Integration of mergers and acquisitions

Corporate governance models and M&A

Telmo Francisco Vieira

Corporate Governance

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Corporate Governance

Index

Exercise - New model of corporate governance in a post-acquisition operation

Disclaimer: *As Corporate Governance deals with several codes and legislation/regulations and changes may take place at any time, the following slides should be understood as a working basis. In presence of a specific assignment it is* ***necessary to validate*** *if specific regulation is still in force or if it registered any changes.*

1. Introduction

1. Introduction

Corporate Governance

Corporate Governance has been associated to the relation ***principal-agent problem.***

→ The **investor** (principal) hires a **manager** (agent) to administer the companies on their behalf.

*Corporate Governance concerns how to **align the interests of both parts** and assure that companies will be managed in the principal's benefit.*

Corporate Governance is frequently associated with the **structure of management body of companies.**

1. Introduction

Corporate Governance – an increasing concern

The increasing concerns about organization's **sustainability**, **ethics** and **financial scandals** that occured, have conducted to a closer look to which could be the **best governance practice**.

These concerns have been reflected by:

- **Governments**, in the production of norms and regulations that seek to guide the implementation by organizations of **best governance principles**.
- **Organizations,** by implementing the **corporate governance models**.
- **Society in General** with new instituts/associations that focus on corporate governance.

In terms of **political power** there is now an awareness of the contribution that <u>good corporate governance</u> makes to **economic growth**, **investment** and **financial market stability**.

1. Introduction

Corporate Governance's objectives:

The main objectives to be achieved by corporate governance are:

- ensure integrity, professionalism and **accountability of management**;
- consider **internal control mechanisms** to encourage good management practices;
- predict appropriate mechanisms of transparency and reporting;
- establish supervision mechanisms that may contribute to the credibility of the global business environment.

❖ Decline in the Economy - some history event

As Economy walked into a recession at 2000, stock prices fallen.

The decreasing of stock prices was even deeper by the awareness of practices/behaviours non-ethics by some companies.

Some examples of fraud:

❖ Examples of commited fraud

Enron

1. Used *special-purpose entities* (SPE) to decrease their responsibilities and to count **artificial income** for either SPE either Enron.
2. Contracts lasting for several years were accounted for in the first year, reducing costs and oversizing income.

WorldCom

1. **Current expenditures** were accounted as **investments** (with this they transformed the losses they indeed had in profits).

2. **Very large amount of loans** to top executives were not paid by them.

Tyco

1. **Manipuled the accounts** to show high profits.

2. **Non-approved loans** to top executives (these executives used company's money to buy personal property and other assets).

❖ Studies regarding fraud

Other fraud examples were studied by **Agrawal, Jaffe, and Karpoff (1999)**.

They identified **103 companies** accused of **fraud** present at Wall Street Journal Index between 1981 and 1992. They have also established 103 control companies whose code of economic activity and net sales were similar to that of companies with fraud.

- The companies that were part of fraud's companies sample had significatively more fraud than the ones of the control group in the 2 years before and 2 years after regarding the year of the key event for the study.
- The differences in operating performance around the event of fraud were not statistically different between two groups.

Regarding management rotation they "**didn't find evidence that fraud revelation leads to a subsequent alteration in the leadership structure**" – in the cases which CEO and Chairman are the same person.

They also evaluated the rotation for the tree top positions and the alterations remain non-significant between companies in fraud situation and the ones in the control group..

❖ Studies regarding fraud (cont.)

During the year of the fraud event, and in the 3 following years, the companies in fraud situation reduce slightly their executive board, reducing simultaneously their internal and external members; on the other hand, the companies in the control group increased slightly their executive board (but not significatively).

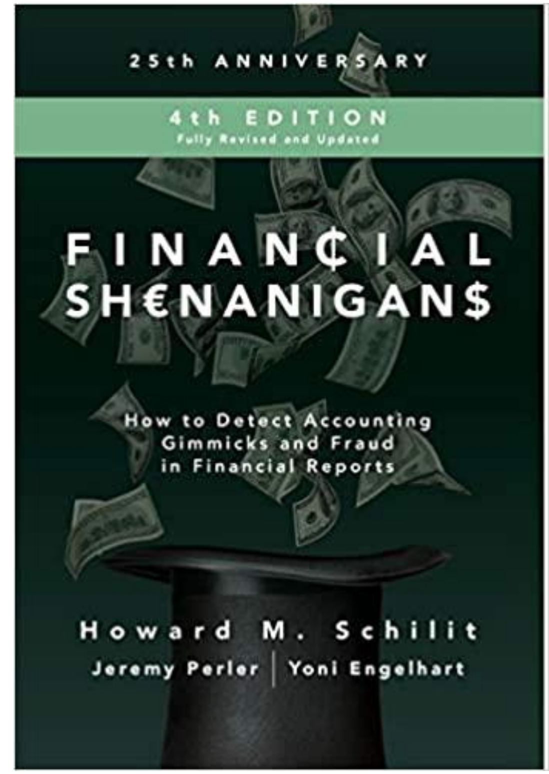
> ➢ **The authors conclude that the reduced impact from reported frauds in the study may reflect the favorable economic and finantial characteristics for the period 1981-1992.**

❖ Some books about corporate fraud

Howard Schilit published in 1993 the first edition of his book: "***Financial Shenanigans in 1993***".

Created an analysis and research center (CFRA) to detect early warning signs in relation to operational problems or accounting "anomalies". In the 2002 edition of his book he mentions **30 techniques of financial "cheating"** defined as practices that intentionally distort the financial situation or performance reported by a company.

In 2002, a similar book with many other examples was published by Mulford and Comiskey.



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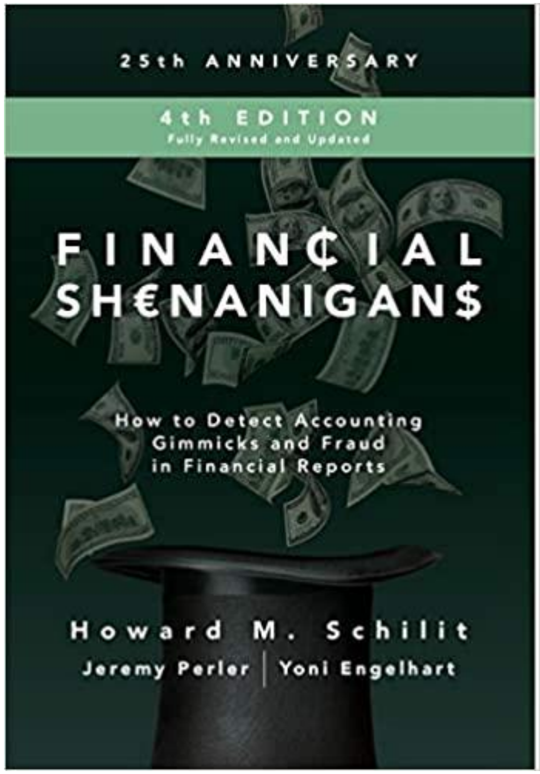
ISBN-10: 126011726Xpj v

➡ These disclosures have **caused outrage** and resulted in **Sarbanes-Oxley Act** (SOA) in July 30th, 2002.

