



VALUE DESTRUCTION IN TRANSFERS OF CONTROL OF BRAZILIAN CORPORATIONS

A critical review of Article 254-A Brazilian Corporate Law: protection of minority shareholders in closely-held companies and tender offer obligations

**Lateinamerikarunde, 25th February, 18:00, Max Planck Institute for Comparative and
International Private Law**

Panelists:

PROF. DR. ANDREIA CASQUET AND

GUSTAVO GREBLER, LL.M. (UNIVERSITY OF PENNSYLVANIA)

Moderator:

PROF. DR. LUIS FELIPE SPINELLI

Abstract

This panel discussion is ultimately concerned with value destruction of Brazilian stock companies in the context of corporate takeovers. The panelists will address legal problems arising out of the transfer of controlling interests in Brazilian closely and publicly held corporations and the protection of minority shareholders. ANDREIA CASQUET will be focusing on the decision of Brazilian lawmakers not to provide for an obligation to launch a tender offer upon the sale of control of closely held corporations; for publicly held corporations such an obligation is set forth in article 254-A of Brazilian Companies Law (Lei das Sociedades por Ações = LSA). In this context, CASQUET will elaborate on the limitations imposed on the powers of the controlling shareholders, which constitute a crucial instrument for protecting minority shareholders of closely held companies. Furthermore, she will offer practical insight into contractual safeguards on the level of shareholders' agreements that serve to establish a balance of powers between controlling and minority shareholders. Those contractual mechanisms may afford the protection sought by minority shareholders and prevent value-destroying conduct of controlling shareholders. GUSTAVO GREBLER will further explore specific shortcomings of the Brazilian takeover regime, which does not provide for sufficiently clear concepts for the 'sale of control' and 'controlling interest' of a Brazilian stock company. The resulting lack of legal certainty has undermined the trust in the securities market and elevated the cost of capital of traded companies. The main cases on the subject matter will be presented, as well as regulatory reforms that could mitigate the value destroyed by the currently flawed discipline.

**About the Speakers:**

Andreia Casquet is a transactional lawyer and corporate adviser whose practice focuses on domestic and cross-border mergers and acquisitions, corporate and securities law matters. Currently she is a Postdoctoral Scholar at University of São Paulo and she is conducting the Post-Doctoral research at the Max Planck Institute for Comparative and International Private Law regarding the One-share-one-vote rule. She received her Ph.D. in Commercial Law from University of São Paulo in 2015. She is a professor of the LL.M. programme in Corporate Law and is responsible for mentoring and advising LL.M. students at Insper – Instituto de Ensino e Pesquisa. She is a partner of [Souto, Correa, Cesa, Lummertz & Amaral Advogados](#). She is an author of various legal articles and books.

Gustavo Grebler is a Brazilian licensed attorney, with focus on capital markets and corporate law. He is former legal head of a Brazilian financial institution, and long-term contributor to corporate governance and capital markets regulations. He is currently a Visiting Fellow at the Max Planck Institute for Comparative and International Private Law, where he conducts a comparative research aimed at improving Brazilian takeover regulations applicable to publicly held companies. Gustavo earned a J.D. from Universidade Federal de Minas Gerais (UFMG), holds a certificate of specialization in Law and Economics from Fundação Getulio Vargas, a LL.M from the University of Pennsylvania, and is a PhD candidate at the Universidade de São Paulo (USP). He co-authored books on Corporate Law, and published various articles on corporate governance matters. He is a member of the Directive Committee of the Brazilian Institute of Corporate Governance – IBGC and a member of the Securities Regulations Committee of the International Law Association – ILA.

Moderator: Luis Felipe Spinelli is a lawyer whose practice focuses on Corporate and Bankruptcy law. He holds a Ph.D. in Commercial Law from University of São Paulo (USP), a Master's in Private Law and is an Expert in Business Law from Federal University of Rio Grande do Sul. Since 2015, Spinelli is a Professor of Business Law at the Federal University of Rio Grande do Sul (UFRGS). He has authored and co-authored books and legal publications on the topics of Corporate and Bankruptcy Law. Spinelli is conducting part of his current research project in the area of directors and officers fiduciary duties at the Max Planck Institute for Comparative and International Private Law. He is a partner of [Souto, Correa, Cesa, Lummertz & Amaral Advogados](#).