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Corporate Governance and Fraud: Evolution and Considerations

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Abstract

There are many definitions of Corporate Governance, as a structure, as process, as policies, as mechanisms, but despite their differences of focus, they mainly addressed the sustainable economic growth and protection of shareholders and other stakeholder's rights. The purpose here is to present the evolution of the main principles and frameworks as corporate and financial environment changes and set new challenges. Some important scandals that revealed the weaknesses of corporate governance frameworks are described to complement the comprehension of the object of it. It is detached the aspects simulated or ignored and the subsequent enforcement and monitoring response. Discussion about the new challenges, what corporate governance is supposed to provide and what it can promote, closes this chapter.

Keywords: corporate governance, corporate fraud, scandals, monitoring control, enforcement

1. Introduction

The purpose of this chapter is to present the evolution of main corporate governance principles and frameworks, but not exclusively. As corporate governance effectiveness also depends on legal, regulatory and institutional environment, some important changes within this environment should be pointed out to better address the challenge behind the central issue: reassure shareholders and other stakeholders that their rights are being protected.

The growing complexity of businesses increased the desire to access management processes by standardized procedures. In this context, the Organization for Economic Co-operation and Development (OECD) published *The Principles of Corporate Governance* in 1999 [1]. The objective was to help policy-makers evaluate and improve the legal, regulatory, and institutional

framework for corporate governance, with a view to support economic efficiency, sustainable growth and financial stability. Since then, the principles have been adopted worldwide as an international benchmarking for policy-makers and stakeholders.

Corporate governance has been defined as a set of mechanisms of incentives and monitoring in order to assure a good management in behalf of company and its shareholders and others stakeholders. It should build an environment of trust, transparency and accountability for investments. Nevertheless, despite the improvement on business environment, some events periodically show that these principles are overlooked by important companies or even simulated.

After big corporate scandals like Enron, WorldCom, Tyco, Parmalat, the quality of financial statements and the role of auditors and accountants were broadly questioned and turned to be the central point in corporate governance issue for some couple of years. As a matter of fact, corporate scandals open wide weaknesses on internal and external controls over companies, which should be detected by good practices of governance. Effective corporate governance should reduce the likelihood of creative accounting and frauds.

Sarbanes-Oxley Act of 2002 approved by American Congress was a response to these scandals as a temptation to restore investor confidence by ensuring compliance. Effectively, it ended with a century of self-regulation of the accounting profession in the USA [2, 3]. Section 404 of this law requires extensive documentation, tests and assessments of companies' internal-control procedures. Corporate Governance framework has shown to be ineffective to avoid or to preview financial misstatement. SOX was then supposed to allow detecting problems on financial reporting processes and procedures before scandals.

The SOX Act created the Public Company Accounting Oversight Board (PCAOB) with the mission to oversee the audits of public companies and related matters, even in foreign companies as they were listed on U.S. stock exchange market. It was given authority to inspect accounting firms work, conduct investigations and take disciplinary actions. After an initial constraint, European Commission (EC) rules started to incorporate part of Sarbanes-Oxley Act to remodel Corporate Governance standard within European Union. Self-regulation market approach was no longer efficient to assure corporate governance even in Europe.

PCAOB issued a standard that requires notation about any significant defects or noncompliance in audit testing work. Many others procedures were imposed to auditors to ensure the quality of their assessment of internal controls like increasing disclosure requirements, disciplinary sanctions and effective independence.

Improvements led up to a largely movement—but not smooth, to broad adoption of international standards on accounting (IFRS, IPSAS) and on auditing (ISA). Even on corporate governance, EC concluded that European Union should adopt a few common essential rules. We should also point out the collaboration between two important securities market regulators (SEC in USA and CESR—Committee of European Securities Regulators) in order to enhance dialogue and prior detect emerging risks and problems as potential regulation to avoid them.

Corporate governance mechanisms continued to be improved. For instance, as institutional investor (mutual and pension fund) became important players in the majority of financial markets, more attention was given to their participation and interaction with corporate governance [4].

