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REVIEW OF SELECTED GENERALLY ACCEPTED CORPORATE GOVERNANCE CODES

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Abstract

This paper reviews the most important aspects of corporate governance and compares them with the latest governance codes published in the United States, the United Kingdom, Germany, Italy and Spain.

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Keywords: Good governance codes, corporate governance, management advice.

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Introduction

This paper summarizes the approaches of five different countries to introduce certain common rules of corporate governance. Since the needs of the different countries as well as their business traditions and legal systems vary, the approaches presented also reflect those differences. What is more, the focus of regulators is sometimes strongly affected by the immediate need to close the gap that can suddenly cause severe problems to the investors' society.

U.S. Corporate Governance Model

As a result of the United States' biggest-ever corporate scandals, followed by spectacular bankruptcies, a law was introduced governing accounting, reporting and auditing functions. The Public Company Accounting Reform and Investor Protection Act of 2002, commonly called SOX or Sarbox (July 30, 2002) is a United States federal law. It is highly focused on the internal control issues of the companies and establishing appropriate regulatory reporting processes. SOX also strictly regulates the relations between the company and its auditors. What the corporate governance codes of other countries treat as a best practice in the areas of internal control – whistleblowers protection and auditor independence – SOX treats as a law. On the other hand, it does not regulate issues such as board composition, board committees (other than the audit committee), and so on, leaving them to the best practice type codes.

One of the means of executing these regulations is the establishment of an audit committee. A committee, established by and drawn from the board of directors, has the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements. Its responsibilities include appointment, compensation and supervision of the work of auditors employed by the company for the purpose of preparing or issuing the audit report. Each member of the audit committee must be a member of the board of directors. The committee should establish procedures for the receipt, retention and treatment of complaints received by the company regarding accounting, internal accounting controls or auditing matters, and the confidential, anonymous submission by employees of the company regarding questionable accounting or auditing matters.

U.K. Corporate Governance Model

The key source of corporate governance recommendations for U.K.-listed companies is the Combined Code. The Listing Rules require annual financial reports to state how the company has applied the principles, where it has complied with the Combined Code and where it has not. The Combined Code consolidates the work of the earlier sources of rules of corporate governance: the Cadbury report, the Greenbury report, the Hampel report, the Higgs review and Smith report. It consists of principles of good governance, most of which have their own set of more detailed provisions, that, in most cases, amplify the principles.

German Corporate Governance Model

The basic issue of Germany's commercial law setting is a clear distinction between Management Board and Supervisory Board. This division of duties is also visible in the German Corporate Governance Code, where the recommendations concerning these two bodies are kept separated. This historical and traditional division is reflected by the German corporate governance code which regulates the issues concerning those two bodies separately. In September 2001 the government commission of Corporate Governance was established. In February 2002 it presented the results of its work to the German government. The official premiere of the German Corporate Governance Code took place on August 30, 2002. Since then it has been updated yearly. The last update took place on June 14, 2007.

Italian Corporate Governance Model

The Italian Stock Exchange is the institution that sets the pace of development of Italian corporate governance policies. In 1999 it issued its Corporate Governance Code concerning listed companies. The Italian Stock Exchange is also the main channel of communication on the implemented policies for the listed companies, which publish their annual corporate governance reports using its domain.

Spanish Corporate Governance Model

Spanish corporate governance code has traditionally been characterized by general principles of law set forth in the Spanish Commercial Code (Código de Comercio). Disclosure requirements for Spanish public companies have traditionally been established by the Stock Exchange Law (Ley de Mercado de Valores), regulations of the Spanish Securities Market Commission (Comisión Nacional del Mercado de Valores or CNMV), and listing rules of the stock exchanges. In addition to these regulations, there are a number of different compilations available which include the above-mentioned rules as well as add a broader perspective by incorporating some rules from the codes published in other countries.