❖ Some books about corporate fraud



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Contents

❖ **Sarbanes-Oxley Act**

The **Sarbanes-Oxley Act** covers 11 main areas:

1. **PCAOB – Public Company Accounting Oversight Board**

PCAOB is a private nonprofit entity subjected to the regulation and supervision of the SEC.

This organization is responsible for the **supervision of the audit** listed companies and the establishment of standards for audit reports. All audit firms must be registered in the PCAOB.

All companies must report to its audit committee is composed of at least one member who is financial expert under the SEC definition.

❖ Sarbanes-Oxley Act (cont.)

2. Auditor independence:

- **Audit** firms are prohibited to providing non-audit services such as **consulting.**
- The Audit Partner should rotate at least **each 5 years**.
- **Audit reports** should be directed to the **audit committee** rather than to the management body.
- The auditing firm should not have employed an accounting or financial responsible of the audited company during the period of one year before the audit.

❖ Sarbanes-Oxley Act (cont.)

3. Certification: The CEO and CFO must be sure that the report is according the SEC requirements and properly presents the financial position of the company (making false statements gives rise to a **prison sentence between 10 and 20 years**);

4. Disclosures: Each annual and quarterly report prepared in accordance with those norms SEC has to disclose all material **off-balance-sheet transactions**.

5. Insider trading: *Insider trading* with the stocks of the company in which they work is considered an event subject to disclosure that must be reported in a *Form 4 within a period of 2 days (*previously was until the 10th day of the month following the realization of the transaction).

6. Conflict of interests: Personal loans are prohibited by companies to administrators and directors;

❖ Sarbanes-Oxley Act (cont.)

7. Professional responsibility: New regulations establish minimum standards of professional conduct regarding **lawyers** who practice their activity in entities supervised by SEC.

8. Studies and Reports: Must be conducted several studies.

9. Fraud accountability: The elimination, alteration or falsification of registrations is a **crime**.

10. Sanctions: All audit or work papers must be kept for **5 years**. False certifications or reports forgery must result in fines until **5 million dollar** and/or **prison until 20 years**.

11. Authority of SEC: Everyone who had violated the antifraud norms may be prohibited of exercise administrative or management positions.

❖ NYSE

On August 16, 2002, the New York Stock Exchange (**NYSE**), submitted to the SEC for final approval a review of the **requirements for admission to listing**.

The new rules to admission the listing of shares in NYSE go beyond the auditor's independence conditions required by **Sarbanes-Oxley Act**.

The company must have an **audit commission** composed by at least 3 persons.

The commission must have a detailed description, in writing, about their activities.

The next slide details the **specifications for the independence of the board:**

❖ NYSE

❖ specifications for the independence of the board

- **Most members** of the **board** should be **independent**;
- The non-executive directors should meet regularly without the presence of executives;
- The boards must have independent **compensation committees** and **nomination committees**;
- All shareholders should vote on ***stock options plans***;
- All listed companies must adopt a set of **guidelines** for **corporate governance.** Regarding the management guidelines, it should include their qualifications, responsibilities and compensation and access management;
- All listed companies must disclose a **code of conduct and ethics**.

❖ Corporate Governance deficiencies

The **Sarbanes-Oxley Act** and the new requirements for listed stocks in NYSE focused the **deficiencies perceived** regarding **Corporate Governance**.

- The board members **were not independent;**
- The audit commission did not have enought independent management power;
- Audit firms had **conflicts of interests** resulting from providing non-audit services such as consulting
- CEO and CFO pursued an **aggressive accounting** and didn't assume any responsibility for the validity and security of financial reports;
- **Transactions** not reflected on the balance sheet **were not adequately disclosed**;
- **Personal loans** to directors were not justified;
- The **analysts' reports** suffered from **conflicts of interest**;
- The professional attitude of some **lawyers** did not comply with minimum standards.
- The unlimited power of top executive allowed them to give themselves excessive bonusses and developed other ways of personal business

❖ Corporate Governance – an unfinished work

It is not clear that the new laws and regulations corrected the faults of Corporate Governance.

This is indeed a work in progress.

❖ Corporate Governance – an advisory services area

pwc

https://www.pwc.pt/pt/servicos/auditoria/corporate-reporting/corporate-governance.html

Deloitte.

https://www2.deloitte.com/pt/pt/pages/risk/topics/center-for-corporate-governance-portugal.html

McKinsey & Company

https://www.mckinsey.com/featured-insights/leadership/board-governance

KPMG

https://home.kpmg/xx/en/home/insights/2018/11/leading-practices-corporate-governance.html

Exercise

1. Provide a definition of "**Independent board member**"

2. Present the **corporate governance model/structure** for 2 companies at your choice.

2. Legal and regulatory Guidelines concerning Corporate Governance in UK

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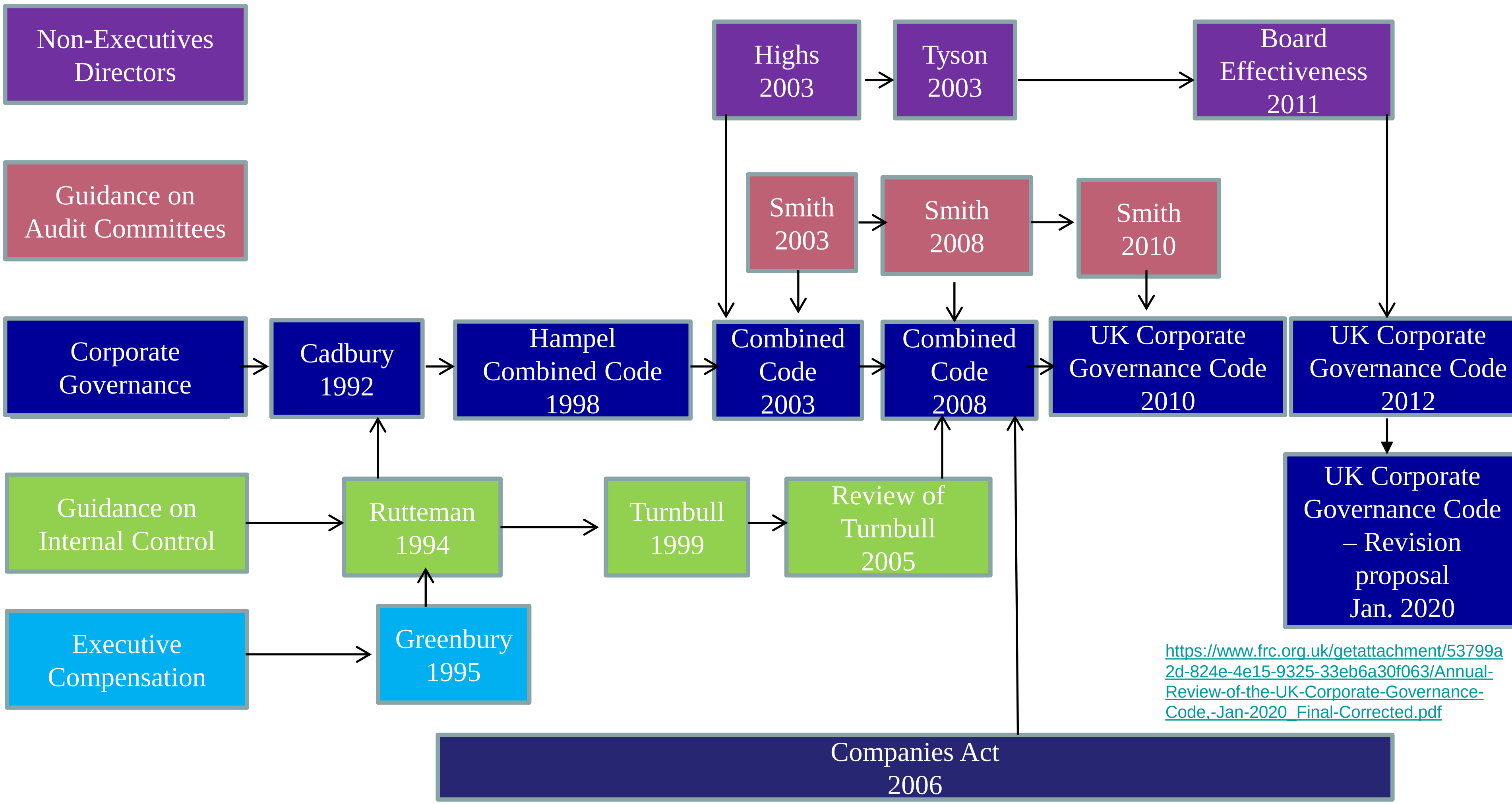
UNIVERSIDADE DE LISBOA