Despite this engagement after 2000 scandals, a new crisis based on accounting frauds astonished the world. Bank failures and financial crisis of 2008–2009 brought out a new type of governance failure: on a system [4]. An entire sector including its regulatory agencies decided to let it on.

Corporate governance post-2008 addressed some more issues: recommendations for improvements in remuneration, risk management, board practices and the exercise of shareholder rights. The latest revision of the principles was conducted in 2015 at G20 Forum [5]. The revision was necessary to incorporate changes in both the corporate and the financial sectors.

Financial shenanigans and accounting frauds will never be avoided completely. When regulation is improved, by enforcement or incentives, another creative fraud will be designed. Corporate governance can help companies avoid biased decisions that could take them out of a sustainable trajectory but will not assure an ethic performance, at least, not alone. It is always important to consider incoherencies among business or market information, for a single company or for a system as a whole.

2. Corporate governance origins

Historically, accounting frameworks and concepts have been developed in order to support transactions necessity. When simple exchanges were predominant, inputs and outputs control were the main framework, registering what was being receiving in exchange. Under mercantilism capital system, the necessity of controlling the assets promoted the development of the main current accounting structure. Continuing the evolution, as industrial capital required management accounting frameworks to control production, financial capital promoted the separation of ownership from management and required a broader control over accounting information. Since then, capital market has been setting challenges to accounting and governance frameworks.

To reduce agency conflict [6], corporate governance issue emerged as a mechanism of monitoring and control for assuring that shareholder's interests would be pursued. Shareholders disposal financial resources to be invested with a purpose and managers have to disclosure accountability, assuring that resources have been used as expected. Despite this discussion in the literature, the term *corporate governance* strongly appeared as a reference only in 1990s [7, 8].

It is important to point out that financial information is the main report analyzed by shareholders and stakeholders to evaluate the level of accountability and governance. So problems related to the manipulation of this information are also present on governance and they occur on society since much earlier than the separation of ownership and control [9]. Practices to deceive someone else are similar. What bursts the effect of them is the fact that manager can do it without allowance of ownerships and many people can be affected, as operation scales of companies became larger and spread in a globalized world.

Creative accounting has been used for many purposes as to avoid taxation, to issue new shares, to distribute more dividends, etc. (e.g. [10]). Many authors studied the motivation for it (e.g. [11]), but it is not the focus here. In synthesis, creative accounting has been used to hide poor performance or failure, to boost the economic performance or to perpetrate a corporate fraud over investors [9].

When industrial revolution created companies big enough to require investment from diverse sources and could not be managed by their owners anymore, two main mechanisms were developed to mitigate the agency conflicts: the executives compensation plan and boards monitoring role. Compensation and bonus plans started to be developed as a rational way to pay managers for working in the best interest of owners. The outcomes-based incentives turned to be an important mechanism used by firms to align interests between agents and principles [12, 13].

When economy is in expansion phase, it is more difficult to pay attention to red flags. But financial crises play an important role to improvements on corporate control. The next sections were separated by main financial crises that promoted a worldwide injures and changes on governance.

It is worth to point out that although the same problems have been occurred in all parts of the world, many events commented here were placed in the United States, as its consequences affect a great number of people and markets and usually drive the main changes on legislation, enforcements and practices worldwide.

3. From 1929 crisis up to 1970s

The 1929 crisis turned explicit some problems that were being overlooked by investors and shareholders. It showed that capital market was developed enough to receive more attention by government authorities. During the 1920s, millions of people invested their fortunes in stock market and lost great part of it. Public have lost confidence on capital market and by this time, it constituted an important financial source for economy. It was urgent to restore investor confidence on it [14].

In 1932, the first big corporate scandal was Kreuger & Toll, the king of matches that used subsidiaries transfers to avoid taxes and diffuse the lack of asset given as collateral for multiple loans, exceeding the credit limit. Discovered after Kreuger death, this scandal attracted press and U.S. Congress interests. Something should be done regarding securities, corporate structure, accounting and auditing [9, 15].