Item	UK	Germany	Italy	Spain
Code name	Combined Code	Deutscher Corporate Governance Kodex (*German Corporate Governance Code*)	Codice di Autodisciplina (*Corporate Governance Code*)	Código Unificado de Buen Gobierno by CNMV (*Unified Code on Good Corporate Governance*)
Date of introduction	2003; reviewed 2006	30-08-2002; reviewed yearly	1999; reviewed 2002 and 2006	July 2005
Character	Recommendation *Comply or explain*	Best practice	Best practice	Recommendation *Comply or explain*
Application	All companies incorporated in the UK and listed on the Main Market of the London Stock Exchange	German listed companies	Italian listed companies	Spanish listed companies
Selected elements regulated				
Board of Directors				
Mission	Provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed	The **Management Board** ensures that all provisions of law and the enterprise's internal policies are abided by, and works to achieve their compliance by group companies (compliance) The task of the **Supervisory Board** is to advise regularly and supervise the Management Board in the management of the enterprise	Create value for the shareholders	Maximize the company's value
Functions	Set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company, set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met	The **Management Board** develops the enterprise's strategy, coordinates it with the Supervisory Board, ensures its implementation, ensures appropriate risk management and risk controlling in the enterprise The **Supervisory Board** must ensure that there is long-term succession planning	Examine and approve the company's strategic, operational and financial plans; evaluate the adequacy of the organizational, administrative and accounting structure of the issuer; delegate powers to the managing directors and to the executive committee and revoke them; determine the remuneration of the managing directors	Approve the company's general policies and strategies. In particular: the strategic or business plan, management targets and annual budgets; investment and financing policy; design of the structure of the corporate group; corporate governance policy; remuneration and evaluation of senior officers; risk control and management

Item	UK	Germany	Italy	Spain
Requirements regarding directors				
Chairman and CEO	The roles of chairman and chief executive should not be exercized by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board.	Not applicable: a dual board system is already prescribed by law for German stock corporations.	In the event that the chairman of the board of directors is the chief executive officer of the company, as well as in the event that the office of chairman is covered by the person controlling the issuer, the board must designate a lead independent director who represents a reference and coordination point for the requests and contributions of non-executive directors and, in particular, those who are independent.	When the chairman and chief executive are one and the same, a deputy chairman must be appointed from among the company's independent directors. This deputy chairman is empowered to request the calling of board meetings or the inclusion of new business on the agenda, may organize coordinating meetings among external directors and is responsible for the chairman's evaluation.
Number of Directors	The board should be large enough to balance the skills and experience appropriate for the requirements of the business and such that changes to the board's composition can be managed without undue disruption.	**Management Board** The management board should be comprised of several persons and have a chairman or spokesman. No more than two former members of the management board may be members of the **supervisory board**.	The board must issue guidelines regarding the maximum number of offices as director or auditor.	Board of directors should comprise between seven and fifteen members.
Types of Directors	Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors.	To permit the **supervisory board's** independent advice and supervision of the management board, the supervisory board should include what it considers to be an adequate number of independent members.	The board of directors must be made up of executive and non-executive directors. An adequate number of non-executive directors should be independent.	Directors may belong to one or other of the following groups: “executive” or “internal directors”; “proprietary directors” or “independent directors.”
Definition of the Independence	Director is considered independent when he or she has not been an employee of the company within the last five years; does not have, or hasn't	A supervisory board member is considered independent if he or she has no business or personal relations with the company or its management	Directors are considered independent when they do not maintain, nor have recently maintained, directly or indirectly, any business relationships with	Independent directors having no personal or business connection with the company.

Item	UK	Germany	Italy	Spain
	had within the last three years, a material business relationship with the company; does not receive any additional remuneration from the company apart from a director's fee; does not participate in the company's share option or a performance-related pay scheme; does not have any close family ties with any of the company's advisers, directors or senior employees; does not hold any cross-directorships or has significant links with other directors through involvement in other companies or bodies; does not represent a significant shareholder; or hasn't served on the board for more than nine years from the date of their first election.	board which cause a conflict of interests.	the issuer or persons linked to the issuer, of such significance as to influence their autonomous judgment.	
Requirements for board members	Appointments to the board should be made on merit and against objective criteria. Care should be taken to ensure that appointees have enough time available to devote to the job. This is particularly important in the case of chairmanships.	For nominations for the election of members of the **supervisory board**, care must be taken that the supervisory board, at all times, is composed of members who, as a whole, have the required knowledge, abilities and expert experience to properly complete their tasks and are sufficiently independent.	Non-executive directors should bring their specific expertise to board discussions and contribute to the taking of balanced decisions paying particular care to the areas where conflicts of interest may exist. The directors must know the duties and responsibilities relating to their office.	The board of directors should have an adequate diversity of knowledge, gender and experience to perform its tasks efficiently, objectively and by independent.
Evaluation of the board	The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.	The supervisory board should examine the efficiency of its activities on a regular basis.	The management board evaluates, at least once a year, the size, composition and performance of the board of directors and its committees.	The board must evaluate the following points on a yearly basis: the quality and efficiency of the board's stewardship; how well the chairman and chief executive have carried out their duties; the performance of its committees.