UK Corporate Governance Timeline 1992-2020



https://www.frc.org.uk/getattachment/53799a2d-824e-4e15-9325-33eb6a30f063/Annual-Review-of-the-UK-Corporate-Governance-Code,-Jan-2020_Final-Corrected.pdf

Other Relevant Codes and Reports

Association Investment Companies Code 2003	Walker Report 2009	Stewardship Code 2010

Conclusion

The UK corporate governance framework is constituted from a number of different sources, from formal legislation that must be strictly followed and can have high penalties for failure to do so, to the more principles based voluntary Combined Code.

The framework ensures that basic standards of corporate governance are maintained throughout all companies incorporated in the UK whilst allowing flexibility to enable companies to implement corporate governance policies which fit their business model.

3. Legal and regulatory Guidelines and Models concerning Corporate Governance in Portugal

3. Legal and regulatory Guidelines concerning Corporate Governance in Portugal

Next slides focus the legal and regulatory guidelines concerning Corporate Governance in Portugal.

3. Legal and regulatory Guidelines concerning Corporate Governance in Portugal

OECD	Sarbanes-Oxley Act	CMVM
The **OECD principles** on Corpotate Governance state: • It must be considered the denomination of **non-executive** members and **independent** members to the board. • In the cases where there are committees on the board, their duties and composition must be defined. • The information about corporate governance policy must be disclosed. • The **nomination and election** of the board must be a formal and transparent process.	Sarbanes-Oxley Act is mandatory for companies with listed stocks on the NYSE. It provides: • Periodic evaluation of the effectiveness of the structure and internal control procedures • Obligatoriness of an **audit committee** (at least one member must be an expert in finance)	The **«*Regulamento CMVM 11/2003 – Governo das Sociedades Cotadas*»** requires the board to distinguish between: • **Executive** and **non-executiv**e members • **Independent** and **non-independent** members **CMVM November 2003 recommendation about Corporate Governance.** • At least one member of the management board must be **independent** (a member not associated with specific interest groups) • members of the **remuneration committee** should be independent regarding the members of the Board **CMVM Recommendations on Corporate Governance (2013)** The Chair of the Supervisory Board, the Audit Committee or the Financial Matters Committee shall be **independent** in accordance with the applicable legal standard, and **have the necessary skills** to carry out their relevant duties

3. Legal and regulatory Guidelines concerning Corporate Governance in Portugal

CSC – Código Sociedades Comerciais

CHAPTER VI - Administration, fiscalization and secretary of company

SECTION I - Board of Directors

Article 390. - Composition

Article 396. – Deposit

Article 397. - Transactions with company

Article 399. - Remuneration

Article 405. - Jurisdiction of the Board

SECTION II - Fiscalization

SECTION III – Audit Commission

SECTION IV - Executive Board of Directors

SECTION V - General and Supervisory Board

SECTION VI - Statutory auditor

SECTION VII – Company Secretary

ISP / ASF - Autoridade Supervisão de Seguros e Fundos Pensões

Decree-Law 475/99 - It rregulates the establishment and operation of pension funds and fund management companies. It defines:

- Responsible actuary(art. 32º)
- Management entity(art. 33º)
- Audit (art. 44º)
- Depositories (art. 51º)

Norm 21/2002-R Investment policy of pension funds. Defines:

- The fund manager must define the process of recommendation, approval, implementation and monitoring of investment decisions

European Commission Directives

The directive 2003/41/CE concerning the activities and supervision of institutions for occupational retirement provision predicts:

- There must be **legal separation** between the company and institutions for managing occupational retirement provision (Article 8)
- The need of a **declaration of principles** regarding the **investment policy** that should be reviewed at least every 3 years.
- The Article 18 refers to the investment rules explaining in particular how to proceed in case of conflict of interest

