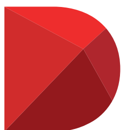
Corporate Governance Structures

Corporate governance is the process of how corporations are run. Each country has a structure with some type of relationship between a corporation's owners, managers, and shareholders. While each country has a unique infrastructure for corporate governance, there is currently no universal process for corporate governance.

The banking and financial institutions play a central role in the corporate infrastructure of most countries. There are various pros and cons to each type of structure and none of them represent the perfect model. Around the world, all countries felt the impact of the financial crisis of 2008, so all nations have an interest in good corporate governance. Governments on a global scale have much to learn from each other about the principles of good corporate governance. Following is a brief overview of how some countries set up their corporate governance structures.



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THE USA

In the United States, there is a separation of ownership and control. The shareholders collectively own the company. The number of shares they purchase constitute the percentage of the company that they own. regulations and statutes. Perhaps the most well-known, far-reaching and impactful of these new legislative initiatives is the European Union's General Data Protection Regulation (GDPR). The new rules require the company's directors and officers certify that their company is in compliance – and holds them personally accountable. Here are four questions directors and officers can discuss to ensure they are up-to-speed with GDPR.

The number of shares that shareholders own also influences their voting rights. Typically, shareholders get one vote per share. The board usually assigns a nominating committee to put up a slate of board directors at election time. The shareholders then vote to elect new board members.

The recommended minimum number of board directors is three. The board usually begins with the founder and two investors. Most boards of large companies have between seven to nine board directors[1]. The board is responsible for the organization's vision and mission. They're also responsible for strategic planning and managerial oversight. Board members set their own rules for remuneration.

The board elects the CEO and other senior managers and sets the compensation for the CEO.

Corporations in the United States must follow the federal, state, and local securities laws. Listed companies are also subject to the exchange rules such as NASDAQ and the New York Stock Exchange.

THE UNITED KINGDOM

The principle authority on corporations that sets the corporate governance standards for board leadership, accountability, board member remuneration, and shareholders is the UK Corporate Governance Code[2].

The Code, as it's called, states that boards of directors should have a strong presence of executive and non-executive directors. The idea behind this is that no one individual or small group should dominate the board's decision-making. The Code requires at least half the board to be independent of non-executive directors, irrespective of the board chair. This structure was not designed with the intent of the non-executives creating a separate supervisory board. All board directors comprise a unitary decision-making process.

The Code also requires companies to submit an annual report that demonstrates how they're complying with the Code or an explanation of why they aren't complying with it.

The board typically chooses one of its independent non-executive directors to serve as senior independent director. This role is designed to be an alternative point of contact for major shareholders with major concerns who are not making headway with other approaches.

There are slightly different rules for smaller companies in the United Kingdom. Shareholders have voting rights in the general meeting. The Takeover Code[3] protects the rights of shareholders and lets them freely trade their shares.

The U.K. Corporate Governance Code[4] of 2016 was set as a national financial council that sets standards and expectations for the duties, responsibilities, and expectations of board directors, shareholders, and managers.

GERMANY

Germany has a two-tier board model[5] consisting of a supervisory board and a management board. Banks and financial institutions comprise a large majority of corporations shareholders typically appoint about 50% of members to the supervisory board.

The German Codetermination Act[6] gives workers the right to participate in the management of the companies they work for. The Act allows employees and labor unions to elect the other half of the supervisory board when there are over 2,000 employees. Smaller companies of 500-2,000 employees get to elect a third of the supervisory board members.

In addition to the supervisory board and the management board, German corporations usually have an annual meeting of shareholders.

The German Stock Corporation Act[7] grants many rights to shareholders including appropriation of profits, electing auditors, discharging the management board and supervisory boards, making amendments to the Articles of Association, issuing stocks and bonds, and more.

THE NETHERLANDS

In the Netherlands, Book 2 of the Civil Code is the prime authority on corporations. The Code outlines the differences between private and public corporations.