Item	UK	Germany	Italy	Spain
Remuneration	Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance. Executive share options should not be offered at a discount save as permitted by the relevant provisions of the Listing Rules.	Criteria for determining the appropriateness of compensation are, in particular, the tasks of the respective member of the Management Board, his or her personal performance, the performance of the management board as well as the economic situation, the performance and outlook of the enterprise taking into account its peer companies. Members of the **supervisory board** should receive fixed as well as performance-related compensation.	The remuneration of directors must be established at an amount sufficient to attract, maintain and motivate directors endowed with the professional skills necessary for managing the issuer successfully.	The company's remuneration policy, as approved by its board of directors, must specify at least the following points: the amount of the fixed components, performance-related components, main characteristics of pension systems.
Re-election	All directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years.	For first-time appointments the maximum possible appointment period of five years should not be the rule. A re-appointment prior to one year before the end of the appointment period with a simultaneous termination of the current appointment should only take place under special circumstances. An age limit for members of the **management board** must be specified. The election or re-election of members of the **supervisory board** at different dates and for different periods of office enables changing requirements to be taken into account.	Not regulated	The proposal for the appointment or renewal of directors which the board submits to the general shareholder's meeting will be approved by the board subject to a report from the nomination committee in all other cases.
Conflicts of interest	Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognize and avoid conflicts of interest.	No member of the supervisory board may pursue personal interests in his/her decisions or use business opportunities intended for the enterprise for him or herself.	The board of directors should adopt measures aimed at ensuring that the transactions in which a director is bearer of an interest, on his/her behalf or on behalf of third parties, and	Regulated by *Ley de Transparencia;* literally, the Law of Transparency.

Item	UK	Germany	Italy	Spain
			transactions carried out with related parties, are performed in a transparent manner and meet criteria of substantial and procedural fairness.	
Committees				
Remuneration committee	The board should establish a remuneration committee of at least three, or in the case of smaller companies, two, independent non-executive directors. The remuneration committee should be responsible for setting remuneration for all executive directors and the chairman, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management.	The supervisory board can delegate preparations for the appointment of members of the management board to a committee, which also determines the conditions of the employment contracts including compensation.	The board of directors must establish among its members a remuneration committee, made up of non-executive directors, the majority of which are independent. The remuneration committee shall formulate proposals to the board for the remuneration of the managing directors and other directors who cover particular offices; periodically evaluate the criteria adopted for the remuneration of executives with strategic responsibilities, control their application on the basis of the information provided by the managing directors and submit to the board of directors general recommendations on the subject matter thereof.	The remuneration committee makes proposals to the board of directors regarding the remuneration policy for directors and senior officers; the individual remuneration of directors and the types of contracts the company should sign with each executive director; hiring modalities for senior officers as well as oversees compliance with the remuneration policy set by the company.
Audit Committee	The board should establish an audit committee of at least three members, or in the case of smaller companies, two, who should all be independent non-executive directors. The main role and responsibilities of the audit committee should be set out in written terms of reference and should include: to monitor the integrity of the financial statements of the company; to review the company's internal financial controls; to monitor	The supervisory board must set up an audit committee which, in particular, handles issues of accounting, risk management and compliance, the necessary independence required of the auditor, the issuing of the audit mandate to the auditor, the determination of auditing focal points and the fee agreement. The chairman of the audit committee should have specialist knowledge and experience in the application of	The internal control committee should evaluate, together with the executive responsible for the preparation of the company's accounting documents and the auditors, the correct utilization of the accounting principles and, in the event of groups, their consistency for the purpose of the preparation of the consolidated balance sheet; upon request of the executive director, express opinions on	The audit committee's role will be: 1. With respect to internal control and reporting systems: monitor the preparation and the integrity of the financial information prepared on the company and, where appropriate, the group, checking for compliance with legal provisions and the correct application of accounting principles, review internal control and risk management