3. Legal and regulatory Guidelines concerning Corporate Governance in Portugal

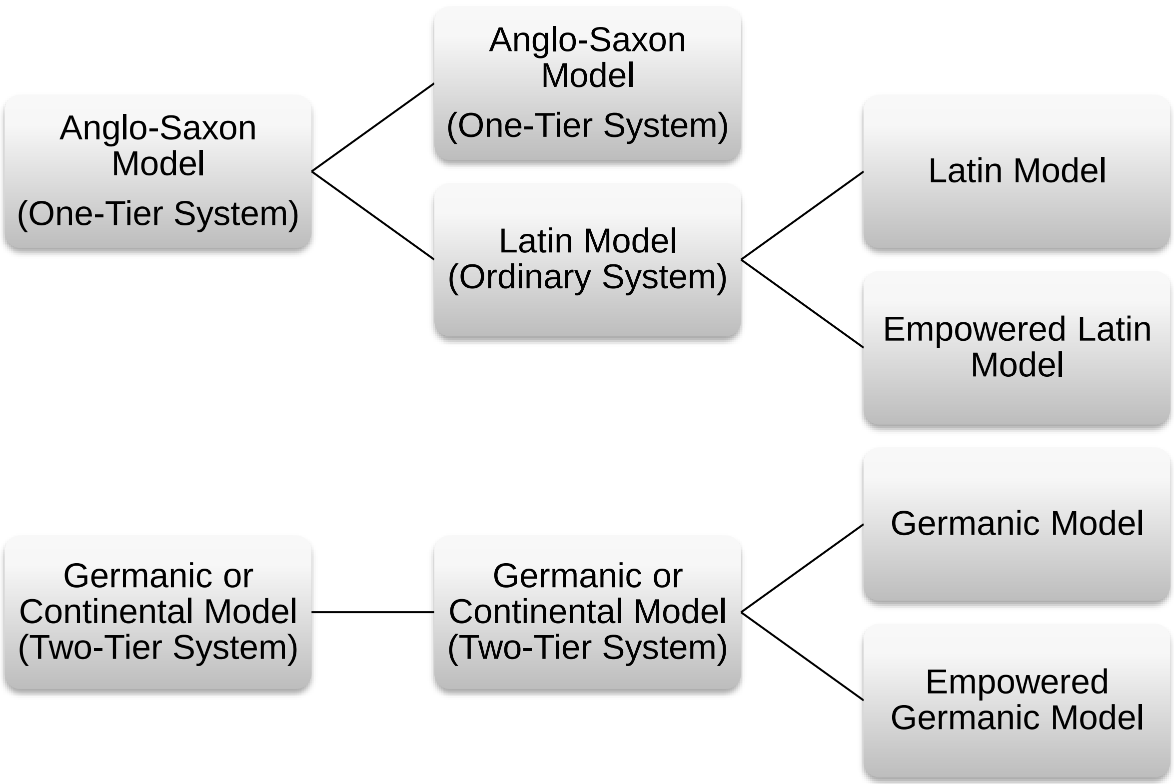
Year	Origin	Document	Recomendations Added
1986		Código das Sociedades Comerciais	* In Portugal the first legislation concerning corporate governance matters, even if not called by the name "Corporate Governance", **appear in 1986** with the introduction of "Código das Sociedades Comerciais", that contained the basic rules on corporate management and control for all types of corporations.
1999	CMVM	Recommendations on Corporate Governance of Listed Companies	* Follow the OECD Principles of Corporate Governance, without imposing strict and uniform models. It mentioned topics such as disclosure of information, exercise of voting rights, shareholder representation, institutional investors, corporate rules and structure and functions of administration boards.
2001	CMVM	Recommendations on Corporate Governance of Listed Companies /CMVM Regulation No 7/2001	* Recomendations on the form of dutties regarding information disclosure on Corporate Governance pratices. * Philosophy of comply or explain.
2003	CMVM	Recommendations on Corporate Governance of Listed Companies /CMVM Regulation No 11/2003	* Clarification of the concept of independent director.

3. Legal and regulatory Guidelines concerning Corporate Governance in Portugal

Year	Origin	Document	Recomendations Added
2018	IPCG	Corporate Governance Code	This new code results from public consultation, to the scrutiny of all those with an interest in matters of corporate governance, now under the clarified purpose of making the final, approved version the new Corporate Governance Code: a Code presented, not as an alternative to the CMVM´s Code, given that the latter will cease to be published, as already announced in the joint declaration of 16 March 2016, but rather as a successor of both then existing Codes. In relation to the 2017 edition, this 2018 version includes some brief changes in some recommendations. The Code of Corporate Governance is effective as of **January 1, 2018.**

3. Corporate Governance Models in Portugal

The Portuguese legislation do not seek to impose strict or uniform Corporate Governance Models, instead it enables companies to choose between the following models (Article 278º, of *Código das Sociedades Comerciais*):



Anglo-Saxon Model (One-Tier System)

Legal framework based in Anglo-Saxon countries (UK, USA, Canada, Australia);

Market-oriented system, where an active external market for corporate control is used by independent shareholders to influence managerial decision-making;

Individual shareholders play an important role with the principle *“one share, one vote”*.

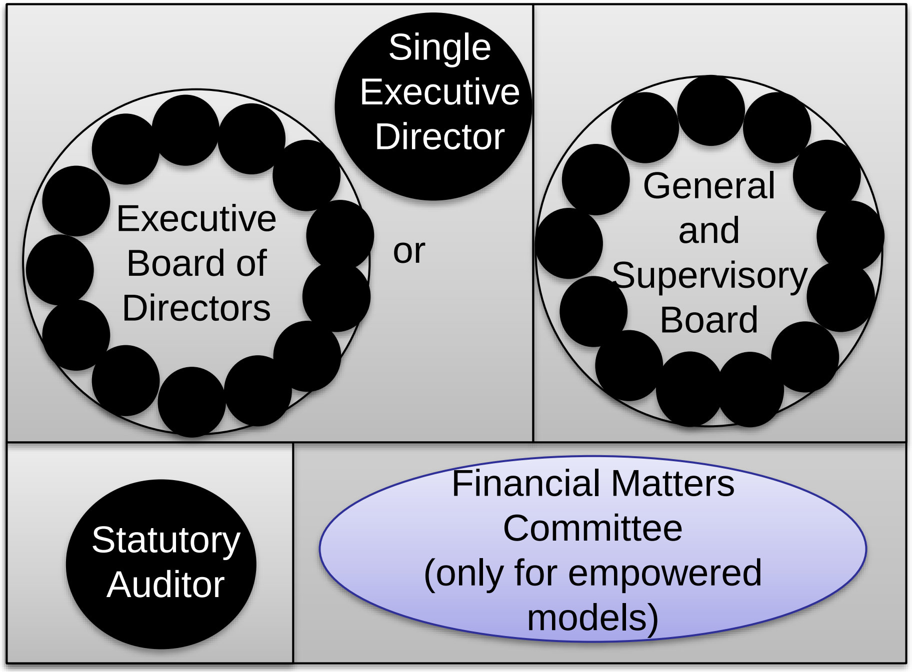
Latin Model (Ordinary System)

Legal framework based in Latin countries (France, Italy, Spain, Portugal,…);

Germanic Model (Two-Tier System)

Legal framework based in Germanic countries (Germany, Netherlands, Switzerland, Austria,…); Network-oriented systems, where oligarchy groups sway managerial decision-making, by stable relationships.

Relevant Stakeholders (corporate management, employees, suppliers, debt holders, firms with mutual cross-shareholdings) play an important role in management decisions.



4. Legal and regulatory Guidelines and Models concerning Corporate Governance in Germany

4. Corporate Governance in Germany

•The task of the Supervisory Board is to advise regularly and supervise the Management Board in the management of the enterprise.

•Responsible for independently managing in the interest of the enterprise, thus taking into account the interests of the shareholders, its employees and other stakeholders.

•The Supervisory Board appoints and dismisses the members of the Management Board.

4. Corporate Governance in Germany

Germanic Model	
Concept of the firm	Institutional
Board System	• Two-Tier (management board and **supervisory board**) • Management board is appointed and dismissed by the supervisory board, and supervisory board are appointed by the general assembly of shareholders
Salient Stakeholders	Industrial Banks, employees
Importance of stock market in the national economy	Stock markets play a small role

- A **dual board** management system is required by law for German stock corporations.
- **Alternatively**, German corporations may choose the legal structure of the European Company (Societas Europaea, SE), an internationally widespread legal structure that provides for a **one tier system** of governance (Administrative Board).