The Netherlands takes much pride in their history of family-owned businesses. As a result, the most common type of company is a sole-proprietorship. Sole proprietors may transfer ownership to other family members or anyone else at will.

The second-most common type of company in the Netherlands is the limited liability corporation (LLC). LLC's may only issue registered shares and owners must abide by legal restrictions for transferring shares.

Dutch public corporations have the option of listing on the Amsterdam Exchanges, where they can issue and transfer registered and bearer shares.

The Netherlands designed the Civil Code to suit a certain description and size of business. The Code requires all public and private companies to have a management board. The government has long required all large companies to have a two-tiered model of governance with a management board and a supervisory board. However, as of January 1, 2013, Dutch law now allows a one-tier board[8].

FRANCE

Corporations in France have the latitude to decide on either a unitary structure with a board of directors or a two-tier structure with a management board and supervisory board, similar to the German corporate governance structure to limited and listed corporations. To date, most companies have chosen a one-tier, or unitary board.

Companies that have a board of directors also have the liberty of choosing whether to combine the office of the board chair and CEO or keep them separate.

There is an important distinction between French law and British law regarding the responsibilities of the board and executive management. The Commercial Code[9] in France requires the board to develop the strategy and broad guidelines of the corporation. Executive management (assisted by an executive committee) is responsible for the daily activities of the company. The Commercial Code also limits the number of board directors to one-third of total board membership. Board directors are chiefly comprised of non-executive directors, which veers substantially from the United Kingdom's model. This type of structure requires that the board of directors take responsibility for guaranteeing an essential balance for good governance.

PORTUGAL

The Commercial Companies Code (CSC) and the Securities Code (CVM)[10] outline the foundation for the corporate governance structure in Portugal. The CSC allows for three different models of corporate governance management and supervision.

The first structure is the Traditional Model Management, which is composed of a management body and a supervisory board. The board of directors carries out management activities and has the final authority on all managerial matters, except for certain matters that are delegated to shareholders. The management body may delegate one or more directors or an executive committee to run the daily management activities. The board holds the authority to amend the terms to the delegation of powers and to revoke board director appointments. The supervisory board takes responsibility for oversight, legal compliance, cash flow, audits, internal controls and managing risk.

The second governance structure falls under the description of the Anglo-Saxon Model, which has a management body, an audit committee and an official chartered accountant. Under this model, the board of directors carries out managerial duties. The board selects at least three directors to serve on an audit committee, which has the same authority as the supervisory board. The audit committee members must have fixed remuneration, and they can't be removed without just cause. This model also requires the formation of an executive committee.

The third structure is the Two-Tiered Model, with an executive management body, a general and a supervisory board, and an official chartered accountant. The executive board of directors carries out all managerial duties. The general board or the supervisory board may appoint or dismiss board directors. Directors may also be appointed or dismissed by a vote of the shareholders. The variance between general and supervisory board duties makes this structure somewhat of a hybrid corporate body. The executive committee's powers can't be delegated or amended.

JAPAN

The corporate governance model in Japan is a business network model. Japan devised the keiretsu, which is a business network that includes manufacturers, supply chain partners, distributors and financial experts who are independent of one another and who also work together to inspire success. Corporations with keiretsu networks tend to be primarily executives with larger boards, which are often ritualistic in the way that they operate.

Shareholders are usually banks or financial institutions, large family shareholders or corporate shareholders with cross-shareholding. The business network model has a supervisory board and a board of directors. Shareholders, along with banks and other financial institutions, appoint the board of directors and the board president. It has been rare for Japanese companies to search for outside directors in the past, although companies are seeking independent directors increasingly over the last few years.

The Japanese Corporate Governance Code[11], which took effect in June 2015, outlines new rules for disclosure, stakeholders' rights, whistleblowing and other updated corporate governance standards. The standards in the Code are voluntary rather than mandatory. However, the Tokyo Stock Exchange and the Japanese government are encouraging corporations to follow it.

