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CEO and Corporate Governance: A Comparative Study in France, Germany and USA

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Abstract

Corporate governance broadly refers to the mechanisms, processes and relations by which corporations are controlled and directed. Governance structures and principles identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and include the rules and procedures for making decisions in corporate affairs. In France, the governance of an SA (Societe Anonyme) can be organized as a unitary or a dual structure. Unitary structure is the most widely-used structure that consists of a board of directors (*conseil d'administration*), headed by a chairman and a chief executive officer (CEO) (*directeur général*) who runs the company. Both positions can be held by the same individual. Dual Structure consists of a management board (*directoire*) composed of up to five members running the company, and a supervisory board (*conseil de surveillance*) that oversees the management board. The management board's members and its chairman are appointed and dismissed by the supervisory board, whose members are appointed by the shareholders. In German corporate governance, a Vorstand is the executive board of a corporation (public limited company). It is hierarchically subordinate to the supervisory board (*Aufsichtsrat*), as German company law imposes a two-tier board of directors. German law confers executive powers on the executive board as a body. It is expected to act collectively and collegially. Unlike the executive committee (*aka* operating committee or executive council) of a US company, the executive board is not an adjunct of the CEO (managing director). The German executive board has real decision-making power. It is, by law, the managing body of a company and cannot be instructed by any legal person, be they natural or artificial, to act in such a way as to harm the business. Executive board members are personally liable for accepting any such instructions. The US system of corporate governance offers CEOs a great deal of power to influence. According to the US system, CEOs are powerful because of their dual role as chairman of the board.

Keywords: CEO; Corporate Governance; Board of Directors; Supervisory Board.

1. Introduction

Corporate governance broadly refers to the mechanisms, processes and relations by which corporations are controlled and directed (Shailer, 2004). Governance structures and principles identify the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and includes the rules and procedures for making decisions in corporate affairs (*The Corporate Governance of Iconic Executives*, 2011). Corporate governance includes the processes through which corporations' objectives are set and pursued in the context of the social, regulatory and market environment. Governance mechanisms include monitoring the actions, policies, practices, and decisions of corporations, their agents, and affected stakeholders. Corporate governance practices are affected by attempts to align the interests of stakeholders (*OECD Principles of Corporate Governance,* 2004; Tricker, 2009) Interest in the corporate governance practices of modern corporations, particularly in relation to accountability, increased following the high-profile collapses of a number

of large corporations during 2001–2002, most of which involved accounting fraud; and then again after the recent financial crisis in 2008.

Corporate titles or business titles are given to company and organization officials to show what duties and responsibilities they have in the organization. Such titles are used in publicly and privately held for-profit corporations. In addition, many non-profit organizations, educational institutions, partnerships, and sole proprietorships also confer corporate titles.

The highest-level executives in senior management usually have titles beginning with "chief" and are therefore usually called "C-level" or part of the "C-suite". The traditional three such officers are chief executive officer (CEO), chief operations officer (COO), and chief financial officer (CFO). Depending on the management structure, C-titles may exist instead of or are blended/overlapped with other traditional executive titles, such as *president*, various designations of *vice presidents* (e.g. VP of marketing), and *general managers* or *directors* of various divisions (such as director of marketing); the latter may or may not imply membership of the *board of directors*.

Certain other prominent C-level positions have emerged, some of which are sector-specific. For example, CEO and chief risk officer (CRO) positions are often found in many types of financial services companies. Technology companies of all sorts now tend to have a chief technology officer (CTO) to manage technology development. A chief information officer (CIO) oversees IT (information technology) matters, either in companies that specialize in IT or in any kind of company that relies on it for supporting infrastructure.

Many companies now also have a chief marketing officer (CMO), particularly mature companies in competitive sectors, where brand management is a high priority. In creative/design industries, there is sometimes a chief creative officer (CCO), responsible for keeping the overall look and feel of different products consistent across a brand. A chief administrative officer may be found in many large complex organizations that have various departments or divisions. Additionally, many companies now call their top diversity leadership position the chief diversity officer (CDO). However, this and many other nontraditional and/or lower-ranking C-level titles (see below) are not universally recognized as corporate officers, and they tend to be specific to particular organizational cultures or the preferences of employees.[1]

2. CEO and corporate governance in France

2.1 Board Structure

The governance of an SA can be organized as a unitary or a dual structure.