4. Corporate Governance in Germany

Germanic Model	
Active external market control	• Pratically non-existant • Mutual cross-shareholdings between firms are generally permitted and there is an implicit agreement that such shareholdings are not used to launch unwelcome takeovers
Ownership concentration	High ownership concentration
Performance-dependent executive compensation	Is not very common but is increasing recently
Time horizon of economic relationships	Long-term and stable economic relationships

4. German Corporate Governance Code

German Corporate Governance Code *

* Regierungskommission Deutscher Corporate Governance Kodex (as amended on 16th December 2019)

The **Supervisory Board** appoints, supervises and advises the members of the Management Board, and is directly involved in decisions of fundamental importance to the company.

The members of the Supervisory Board are **elected by the shareholders** at the corporation's General Meeting.

Voting Cap

- In principle, each share carries one vote. **There are no** shares with multiple voting rights, preferential voting rights (golden shares) or **maximum voting rights**.

Independent Members

- The Supervisory Board is responsible to decide what is an appropriate and reasonable number of independent members in the board.

4. German Corporate Governance Code

Compliance Degree:

- **“Shall Recommendations”** which also reflect basic international governance standards. Companies that do not comply with these Recommendations have to state this in their annual report and/or their website.

- **“Should Suggestions“** that represent additional international elements of good governance. These ‘Suggestions’ do not require an obligatory statement in case of non-compliance (but the Code encourages a detailed description of the application and any deviation from the 'Suggestions').

4. German Corporate Governance Code

Employee Ownership

Empoyees have a participaton on the companie’s stock

Employee Representation

Employees have representatives in the board corresponding to:

- 1/3 of the board, if company has more than 500 employees
- 1/2 of the board if company has more than 2000 employees

5. Examples of Corporate Governance models

5. Examples of Corporate Governance models

(the “two-tiered board” model)

- **Allianz**

In Germany the management and supervision is made by two different boards (two-tiered board):

Board of Management - is only responsable by managing the company: runs day-to-day operations.

Supervisory Board - monitors and advises.

- The members of **Board of Management** are responsables by managing the company. Their functions are coordinated by the Chairman.
- The **Supervisory Board** is responsible by hire and fire the members of the management board, determine their compensation, and review major business decisions.

5. Examples of Corporate Governance models

(the “two-tiered board” model)

- **Allianz**

Supervisory Board

- **Audit Committee**
- **Standing Comittee**
- Personnel Committee
- Mediation Committee

Allianz

Audit Committee

- 5 members (3 stockeholders representatives and 2 employee representatives)
- 5 sessions per year in average
- It prepares Supervisory Board decisions regarding the approval of annual accounts;
- It analyzes the quaterly reports;
- It prepares the decision to appoint the auditor;
- It analyzes the auditor independence;
- It establishes the anual compensation for the anual audit;
- …

Standing Committee

- 5 members (2 employee representatives)
- It is responsable by approval of transactions that requires the approval of Supervisory Board, if the Supervisory Board chamber or other commission was not obligated to give that approval.

5. Examples of Corporate Governance models

(the "two-tiered board" model)

❖ **Allianz**

Allianz

Supervisory Board

- Audit Committee
- Standing Committee
- **Personnel Committee**
- **Mediation Committee**

Personnel Committee

- 3 members (Chairman of Supervisory Board, a stockholder representative and a employee representative in the supervisory board);
- It is responsible in particular for the preparation of the **nomination / appointment** of members of the Board of Management;
- Responsible for issues related to compensation remuneration

Mediation Committee

- According to German law, Mediation Committee has by function the resolution of conflict relating to the appointment of members of the Board of Management.
- Mediation Committee met only if the Supervisory Board do not get a two thirds vote …

5. Examples of Corporate Governance models

(the "two-tiered board" model)

- **Axa**

Axa's corporate governance model compreehends:

- **Supervisory Board**
- **Management Board**

Supervisory Board - monitors the operations of the company and reports to stockholders.

It appoints the Chairman and members of the Management Board and supervises executive management.

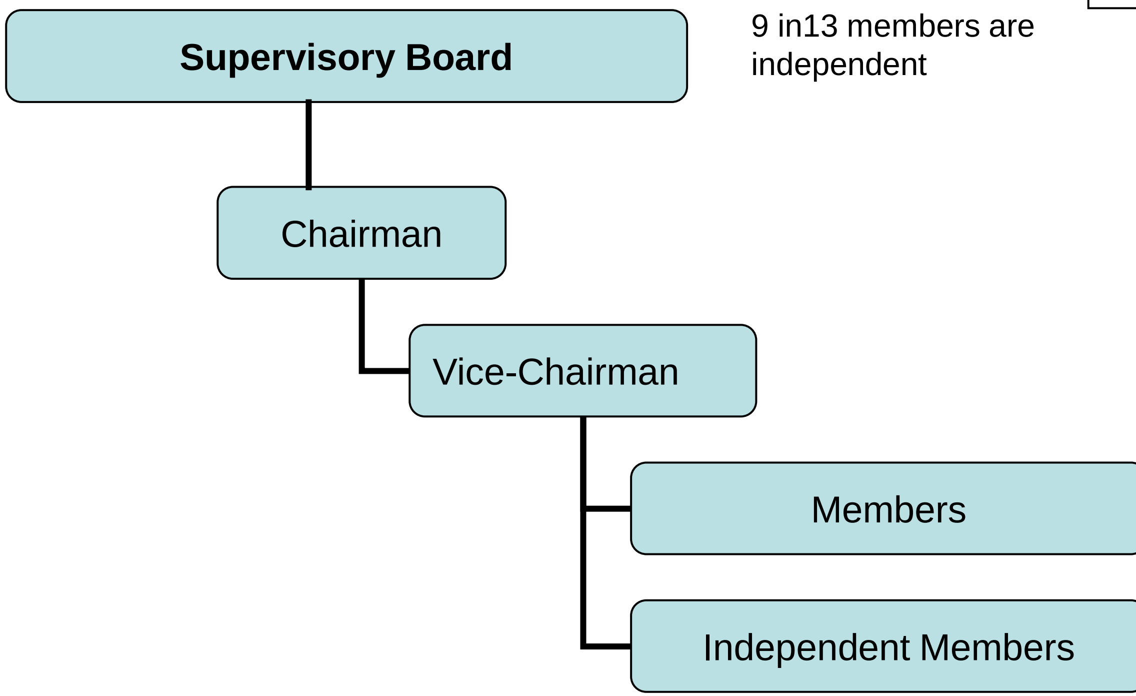
Supervisory Board formally established "**Special Committees**" to help implementing the principles of Corporate Governance.

The Chairman and members are appointed by it as well as the specifications of their rights and duties.

5. Examples of Corporate Governance models

(the “two-tiered board” model)

- **Axa**



9 in13 members are independent

5. Examples of Corporate Governance models

❖ Axa

Special Committees

Supervisory Board

Audit Committee	Finance Committee	Selection & Governance Committee	Compensation Committee

Audit Committee

- 5 members (at least 1 of them has to be independent);
- 7 sessions in average per year;
- It examines the financial statements before they are presented to the Supervisory Board.
- It controls the nomination of external auditors of the company, approves the external audit programs, results and recommendations as well as any actions taken in light of these recommendations.