By 1933, it was approved the Securities Act that required that investors should receive true financial information and prohibit fraud, indicating civil liabilities and penalties to false communication [16]. To empower this Act, by 1934, it was created the Securities and Exchange Commission—SEC [17], providing regulation and control over transactions in securities, as they constitute a national public interest. Besides the law, 1934 Act created a regulatory authority that required periodical information and had disciplinary powers over companies registered there.

One of the SEC first requirements was for disclosure of executive pay. In 1929, private information about the excessive salary and bonus of Bethlehem Steel president came to public and outraged them. Both were substantial higher than a management compensation considered good on that moment. This kind of incentive became a public interest since then [13].

In order to avoid unrealistic bonuses, many firms adopted performance-based compensations. This mechanism should avoid paying high bonuses when things are going bad. It is supposed to avoid moral hazard [6]. The principal wants to expend as little money as possible and get as much effort as he can from agents. Agents want to expend as little effort as possible for getting as much money as they can. Performance-based incentives would align these opposed interests. Notwithstanding, this performance-based incentives shifted the risk from shareholders to managers. Their perception of compensation risk (and personal wealth) led to the intensification of earning manipulation practices [12, 18, 19], or at least induced dysfunctional results, as this perception also depends on measurement systems covering and the level of supervision control [20]. Managers misrepresented financial reports in order to inflate company stock prices and other compensation-related metrics [21].

As capital market turned complex, other laws were being approved like ones to regulate debt securities (1939), investment companies and investment advisory (1940) [14]. All these laws can be seen as adaptation to market environment but one of them deserves a commentary.

In 1940s, a graduated income tax structured was implemented in the USA and affected mainly the senior executives. To avoid it, many others non-cash compensation was developed, as deferred compensation and stock options [13]. In 1950, the Revenue Act allowed that income tax would be applied over gains when shares were sold, creating the figure of restricted stock options. The era of compensation has started. Despite other tax code changes along time, this kind of compensation continued to be used. Stock-based compensation is consistent to agency theory and was seen as a governance mechanism to discourage misrepresentation [19]. Empirical studies, however, present different evidences that testify this hypothesis (e.g. [22]) and that refute it for some types of stocks (e.g. [12]).

Economy was growing in the 1960s thanks to a huge explosion in technology, and executives were willing to participate in this. Stock options were then the main instrument used to do it, but Senator Albert Gore started a campaign to eliminate the tax advantage of them. In 1970s, there was a stagnant economy in function of oil crisis and unemployment. In this context, restricted stock became more popular as share was to be paid out over three to five years depending on financial performance or other goals. At this time, options were not seen as a motivation for short-term performance and main as a retirement and long-term saving plans [13].

Although accounting for options had been raised on 1950s as the use of this instrument was intensified, the first accounting rule about it was only issued in 1972. The APB n° 25 was an opinion issued by the predecessor of Financial Accounting Standard Board (FASB)—the Accounting Principles Board (APB). This opinion specified the intrinsic value method for valuing stock options (quoted market prices—exercise price), and this net value should be

expensed. As companies made the exercise price equal to the quoted market price, the intrinsic value was zero, and it seemed that APB n° 25 did not require options to be expensed [23–25] and so was mere figurative enforcement.

In 1973, it was founded the Chicago Board Options Exchange (CBOE) and stock options started to be negotiated in a more regulated basis. At the same time, it was published the Black-Scholes method for valuing options [26], which turned to be the most widely used model. Despite a more precise method for valuing options, they were not yet recognized by accounting rules and were not registered.

In 1976, Congress finally repealed the 1950 rule that had sheltered stock options from tax [24].

4. 1980s and 1990s: folly in organization level

These two decades are here detached from prior period as the corporation and legal environments suffered huge changes that led to spectacular level of executive remuneration and lack of control culminating in big scandals in 2000s—the next section. Different from prior section that started from a financial crisis and its consequences on governance, this section describes the main facts and movements important to understand the next financial crisis.

