Independent Directors and Board Committees

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Directors’/shareholders’ powers

- Directors manage the corporation in the interest of shareholders
- Shareholders deal with extraordinary transactions, amend governing documents
- Grey areas: in the US directors decide the distribution of dividends
Directors of listed companies

• Executive Directors
• Non Executive Directors
• Independent Directors
• Minority Directors
Independent directors

• Independent directors are always non executive, but not the contrary
• Independence is the absence of business, family or other relationships that may create a conflict of interest, hindering his/her judgement
• Important role in order to approve resolutions in which other board members might have conflicts of interests (remunerations, nomination, etc.) or related parties’ transactions
Criteria (1)

• Not being an executive or managing director of the company or an associated company, and not having been in such a position for xxx previous years

• Not to be an employee of the company or an associated company (and previously; but Germany...)

• Not to receive, or have received, significant additional remuneration from the company or an associated company apart from a fee received as non-executive or supervisory director

• Not to be or to represent in any way the controlling shareholder(s)

• Not to have, or have had within the last year, a significant business relationship with the company or an associated company
Criteria (2)

• Not to be, or have been within the last 3 years, partner or employee of the present or former external auditor of the company or an associated company

• Not have significant links with executive directors of the company through involvement in other companies or bodies

• Not to have served on the (supervisory) board as a non-executive or supervisory director for more than three terms (or, alternatively, more than 12 years where national law provides for normal terms of a very small length)

• Not to be a close family member of an executive or managing director, or of persons in the situations referred
Independence is a state of mind or a criteria?

- Non independent directors are not bad people!
- More reputational issue than objective
- Whatever rule is wrong and cannot cover all cases
- Market enforcement (press, analysts, ...) or comply or explain
Internal Committees of the BoD

• BoD may establish one or more committees among its members with executive, proposing, consultative functions

• Examples
  – Executive committee
  – Governance/strategies...
  – Internal controls and risks
  – Remuneration
  – Nomination
  – .......
Composition of the internal Committees

- At least 3 members
- Independent directors (exceptions: executive committee)
- SMEs with small BoDs
- Functions provided by Codes may be differently distributed among various committees according to companies’ size, needs, etc.
Functioning of internal Committees

• Minutes of the meetings
• Right to access the necessary information and company’s functions, according to procedures decided by the BoD
• Possibility to ask external consultants
• Adequate financial resources to perform their duties
• Persons who are not members of the committee may participate upon invitation with reference to single items
Functioning of internal Committees

• The issuer shall provide adequate information in the report on corporate governance on:
  – Establishment and composition of committees
  – Contents of the mandate
  – Activities actually performed during the fiscal year (number of meetings, percentage of participation of each member)
Internal control system

• Set of rules, procedures and structures aimed at a sound and correct management of the company consistent with the established goals, through adequate identification, measurement, management and monitoring of the main risks

• An effective control system contributes to:
  – safeguard company’s assets
  – efficiency and effectiveness of business transactions
  – reliability of financial information
  – compliance with laws and regulations
Internal control system (2)

• BoD:
  – ensures that the internal control system is adequate with regard to the characteristics of the company
  – ensures that its evaluations and decisions relating to the internal control system and the approval of annual and semi-annual accounts are supported by an adequate preliminary activity
  – establishes an internal control committee, made up of non-executive directors, the majority of which are independent and have financial and accounting competences
Internal control system (3)

- BoD, with the assistance of the internal control committee, shall:
  - Define the guidelines of the internal control system for risks to be adequately identified and managed
  - Identify an executive director for supervising the functionality of the internal control system
  - Evaluate at least on an annual basis the adequacy, effectiveness and functioning of the system
  - Describe in the Report on CG the essential elements of the system and express an evaluation on its adequacy
  - Appoint one or more persons in charge of internal controls in the company and define their remuneration