Finance Committee

- 5 members (at least 1 of them has to be independent);
- 3 sessions in average per year;
- It examines and emits the recommendations about plans to sell properties or equity which amount of evaluation had exceeded the authorization given at Management Board by Supervisory Board;
- It reviews the major AXA's guidelines concerning the asset management politics and generally all related aspects with investment management policy.

5. Examples of Corporate Governance models

❖ Axa

Special Committees

Supervisory Board

Audit Committee	Finance Committee	Selection & Governance Committee	Compensation Committee

Selection & Governance Committee

- 5 members (at least 3 have to be independent);
- 2 sessions in average per year;
- It formulates recommendations to the Supervisory Board concerning the nomination of members to the Supervisory Board, special committees of Supervisory Board and the Management Board;
- The Committee is notified of the main meetings of top executives and directors of AXA.

Compensation Committee

- 5 members (at least 3 have to be independent);
- 5 sessions in average per year;
- It recommends to the Supervisory Board compensation levels of the salary of the Management Board members, the amounts of fees payable to members of the Supervisory Board - subject to stockholder approval;
- Proposals for use of stock options to members of the Management Board.

5. Examples of Corporate Governance models

(the “two-tiered board” model)

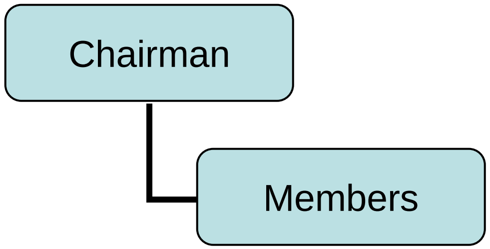
❖ **Axa**

Management Board

Management Board is the decision-making body of AXA.

These members dedicate their time exclusively to managing the company.

Each member of Management Board has a specific responsibility about some concrete aspect in managing the company.



5. Examples of Corporate Governance models

(the "unitary system" model – *modelo monista*)

❖ **Zurich**

According the company's social pact, the **Board of Directors** should have between **7 and 13 members**.

The members at Board of Directors are **non-executives**.

The Board of Directors should meet at least 6 times per year.

The Board of Directors appointed the following committees that will report to it regularly and submit motions for resolutions.

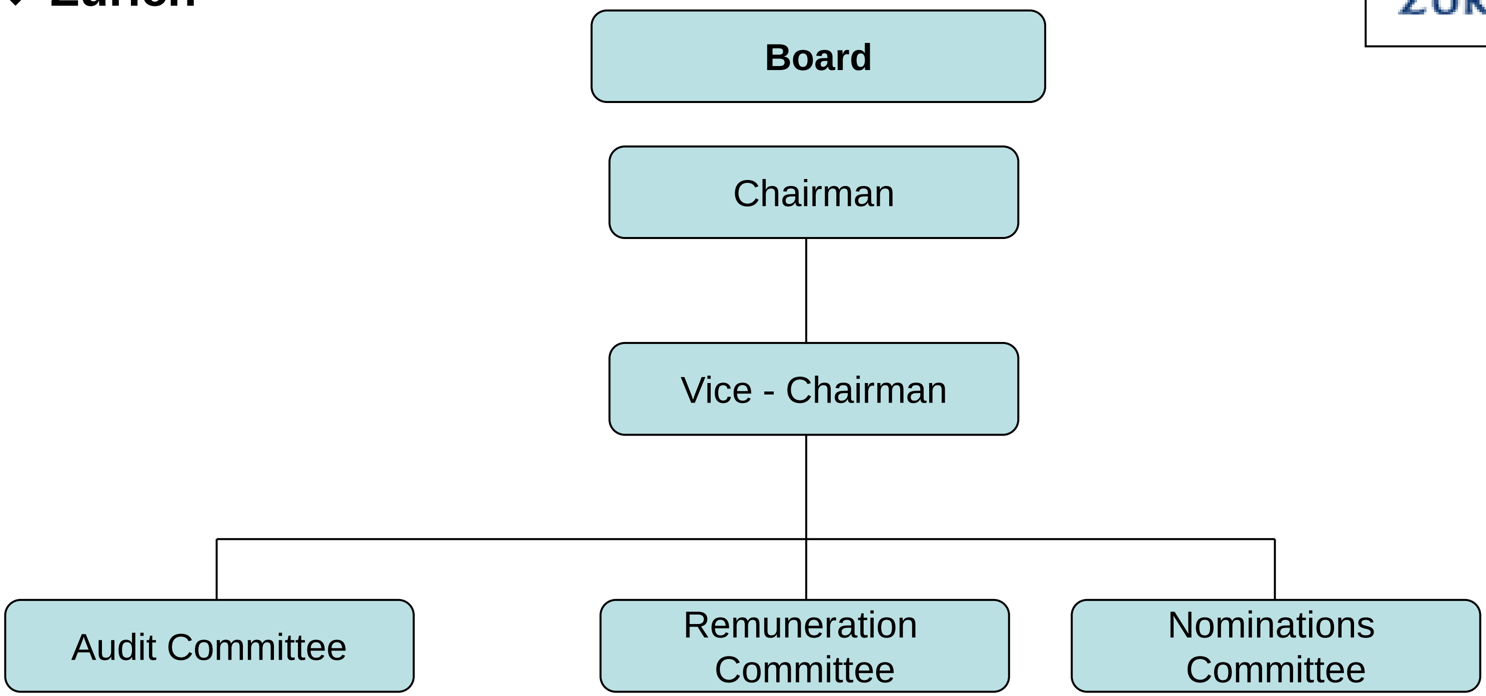
- **Remuneration committee**
- **Audit committee**
- **Nominations committee**

5. Examples of Corporate Governance models

(the “unitary system” model – *modelo monista*)

❖ **Zurich**

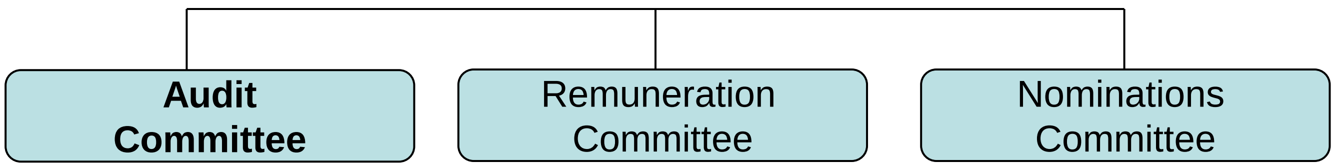
ZURICH



5. Examples of Corporate Governance models

(the “unitary system” model – *modelo monista*)

❖ **Zurich**



Audit committee

- It is composed by 5 members;
- Must meet at least 4 times per year;
- It is the central organ to aspects of financial accounting, internal control, compliance and risk management between management, internal and external auditors;
- The Audit committee is responsible for reviewing the audit process of the company;
- Reviews the internal control systems.

5. Examples of Corporate Governance models

(the "unitary system" model – *modelo monista*)

❖ Zurich

Audit Committee	**Remuneration Committee**	Nominations Committee

Remuneration committee

- It is composed by 6 members of the Board of directors.
- It should meet at least two times a year;
- It proposes to the Board of Directors the principles of remuneration for the Group and the remuneration of directors;
- It determines the metrics and performance analysis.