When the new economy expansion took place in 1980s and 1990s, stock options and restricted stock were intensively used and started to represent mega grants [13]. Stock options were not seen as a tax-avoidance vehicle anymore as in the 1960s and 1970s but as a way to get very rich quickly.

By this time, CEOs turned to be celebrities, *stars*, mainly in function of their millionaire compensation and publicity over it [13, 27]. If in 1929, an excessive payment outraged public, in 1990s, it enacted competency and talent. Media played an important role on this new discourse, publishing executive pay rankings and miraculous executive histories, creating myths [28].

It is supposed that with options, executives would be compensated only if shareholders also gained. The main problem was that the focus was shifted from company's operation to stock performance, considered the ultimate measure of a good corporation management [13]. As markets are not efficient as in theory, the stock price depends on variables others than long-run profitability of firm, and then, stock options would force manager to focus on even shorter run goal of raising stock price [29].

And if managers were too worried about stock performance, creative accounting would be useful to help them to sustain stock price. Many misrepresentations of financial statements (cooked numbers) and even frauds were perpetrated in name of such objective [9, 21]. Another usual managerial tool during this period was the challenging goals set linked to executive compensation plans. As some authors identified a good linkage between difficult goals with good performance (e.g. [30]), some others identified a linkage with cooked numbers (e.g. [31]) and unethical behavior (e.g. [32]). Anyway, unmet goals linked to compensation plan in this context amplify the perverse consequence.

After a wave of diversification of businesses and vertical growing, along the 1980s great corporations started to refocus on core business. Leverage buyouts (LBOs) and management buyouts (MBO) became popular means by which managers turned owners of split companies, intensifying the stock ownership among executives. Two factors seemed to be important to explain preferences for stock options: (a) it was not necessary to pay for shares and (b) there was a fiscal benefit. [13].

An Internal Revenue Code Section approved in 1994 restricted excessive salaries packages to executives but exempted stock options from tax deductions limit. This exception was for performance-based remuneration preapproved by board formed by external directors [13, 33, 34]. Actually, the Section 162 m of this Code provided an environment to flourish two tendencies on governance instrumentals: (a) increasing of stock options on compensation plan and (b) board with outside directors.

It is worth to point out the role of high technology phenomenon of 1990s on governance changes forthcoming. Different from general industries where only executives were compensated with stock options, in high technology companies, every entry-level employee received them. An institutional study certified that biotechnology and computer companies granted 55% of stock options to non-management employees, from 1992 to 1997 [22]. Microsoft, Intel and Cisco Systems were examples of companies that granted stock options to all employees. It illustrates the importance of this industry on lobbies against regulation [13].

Boards were supposed to establish and monitor executive compensation plans and corporate strategy. Experiences (and scandals in 2000s) along these two decades showed that there was a lack of board independence (e.g. [35–38]), there was rudimentary instrumental or lack of competence to evaluate compensation plans and financial reports [13, 21, 37, 39], and as almost a consequence, a simulacrum of monitoring as board members acted as members of other boards acted, maintaining the status quo [13]. This reinforcing mechanism was expected, as Board members were also CEOs in other companies. Consultants should help but there was also a lack of independence of consulting firms. Many of them were also auditing or have closely relationship with management [13, 23, 29].

This problem of monitoring gets worst and more complex as at this time, there was no accounting measurement for stock options yet. If it was not registered in accounting reports, their cost was unknown by managers as also by board and investors. There was a legally hidden cost. Now, it is worthy to take a deeper look over this discussion.

In the early 1980s, the responsibility for setting accounting standards has migrated from American Institute of Certified Public Accountants (AICPA) to Financial Accounting Standards Board (FASB), dominated by accounting firms, some Wall Street analysts and corporate executives. Differently from Accounting Principles Board—APB, it will have full-time employee dedicated to the complex accounting issues [13, 15]. This movement had already occurred in UK after an accounting scandal related to a takeover. The intense repercussion on press led to the creation of the Accounting Standards Steering Committee in 1970 in order to develop and publish mandatory UK standards [9].