2.1.1. Unitary Structure

This most widely-used structure consists of a board of directors (*conseil d'administration*), headed by a chairman and a chief executive officer (CEO) (*directeur général*) who runs the company. Both positions can be held by the same individual.

2.1.2. Dual Structure

This structure consists of a management board (*directoire*) composed of up to five members running the company, and a supervisory board (*conseil de surveillance*) that oversees the management board. The management board's members and its chairman are appointed and dismissed by the supervisory board, whose members are appointed by the shareholders.

2.2 The Management of a Corporate in France by the CEO

2.2.1. Unitary structure

The CEO, appointed by the board of directors, manages the company. He may be assisted by one or several deputy CEOs (*directeurs généraux délégués*), also appointed by the board.

2.2.2. Dual Structure

The management board carries out the day-to-day management.

2.3 Board Members

2.3.1. Unitary Structure

The board of directors consists of 3 to 18 directors appointed by a shareholders' meeting and of employees' elected representatives. Directors can be individuals or legal entities (which must designate a permanent representative, subject to the same obligations and liabilities as an individual). The statutory auditor attends board meetings when the board approves the accounts, otherwise his attendance is optional.

[1] Corporate governance and CEO, www.wikipedia.com

2.3.2. Dual Structure

The supervisory board consists of individuals or legal entities (except for its chairman) appointed by a shareholders' meeting and employees' representatives. The management board consists exclusively of natural persons elected by the supervisory board.[2]

2.4 Management Rules and Authority

The procedures for convening board meetings are freely defined in the bye-laws and the frequency of such meetings is not determined by law. Directors can either agree to meet at regular intervals or allow the chairman to call meetings as necessary. However, the supervisory board must meet at least four times per year in order to examine the management board's quarterly report. A quorum of at least half of the present (including via videoconference) board of directors or supervisory board members is required. Decisions are adopted on the basis of a simple majority of members present or represented, although a higher majority can be stipulated in the bye-laws for matters of particular importance. The quorum of the management board can be freely determined in the bye-laws. Except in certain circumstances (for example, the approval of the company's accounts) or unless prohibited in the bye-laws, directors or supervisory board members can attend board meetings via video or telephone conferencing.[3]

2.5 Directors' Powers

2.5.1. Unitary Structure

The board of directors determines the company's strategic direction and supervises its implementation. The CEO has all powers to act in the company's name under all circumstances and represents the company in its relations with third parties.

2.5.2. Dual Structure

The management board has all powers to act in the company's name under all circumstances and its chairman represents the company in its relations with third parties. The supervisory board operates as a permanent supervision body over the management board.

2.6 Restrictions

The powers of the CEO or management board can be restricted by the bye-laws or via board resolutions. However, such restrictions are unenforceable against third parties. In both unitary and dual structures, the board of directors and supervisory board can delegate responsibility for specific issues to specially-created committees whose members may or may not be directors or supervisory board members. These committees cannot be involved in the company's management or indirectly limit the statutory powers of the relevant board or the CEO. In accordance with corporate governance codes of conduct, many listed companies have created committees of this kind (for example, audit and compensation committees).[4]

3. CEO and Corporate Governance in Germany

In German corporate governance, a ***Vorstand*** is the executive board of a corporation (public limited company). It is hierarchically subordinate to the supervisory board (*Aufsichtsrat)* (as German company law imposes a two-tier board of directors).

German law confers executive powers on the executive board as a body. It is expected to act collectively and collegially. Unlike the executive committee (*aka* operating committee or executive council) of a US or UK company, the executive board is not an adjunct of the CEO (managing director). In contrast to Japanese corporate governance, the German executive board has real decision-making power. It is, by law, the managing body of a company and cannot be instructed by any legal person, be they natural or artificial, to act in such a way as to harm the business. Executive board members are personally liable for accepting any such instructions (Charkham, 1994).