AUSTRALIA

Australia has a unitary structure of corporate governance and is governed by the Corporations Act of 2001[12]. The board of directors acts as overseer of the managers on behalf of the shareholders.

Managerial responsibilities are covered by the managing director (who is also a member of the board) or the CEO, who isn't required to be a board member but who commonly holds a director seat.

Public companies must have a minimum of three directors, and private companies must have at least one director. The Corporations Act requires at least two directors of public companies and at least one director of private companies to have permanent residences in Australia.

The Australian government doesn't make specific requirements about the demographics of directors, but the Australian Securities Exchange encourages independent directors and promotes increasing the number of women directors. The marketplace favors having independent directors as chairs and separate people serving the roles of chair and CEO.

With rare exceptions, directors are appointed and removed by shareholders, and the shareholders determine the directors' remuneration for private and public companies. The Australian Securities Exchange (ASX) Corporate Governance Council's Principles and Recommendations encourage corporations to establish a remuneration committee to review senior executive remuneration and incentives. Some companies must appoint a remuneration committee.

SPAIN

Spain is part of the European Union[13] and so must follow its rules. The structure in Spain is similar to corporate governance in France, Germany and the United Kingdom. The board is a two-tier structure with a supervisory board composed of non-executive directors who control the decision-making of the executive directors.

Spanish law says that the board of directors of a Spanish corporation is responsible for the management, administration and representation in all matters of the business, subject to the provisions in the bylaws. The board chair and the CEO may not hold the same position.

Activist shareholders are highly influential with respect to board decisions. Much like the United Kingdom structure, Spanish boards must comply with European Union rules, or explain why they aren't complying. It's a system that relies heavily on voluntary internal controls rather than enforcing control through legislation.

MEXICO

In Mexico, the laws that regulate corporate governance are the General Law of Commercial Companies (LGSM) and the Securities Market Law (LMV)[14]. These laws are designed to regulate banks, financial institutions and insurance groups. They're also designed to give public and private corporations some latitude to adopt a minimum set of corporate governance rules. The government designed this legislation to allow private and publicly listed companies the flexibility to adopt a minimum set of corporate governance rules.

The National Banking and Securities Commission (CNBC) also regulates and monitors publicly listed companies.

Stock corporations may be managed either by a sole administrator or a board of directors. Publicly traded companies must have a board of directors and a CEO. The board of directors is the legal authority and representative of the company and has the authority to carry out the company's business in most situations. Boards that have three or more directors allow shareholders that hold at least 25% of the equity the ability to appoint one director. Shareholders of public companies only need 10% equity to elect a director.

BRAZIL

In Brazilian companies, the board of directors acts as the supervisory board. The majority shareholders exercise control at the general meeting. Unlike many other corporate governance structures, many Brazilian companies are run by officers who represent the company[15], and they don't have a board of directors at all. Companies that have boards don't always have directors who are truly independent, which is contrary to good corporate governance. The duties of the board directors are outlined in statutes, in non-statutory regulations, and in advisory codes and standards, in particular, the Brazilian Institute of Corporate Governance. equity the ability to appoint one director. Shareholders of public companies only need 10% equity to elect a director.

CANADA

Canada's corporate governance structure[16] is a unitary board structure much like the United States. Corporations must have a board of directors, and they are primarily responsible for strategic planning and oversight. Managers are responsible for the day-to-day operations of the corporation.

Management typically nominates a slate of directors to put before the shareholders for voting at the annual general meeting. In certain situations, the bylaws or other governing documents allow current directors to appoint additional directors during the course of the year, up to a certain percentage of the current size board.

Governance in Canada is shaped by corporate legislation, securities legislation, stock exchange rules, and the common law. Best practices for corporate governance and professional director associations and institutional shareholder groups also shape governance in Canada.

Canada doesn't require corporations to have independent directors, but they strongly encourage it. The government and other stakeholders also encourage other best practices such as board director diversity, for example, on pay and transparency.

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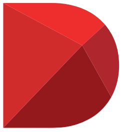

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