Since its creation, FASB began a campaign to require the expensing of stock options, fuelled by investors outrage over excessive executive pay. In 1993, they had prepared the SFAS n° 123

requiring expensing. Opposition was visceral. Companies that used stock options intensively (large companies in general industry and high-tech companies), if expensed its costs, would see the earnings and stock price drop. There was an intense lobby made by CEOs, corporations and also auditing firms. These great companies were important clients of auditing firms. Andersen was taken as a serious accounting firm until then but had a good portion of clients from high tech industry and actively acted against the FASB proposal [13, 15, 24]. The final bullet to kill the FASB proposal was done by North American Congress. They voted a resolution urging that FASB not to issue the statement (SFAS n° 123) obliging expensing stock options. It was a political threat to the independence of FASB as standard setting. This status could be revoked.

The solution found by FASB members was to issue SFAS n° 123 in 1995 saying that options *could be* expensed instead of *should be*. And for companies that chose not to expense, there was an obligation to disclosure them on footnotes. SFAS n° 123 also indicated that options could be valued by fair value method instead of intrinsic one, as Black-Scholes was a popular means to do it. Companies did not accept this recommendation and continued to value options by its intrinsic value (actually, zero) as APB n° 25 indicated [25].

Within this context of increasing financial misrepresentation, some principles of corporate governance and frameworks that support it started to be developed around the world. Two majors concerns besides corporate governance were internal controls and information systems. Two frameworks were developed and adopted worldwide by auditors to attend to these concerns: COSO and COBIT.

The National Commission on Fraudulent Financial Reporting, an initiative sponsored by the American Accounting Association (AAA), the American Institute of Certified Public Accountants (AICPA), Financial Executives International (FEI), The Institute of Internal Auditors (IIA), and the National Association of Accountants (now the Institute of Management Accountants, IMA), studied the causal factors that can lead to fraudulent financial reporting and were concerning to identify steps and provide recommendations to help reducing the incidence of fraudulent financial reporting. It organized the Committee of Sponsoring Organizations (COSO) in 1985 in order to develop internal control frameworks providing criteria for evaluation of internal control systems. The first document was released in 1992, Internal Control—Integrated Framework, known as COSO 1. It attributes the responsibility for internal control to the board of directors, directors and employees that should assure: (a) efficacy and efficiency on operations; (b) accountability on financial reports; and (c) compliance to legal and rules. This development fits so well to aspiration of regulators that AICPA substituted the internal control definition in SAS 55 by the COSO's ones when issued SAS 78. From then on, COSO 1 turned to be a reference to independent auditors in their evaluation of internal controls and in their opinion issuing. In 1996, COSO published another document, the Internal Control Issues in Derivatives Usage, as this type of financial instrumental was so new as complex [40].

The Information System Audit and Control Association—ISACA, a non-profit association of 140.000 professionals in 187 countries was established in 1969 with the purpose to set guidance in the growing field of auditing controls for computer systems. In 1994, it released the Control Objectives for Information and Related Technology (COBIT), a framework for the governance and management of firm's IT [41].

Regarding principles of corporate governance, important steps were taken around the world. The Committee on the Financial Aspects of Corporate Governance, established in 1991, set the first organized set of principles on United Kingdom. It was known as Cadbury Report and was published in 1992 as a response to increasing lack of investor confidence in the honesty and accountability of listed companies and low level confidence in ability of auditors to provide expected safeguards. The 1980s was considered a golden era of creative accounting also in UK. Some spectacular frauds and collapses between 1990 and 1991 outraged society and investors, as Bank of Credit and Commerce International (BCCI), The Mirror Group and Polly Peck. This led to the creation of the Cadbury Report that established a non-statutory Code of Best Practice on financial governance—the Combined Code [9, 42]. Among all recommendation, there are:

- The majority of Board members to be non-executive directors (fraud cases presented non-executive directors but they were not effective).
- The setting up of an audit committee with overall responsibility to review the financial statements and the accounting policies employed.
- The separation of chairman position from chief executive.
- To emphasize the responsibility of directors over the institution of internal control systems

London Stock Exchange required listed companies to *comply or explain* this code. This principle would become the cornerstone of UK corporate governance practice, and this was spread around the world.