The specific scope of an executive board's duties varies from business to business. (A group of companies may each have their own individual executive boards, for example). The president of the executive board (i.e., the CEO) and the position's role are determined by the supervisory board. German law permits, but does not require, executive board members to elect a president/CEO from among their number. There are no specific legal requirements regarding the CEO's role, or even for the title given to the holder of the CEO position, although in practice the most common title is

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[2] Corporate Governance and Directors' Duties: France, http://uk.practicallaw.com/8-502-1296
[3] Corporate Governance and Directors' Duties: France, http://uk.practicallaw.com/8-502-1296
[4] Corporate Governance and Directors' Duties: France, http://uk.practicallaw.com/8-502-1296

simply *Vorstandsvorsitzender* "CEO", literally, "*Vorstand* chairman". A noticeable minority refer to their CEOs as Sprecher (lit., "speaker"), implying that the CEO is no more than primus inter pares (Charkham, 1994).

The exact relationship between the CEO and the other executive officers depends on the company's type, how it was founded, and indeed the individual personalities of the people involved. A family business could, for example, have a strong CEO who is a member of the founding family and exercises a great deal of power over the rest of the board. In other companies, executive officers may hold themselves accountable to the executive board as a whole and not at all accountable to the CEO as an individual. (Charkham, 1994).

The relationships among executive officers can vary too. It is common practice for a board member to be a senior executive with a specific area of functional responsibility. However, the law requires that they oversee the activities of their fellow officers, since they are still personally liable for any failings outside their specific departments/subdivisions (Charkham, 1994). Each board member has one vote. Decisions are *never* escalated, when there is a lack of consensus, to the supervisory board. Executive board meetings are commonly held on a weekly basis and can last up to a whole day (Charkham, 1994).

Formally, the power to appoint executive officers to the board lies with the supervisory board, which can appoint officers with a two-thirds majority vote of approval, or a simple majority if multiple rounds of voting are required in order to reach a decision. Since up to 50% of the supervisory board members are delegates of the employees (or even external trade union representatives, for details see Mitbestimmung), this prevents employees from blocking the appointment of executive officers to the executive board (Charkham, 1994).

Executive officers have a certain degree of job security, which is partly a preventative measure aimed at ensuring that executive boards are not dominated and that they are not "packed" with hand-picked appointees. Officers are usually appointed for the maximum statutory term—5 years. Removal must be for good cause, such as serious breach of duty, and is subject to the supervisory board's veto. When an executive officer's ability to perform their duties is diminished due to old age, it is customary for them to serve out the remainder of their term but with a deputy to help perform their duties. Neither the shareholders nor the executive board can compel an officer to retire, whereas the supervisory board can (Charkham, 1994).

Commonly, the CEO receives between 30% and 50% greater salary than that of the other executive officers. An officer's remuneration usually comprises 65% basic salary, and 35% that is equally split between annual bonuses and benefits (Charkham, 1994).

4. CEO and Corporate Governance in the United States of America

State laws in the United States traditionally required certain positions to be created within every corporation, such as president, secretary and treasurer. Today, the approach under the Model Business Corporation Act (MBCA), which is employed in many states, is to grant companies discretion in determining which titles to have, with the only mandated organ being the board of directors (*Model Business Corporation Act,* 2013).

Some states that do not employ the MBCA continue to require that certain offices be established. Under the law of Delaware, where most large US corporations are established, stock certificates must be signed by two officers with titles specified by law (e.g. a president and secretary or a president and treasurer) (*Delaware General Corporation Law,* 2013). Every corporation incorporated in California must have a chairman of the board or a president (or both), as well as a secretary and a chief financial officer (*California Corporations Code § 312,* 2013).

LLC-structured companies are generally run directly by their members (shareholders), but the members can agree to appoint officers such as a CEO, or to appoint "managers" to operate the company (George, 2013).