Item	UK	Germany	Italy	Spain
	and review the effectiveness of the company's internal audit function; to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant U.K. professional and regulatory requirements; to develop and implement policy on the engagement of the external auditor to supply non-audit services. The audit committee should review arrangements by which staff of the company may confidentially raise concerns about possible improprieties in matters of financial reporting or other matters.	accounting principles and internal control processes. He or she should not be a former member of the management board of the company.	specific aspects relating to the identification of the principal risks for the company as well as on the design, implementation and management of the internal control system; review the work plan prepared by the officers in charge of internal control as well as the periodic reports prepared by them; evaluate the proposals submitted by the auditing firm for obtaining the relevant appointment, as well as the work plan prepared for the audit and the results described in the report and the letter of suggestions, if any; supervise the validity of the accounting audit process; perform any additional duties that are assigned to it by the board of directors; report to the board at least every 6 months, on the occasion of the approval of the balance sheet and the half yearly report, on the activity carried out, as well as on the adequacy of the internal control system.	systems on a regular basis, so main risks are properly identified, managed and disclosed; oversee the independence and effectiveness of the internal audit function; propose the selection, appointment, reappointment and removal of the head of internal audit; propose the resources to be assigned to the internal audit function; receive regular report backs on its activities; and verify that senior management are acting on the conclusions and recommendations of its reports; establish and supervise a mechanism whereby staff can report any irregularities they detect in the course of their work anonymously or confidentially. 2. With respect to the external auditor, the audit committee must: make recommendations to the board for the selection, appointment, reappointment and removal of the external auditor, and the terms and conditions of his engagement; receive regular information from the external auditor on the progress and findings of the audit program, and check that senior management are acting on its recommendations; oversee the independence of the external auditor, to which end: the company will notify any change of auditor to the CNMV as a significant event, stating

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				the reasons for its decision. The committee will ensure that the company and the auditor adhere to current regulations on the provision of non-audit services, the limits on the concentration of the auditor's business and, in general, other requirements designed to safeguard auditors' independence. The committee will investigate the issues giving rise to the resignation of any external auditor.
Nomination Committee	There should be a nomination committee which leads the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors. The nomination committee should evaluate the balance of skills, knowledge and experience on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment.	The supervisory board can delegate preparations for the appointment of members of the management board to a committee, which also determines the conditions of the employment contracts including compensation. The **supervisory board** appoints and dismisses the members of the management board.	Nomination committee to propose candidates for appointment to the position of director may be vested with one or more of the following functions: to propose to the board of directors candidates to the position of director; to designate candidates to the position of independent director to be submitted to the shareholders' meeting of the issuer, taking into account any recommendation in this regard received from shareholders; to express opinions to the board of directors regarding the size and composition of the as well as the professional skills within the board deemed necessary.	The nomination committee will: evaluate the skills, knowledge and experience of the Board, define the roles and abilities required of the candidates to fill each vacancy, and decide the time and dedication necessary for them to properly perform their duties; duly examine or organize the succession of the chairman and chief executive, making the pertinent recommendations to the board so the handover proceeds in a organized and orderly manner; report on the senior officer appointments and removals which the chief executive proposes to the board; report to the board on the gender diversity issues.
Executive Committee				When the company has a delegate or executive committee, the breakdown of its members by director category should roughly mirror that of the board itself.

Item	UK	Germany	Italy	Spain
Other committees		The supervisory board can delegate other subjects to be handled by one or several committees. These subjects include the strategy of the enterprise, the compensation of the members of the management board, investments and financing. The supervisory board can arrange for committees to prepare supervisory board meetings and make decisions in place of the supervisory board.		

References:

US: Sarbanes-Oxley Act of 2002.

UK: The combined Code on Corporate Governance, June 2006.

Germany: German Corporate Governance Code, June 2006.

Italy: Corporate Governance Code, March 2006.

Spain: Unified Code on Good Corporate Governance, January 2006.