Since then, other countries and even Europe as a community intensified the debate on governance issues. In 1996, the European Association of Securities Dealers (EASD) created the EASDAQ, an electronic stock market for fast growing internationally oriented companies and in 1997 set a Corporate Governance Committee [9]. In 1997, Frankfurt created the Neue Markt, specifically to high tech new business but required a more restrictive rules of corporate governance related to kind of stocks and transparency on quarterly financial reporting. They should be based on a more friendly accounting system as USGAAP (Generally Accepted Accounting Principles developed in the US) or IAS (International Accounting Standards) [43]. In 1998, worried about bank failures, excessive CEOs paying, ineffective role of auditors board and how to revive the Japanese economy, the Corporate Governance Forum of Japan proposed its Governance Principles reproducing some aspects of American governance corporate monitoring practices and prior European documents, as independence of boards [44].

Finally, in 1999, it was published a set of principles that became a reference worldwide. This seemed to be a convergence of prior efforts. It follows a brief history of this institution and the main principles and recommendations.

European members believed that a post-war way to ensure peace was to encourage co-operation. They created the Organization for European Economic Cooperation (OEEC) in 1948, and with Canada and the US, it was created the Organization for Economic Co-operation and Development (OECD) in 1961 with the purpose of promoting policies that would improve the economic and social well-being of people around the world. By providing forums,

governments from diverse countries (39 in nowadays) can work together to share experiences and seek solutions to common problems [45]. The OECD Council meeting in 1998 called to develop a set of corporate governance standards and guidelines. The result of this effort among member countries and relevant organizations was the first edition of OECD Principles of Corporate Governance [1]. These principles have also been adopted as one of the Financial Stability Board's Key Standards for Sound Financial Systems and form the basis for the World Bank Reports on the Observance of Standards and Codes (ROSC) in the area of corporate governance. They stated:

“Good corporate governance helps, too, to ensure that corporations take into account the interests of a wide range of constituencies, as well as of the communities within which they operate, and that their boards are accountable to the company and the shareholders. This, in turn, helps to assure that corporations operate for the benefit of society as a whole. It helps to maintain the confidence of investors—both foreign and domestic—and to attract more patient, long-term capital”. (p. 5)

Different environment, traditions and legal systems can adapt these principles in different ways. The aim of this document was to set principles by them governments could evaluate and improve their laws and regulation, and private companies could design its own set of practices.

It seemed that good corporate governance practices would improve confidence on capital market and this was important to financial stability, which indirectly would benefit society. Notwithstanding, it is not clear that corporations will operate for the benefit of society as a whole. They believed that shareholders were interested on long-term performance and reputation and to achieve this it was important to consider societal interests [13]. It is an assumption that was echoed by many authors of corporate governance issues, but it is beyond the control possibilities emerged by these principles and good practices derived from them.

Environment, communities and societal interests are not reachable by corporate governance framework. The attendance to them is invisible to general public up to a scandal. As this constitutes a fundamental to the principles, companies disclosure many actions to show their environmental and societal responsibilities and this is bought as a true. What is disclosure often is a true (except in fraud cases) but there is no managerial tool that can check or evaluate what has not being done. Compliance in these issues is complex and dispersed in many regulatory norms and stakeholders interests. Some big companies in oil, gas and mining sector disclosure environmental responsibilities and attendance to international principles and index, but from time to time, there is a scandal of a spectacular environmental accident. It is not unusual that further analysis explicit that there was not an accident at all.