American companies are generally led by a chief executive officer (CEO). In some companies, the CEO also has the title of president. In other companies, the president is responsible for internal management of the company while the CEO is responsible for external relations. Many companies also have a chief financial officer (CFO), chief operating officer (COO) and other "C-level" positions that report to the president and CEO. The next level of middle management may be called vice president, director or manager, depending on the company (Keith, 2013).

The so-called "Anglo-American model" of corporate governance emphasizes the interests of shareholders. It relies on a single-tiered Board of Directors that is normally dominated by non-executive directors elected by shareholders. Because of this, it is also known as "the unitary system" (Cadbury, 1992; Mallin, 2011). Within this system, many boards include some executives from the company (who are ex officio members of the board). Non-executive directors are expected to outnumber executive directors and hold key posts, including audit and compensation committees. In the United Kingdom, the CEO generally does not also serve as Chairman of the Board, whereas in the US having the dual role is the norm, despite major misgivings regarding the impact on corporate governance (Bowen, 2008).

In the United States, corporations are directly governed by state laws, while the exchange (offering and trading) of securities in corporations (including shares) is governed by federal legislation. Many US states have adopted the Model

Business Corporation Act, but the dominant state law for publicly traded corporations is Delaware, which continues to be the place of incorporation for the majority of publicly traded corporations. (Bebchuck, 2004). Individual rules for corporations are based upon the corporate charter and, less authoritatively, the corporate bylaws (Bebchuck, 2004). Shareholders cannot initiate changes in the corporate charter although they can initiate changes to the corporate bylaws (Bebchuck, 2004).

5. Conclusion

The CEO is very important in corporate governance in the USA. He has a less important role in Germany where the board is equal to him. In France, the CEO exists in SA (Société anonyme) with *board d'administration* (Board of administration). In the USA, the CEO has many privileges when he leaves a corporation. A great amount of money can be granted to him and it is called sometimes "a golden parachute". This practice is criticized and many think that the CEOs were responsible for the beginning of the crisis and the bankruptcy of many corporations like ENRON in the USA.

CEO should be supervised by a board of administration because his management cannot be flawless and the board should advice him to take the right decisions. The German corporate governance has this kind of equality in corporate governance that is different from that in France and in the USA.

References

[1] Bebchuck, LA. (2004). The Case for Increasing Shareholder Power. *Harvard Law Review*.

[2] Bowen, William G, (2008). The Board Book: An Insider's Guide for Directors and Trustees, W.W. Norton & Company, New York & London, ISBN 978-0-393-06645-6

[3] Cadbury, A, (1992), Report of the Committee on the Financial Aspects of Corporate Governance, Gee, London

[4] Jonathan P. Charkham (1994). Keeping Good Company: A Study of Corporate Governance in Five Countries. Oxford University Press. pp. 14–21.

[5] Lawrence, G, (2013). Does an LLC Have to Have a President or CEO?. Houston Chronicle.

[6] Lowe, K, (2013). The Relevance of Employee Titles.

[7] Mallin, Christine A., (2011). "Corporate Governance Developments in the UK" in Mallin, Christine A (ed), Handbook on International Corporate Governance: Country Analyses, Second Edition, Edward Elgar Publishing, ISBN 978-1-84980-123-2.

[8] Shailer, G, (2004). An Introduction to Corporate Governance in Australia, Pearson Education Australia, Sydney.

[9] Tricker, A, (2009). Essentials for Board Directors: An A–Z Guide, Bloomberg Press, New York, ISBN 978-1-57660-354-3.

[10] The Corporate Governance of Iconic Executives, 87 Notre Dame Law Review 351 (2011), available at: http://ssrn.com/abstract=2040922

[11] OECD Principles of Corporate Governance, (2004).

[12] Model Business Corporation Act (PDF). (August 2013).

[13] Delaware General Corporation Law § 158. (December 2013).

[14] California Corporations Code § 312. (December 2013).

[15] Foreign Corrupt Practices Act Guidance, DOJ Website. (May 2013). http://uk.practicallaw.com/8-502-1296.