5. Examples of Corporate Governance models

(the "unitary system" model – *modelo monista*)

❖ **Zurich**

- Audit Committee
- Remuneration Committee
- **Nominations Committee**

Nominations committee

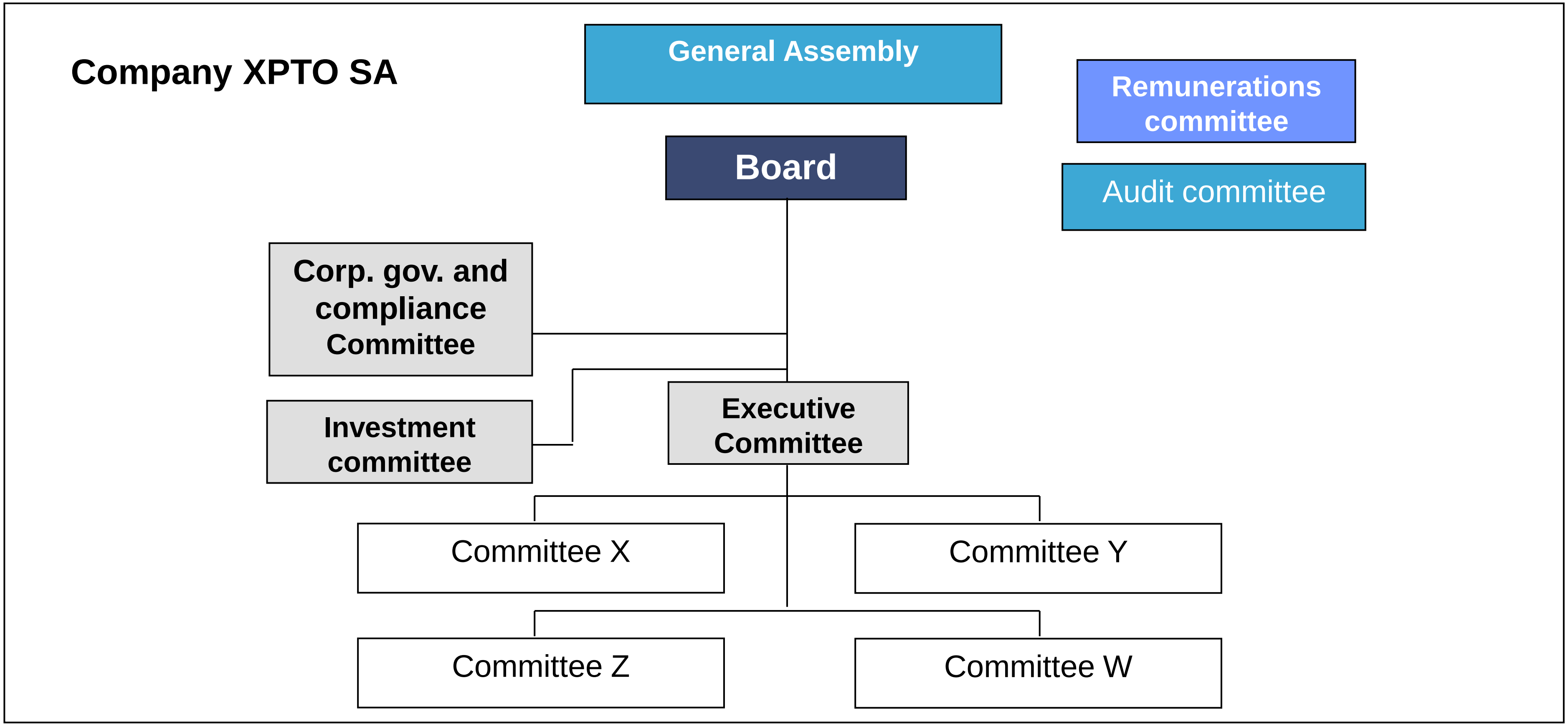
- It is composed by 5 members of the Board of directors;
- It should meet at least two times a year;
- It proposes the principles for the appointment and qualification of members to the Board of Directors;
- It shows proposals to Board of Directors about their composition, the nomination of Chairman and Vice-Chairman as well as CEO (the final decision however is taken by the Board of Directors).

6. Example of a Corporate Governance model for a portuguese company

6. Example of a Corporate Governance model for a portuguese company

(the "unitary system" model (*modelo monista*) – n.º1, al. a), art. 278º CSC)

Latin Model



6. Example of a Corporate Governance model for a portuguese company

Composition of the Board:

Board	Chairman of the Board	Executive committee	Corp. gov. and compliance Committee	Investment committee	total number of members
Executive Members		3	(um dos membros é comum)	1*	3*
Non-executive Members	1		1	1	3
Independent non-executive Members			1		1
	1	3	2	2	**7**
External Members				2	2

6. Example of a Corporate Governance model for a portuguese company

Board

(art. 390º and following CSC)

Composition

- 3 non-executive members (one of which is the Board president)
- 3 executive members
- 1 independent member

Assemblies *

- 1 monthly meeting and whenever this is justified

Year of nomination

- 3 years

Functions

- Responsible for the overall management of the company

6. Example of a Corporate Governance model for a portuguese company

Executive Committee

(nº3, art 407 CSC)

Composition

- 3 executive members*

Assemblies

- 1 weekly meeting and whenever this is justified.

Years of nomination

- 3 years

Functions

- Responsible for leading the company's activities.

* **Note:** According nº 3, article 407 of CSC, the executive commission must necessarily be composed of an odd number of directors.

6. Example of a Corporate Governance model for a portuguese company

Corp. gov. and compliance Committee

Composition

- 1 non-executive member
- 1 independent non-executive member

Assemblies

- 1 quaterly meeting and whenever it is justified.

Years of nomination

- 3 years

Functions

- Monitor and track conformity with the rules and regulations applicable to company's business
- Supervise the conformity with laws, regulations and statutes concernig corporate governance and discuss and approve measures to introduce or changes the observed principles and adopted procedures adopted by the company concerning its governance.
- Monitoring the effectiveness of corporate governance practices and make changes when necessary.

6. Example of a Corporate Governance model for a portuguese company

Corp. gov. and compliance Committee

Composition

- 1 non-executive member
- 1 independent non-executive member

Assemblies

- 1 quaterly meeting and whenever it is justified.

Years of nomination

- 3 years

Functions

- Monitor the continuing compliance with:
  - Separation functions
  - Information mechanisms
  - Control and risk management
- Articulate with external auditors

6. Example of a Corporate Governance model for a portuguese company

Investment Committee

Composition

- 1 executive member
- 1 non-executive member
- 2 external members

Assemblies

- 1 monthly meeting and whenever this is justified

Years of nomination

- 3 years*

Functions

- Responsible for the preparation of the written declaration of principles relating to investment policy (to prepare at least 3 in 3 years) - art. 12 of Directive 2003/41/EC
- Monitor the implementation of investment policies towards objectives and targets set
- Periodically sends to the associated members key information about the consultants and fund's sub-managers

* **Note:** The external members may be appointed for a 2- or 3-years period.