A huge accident in 1980s was the Exxon Valdez (1989) in Alaska and seemed that a crisis plan was not used, as it was too expensive [46]. A recent world largest accident occurred in Brazil, in late 2015, in Mariana town and affected many cities (over 40) down the River Doce, crossing two states up to the Atlantic Ocean (approx. 600 km). The partnership responsible for that was two giant companies with good reputation even in corporate governance: the Brazilian company Vale and the Australian BHP Billiton. Despite the expected revision on national mining

code and regulatory efficacy, the point to be highlighted here is that this kind of negligence is very difficult to be accessed by boards or stakeholders communities as regulatory and auditing reports signalize compliance [47–49]. It is interesting to note that Vale had been preparing its Sustainability Report based on Global Reporting Initiative (GRI), a reference to transparency on risk and opportunities companies face [50].

Returning to the principles [1], they focused on problems resulted from separation of ownership and control and those questions about environment and societal concerns, although stated as an expectation, were treated more explicitly in other documents. Principles run about:

- a. The right of shareholders. It relates to basic ones as shares registration and transfer, to receive timely and regular information about corporation, to participate and vote in shareholder meetings, mainly in decisions concerning statutes changes, share issues and sale of the company.
- b. The equitable treatment of shareholders. Within the same class of shares, they should have the same voting rights and board members and managers should disclosure any material transactions that could affect corporation.
- c. The role of stakeholders in corporate governance. Stakeholders right established by law should be protected and so be considered by corporate governance framework. They should receive relevant information when they participate on corporate governance.
- d. Disclosure and transparency. Governance framework should assure timely and accurate disclosure of corporation information regarding financial situation, performance, ownership and governance. Information should be prepared in accordance with high quality of accounting standards and audited by independent auditor annually.
- e. The responsibilities of the board. Board should review and guide corporate strategic and other important issues, monitor and take decisions on key executives performance and remuneration, assure the integrity of financial information systems including independent audit and assure an appropriate systems for monitoring risk, financial control and compliance with the law. Board is supposed to monitor and manage potential conflicts of interest of managers, board members and shareholders. All those recommendations about the structure of a board (independence, separation of chairman and chief executive roles) are contemplated by this document as annotations.

The main concerns emerged along these two decades were attended in some way by all these principles developed by several countries and by the OECD. They related to executives remuneration, the quality of accounting and financial information and independence of auditor and board members.

Notwithstanding, the capacity of misrepresentation was out of reach of all these enforcements, allowing companies to bypass them and intensify even more their malpractices. Along these two decades, society turned to be more spectacular characterized by rapid changes, mass communication and dissociation between substance and image [51, 52].

“In a age, when the average consumer has only the vaguest notion of the actual activities of a vast, complex corporation, the public image of the corporation substitutes for more specific or more circumstantial notions of what is actually going on”. [52, p. 191]

In the image Era, celebrity is a short path to gain legitimacy from broader public and stakeholders. Celebrity promotes a positive emotional response leading to a favorable perception of a firm’s quality and ability, even if its performance and historical data do not suggest this. Media play an important role as it controls the content to be divulged and the instrument to do it. It dramatizes a story where companies are protagonists. These external narratives would help companies create an internal positive sense-making of what was going on and weak internal control did not represent a red flag [28, 53, 54].

In an environment that emphasizes a narcissistic culture, a message more than its content, with a media planting pseudo events, executives and companies also turned their attention to manage this impression about them. If reality was not so attractive and enforcements were being setting in order to restrict their behaviors, there was an intrinsic incentive to pseudo-actions and structures with placebo effects on people’s impressions and definition of reality [51, 55–57]. Then, companies and their executives applied impression management on financial statements and communication [9, 21, 58, 59], on corporate governance [55] as on internal culture, control systems and negotiation [60, 61]. The *accounting for growth* and *accounting for profit* made history in this last decade [55, 62]. The spontaneous norm was: “Do whatever you can to show the profit rate is growing (...) whatever you can” [62, p. 231].

If in the 1980s, the misstatements were concentrated on earnings manipulation shenanigans [58, 63], in the 1990s with increasing concern regarding financial situation and excessive remuneration, two other groups of shenanigans were adopted: cash flow and key metric misrepresentation or fraud [9]. And it must be added to this list the external auditors role as helping companies in creative accounting and storytelling about numbers [64] and, ineffective audit committees [65].