6. Example of a Corporate Governance model for a portuguese company

Remunerations committee

Composition	Assemblies	Years of nomination
• 3 shareholder members appointed by the general assembly and independent of the Board (art. 399º CSC; recomendation CMVM Nov. 2003)	• 2 annual meeting and whenever necessary	• 3 years

Functions

- Harmonize the remuneration of members of the board with the long-term interests of the company and its shareholders.
- Determine the total remuneration of each individual member of the Board of Directors, including, where appropriate, bonuses, incentive systems and options.
- Determine the targets to achieve the purpose of any remuneratory compensation based on performance.
- Be the only responsible for the establishment of selection criteria, effective selection and definition of terms of reference for any remuneration consultants who provide advice to the commission.

7. Comparative study: corporate governance codes in 10 European countries

Country	Code author(s)	Code creation date[20]	Nature of the authoring body
Germany	Regierungskommission Deutscher Corporate Governance Kodex	2002	Committee appointed by the Ministry of Justice in September 2001. The committee is independent of the Ministry and has 14 members, including investors, academics, a union, and issuer representatives
Belgium	Corporate Governance Committee	2004[21]	A 21-member committee, created at the initiative of the Financial Services and Markets Authority (FSMA), the *Fédération des entreprises de Belgique* (Federation of Enterprises in Belgium, FEB) and Euronext
Spain	Comisión Nacional del Mercado de Valores (CNMV)	2006[22]	Market regulator (in 2013, an expert group made up of 12 members from the public and private sectors was appointed to help the CNMV amend the code)

Source: Autorité des marchés financiers, 30 March 2016

7. Comparative study: corporate governance codes in 10 European countries

Country	Code author(s)	Code creation date[20]	Nature of the authoring body
France	AFEP and MEDEF	2004[23]	Associations representing issuers. Since 2013, the *Haut Comité de Gouvernement d'Entreprise* (High Committee for Corporate Governance, HCGE), established at the initiative of the AFEP and the MEDEF, has also been tasked with "*proposing updates to the code to reflect changes in practice, including at the international level, AMF recommendations or areas for reflection, and investor requests*"
Finland	Securities Market Association	2003[24]	Cooperation organ established by the issuer association (Confederation of Finnish Industries EK), the Finnish Chamber of Commerce and the market undertaking (NASDAQ OMX Helsinki) and made up of 11 members
Italy	Corporate Governance Committee	2006[25]	Entity made up of issuer and investor associations (ABI, ANIA, Assonime, Confindustria and Assogestion) and the market undertaking (Borsa Italiana S.p.A)

7. Comparative study: corporate governance codes in 10 European countries

Luxembourg	Luxembourg Stock Exchange	2006	Market undertaking, in collaboration with issuer representatives
Netherlands	Corporate Governance Code Monitoring Committee	2003[26]	Committee created at the joint initiative of public actors (Ministry of Finance and Economic Affairs) and private actors (employer associations, Euronext), appointed every four years and reporting annually on its findings to the Economy, Justice and Finance Ministries. Originally, the authoring body was made up of issuer representatives and academics (Tabaksblat Committee)
UK	Financial Reporting Council (FRC)	1998[27]	Audit and financial reporting regulator
Sweden	Swedish Corporate Governance Board	2005	Entity affiliated with an association (Association for Generally Accepted Principles in the Securities Market) established by several professional associations to provide a structure for the self-regulation of private sector companies on the Swedish securities market and by the Commission on Business Confidence (a governmental committee, which was chaired by the former Minister of Finance)

Source: AMF

7. Comparative study: corporate governance codes in 10 European countries

Country	Implementation of the corporate governance code	
	mandatory	*voluntary*
Germany	X	
Belgium	X	
Spain		X
Finland	X	
France		X
Italy		X
Luxembourg	X	
Netherlands	X	
UK	X	
Sweden	X	

7. Comparative study: corporate governance codes in 10 European countries

Country	Separation of the roles of chief executive officer and chairman of the board — *Nature*	*Source*	Measures when the roles are combined
Germany	Mandatory	Stock Corporation Act of 6 September 1965 (§105)	N.A.
Belgium	Recommended by the code ("comply or explain")	Provision 1.5	Justify non-compliance with the recommendation
Spain	Voluntary		Election of the chairman must be approved by at least two-thirds of the members of the board of directors A lead director, who takes on additional duties, must be appointed
France	Voluntary		A lead director may be appointed but there is no such recommendation in the code
Finland	Recommended by the code ("comply or explain")	Recommendation 36	Justify non-compliance with the recommendation

7. Comparative study: corporate governance codes in 10 European countries

Country	Separation of the roles of chief executive officer and chairman of the board: *Nature*	*Source*	Measures when the roles are combined
Italy	Voluntary		Appointment of a lead director recommended by the Committee responsible for drafting the code
Luxembourg	Recommended by the code ("comply or explain")	Recommendation 1.3	Justify non-compliance with the recommendation
Netherlands	Mandatory	One-Tier Board Act	N.A.
UK	Recommended by the code ("comply or explain")	Provision A.3.1	Justify non-compliance with the recommendation The board should consult major shareholders in advance and should set out its reasons to the market in the annual report
Sweden	Mandatory	Swedish Companies Act	N.A.

8. Potential areas for academic research

- **Financial performance** and **mechanisms of Corporate Control**
- **Artificial intelligence** and **Machine Learning** applied to Corporate Governance
- Risk management and regulatory practice
- Financial market supervision and control
- Governance and financial market economics
- Codes of 'best practice' and norms of behaviour
- Boards of directors
- Internal controls and accountability

9. References

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9. References

Some relevant sites concerning Corporate Governance

PORTUGAL
https://www.cgov.pt/

UK
https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code

GERMANY
https://www.dcgk.de/en/home.html

FRANCE
http://www.amf-france.org/en_US/Reglementation/Dossiers-thematiques/Societes-cotees-et-operations-financieres/Gouvernement-d-entreprise/Etude-comparee--Les-codes-de-gouvernement-d-entreprise-dans-10-pays-europeens

EUROPE

http://www.euram-online.org/corporate-governance.html

10. Assignment

Assignment

1) Identify databases concerning Corporate Governance (hint, **Mendeley** can be a source for searching) that can be used for academic research

2) Identify academic papers relating Artificial Intelligence and Machine Learning with Corporate Governance

3) Identify 2 academic papers from 2019 or 2020 concerning Corporate Governance

Exercise

New model of corporate governance in a post-acquisition operation

Exercise

Company Alfa S.A. dedicates to manufacturing (laser cutting) and commercialization of metal components for different industries, in particular the automotive industry.

This company was formed about 10 years ago and has always been owned in two equal parts of 50% for each of its two managing partners.

Your company, the acquiring company, just acquired 60% of the share capital of company Alfa S.A.. Your company is one is of the leading companies in the metal sector in Portugal with a very strong financial capacity.

The acquiring company is family owned in which the management is done by the parents and two sons (all with a university degree in management at ISEG-Lisbon University).

It is requested that:

Submit a suggestion concerning the Corporate Governance model that may be adopted in the post-acquisition of Alfa S.A.

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