Finally, the reduction in regulatory oversight as in severity and probability of being convicted for fraudulent accounting practices, added to lack of specialized knowledge of board members, analysts and regulators agents, complemented the enforcement landscape of the 1990s and the early 2000s [66, 67].

5. The 2000s crisis up to 2008: folly in financial services sector

Corporate scandals were the focus on the early 2000s, and enforcements were designed to restrict firm behavior.

A survey of CFOs (40 countries, between 2000 and 2001) showed that the lack of adequate disclosure of information (risk taking, company’s strategy and plans and financial goals) was an issue of most concern around the world [68]. It illustrates that spectacular scandals were not isolated cases.

Among the most outrageous scandals at this time were Enron, Worldcom, Tyco and Parmalat. The first to break out was Enron, in late 2001. They fabricated revenues, misreported cash flows and intensively used SPEs and offshores to hide off balance sheet liabilities and to enhance volume of sale transactions, among many others scams. It is worthy to highlight that along 2000 year Enron still figured as one of the biggest company in the USA and ranked seventh on the Fortune 500 list [9, 21, 69].

Enron was an example of what had been practiced by many companies around the world. The problem was its size and power to broad contaminate the financial system. Its collapse showed up the limits of those malpractices that had been overlooked by regulatory agents, boards, auditing firms and other stakeholders. It was an emblematic case of corporate fraud [70]. Creative accounting can be used within the boundaries of regulation but fraud usually goes beyond, without being perceived or at least, stopped [9]. The image and globalized era turned this kind of fraud a threat to capitalism system.

Among varied practices used to perpetrate the fraud, Enron created a business non regulated, promised unreal gains, fragmented processes in order to control employees by rotinization and socialization and to diffuse culpabilities, granted exceptional compensation for deviant activities, created a complex structure of companies to simulate transactions, executed accounting frauds to cheat investors, auditing and regulation and got involvement of third parties (auditing, politicians, analysts, rating agencies and financial institutions) (see [29, 53, 68–72]). All of these were facilitated by the mega spectacle of image projecting accessing cognitively the ideology of power and competence, neutralizing any critical position. The power spectacle arouses obedience and the competence spectacle grant business legitimacy, even when this clashes with substantial evidences [70].

Principles of corporate governance consolidated in the late 1990s, highlighted the need of controlling the executive remuneration, the quality of accounting information and independence of board members. Corporate frauds usually bypassed these recommendation and created a sense making that excessive remuneration was result of smart guys competence (the Masters of Universe staff); since Enron was the second largest client of Arthur Andersen and the largest of rating agencies, it got their involvement overlooking the red flags on business; and finally, the chairman and chief executive officer was the same person but he was a celebrity [15, 72].

In summary, it was created a smokescreen that did not allow accessing the non-compliance and even rationalized it. What Enron scandal brought to light was that lenient behavior toward governance recommendations would not promote an excellent performance in New Economy but instead, would facilitate and legitimate corporation frauds and add a great risk to financial system.

In the summer of 2002, WorldCom collapsed. It operated for years releasing reserves into income created by creative accounting on acquisitions. Financially struggled, they inflated cash flow, capitalizing what should be expensed. Despite being a fraud much simpler than Enron, it was huge in amount of money. It was also client of Arthur Andersen [9, 15, 21]. That was the same mechanism used by Tyco, the other scandal of 2002. By creating reserves in

acquisition operations, they inflated income and when an event struggled his cash, operating cash flow was also inflated. It was client of PwC [9].

Vivendi, Ahold and Parmalat inaugurated the scandals time in Europe [73–75]. They were cases of report of non-existent asset, non-report of liabilities, cash-flow misrepresentation and frauds, off-balance sheet assets and other creative accounting to inflate revenues. They were also client of important auditing firms like Arthur Andersen, Grant Thornton, Deloitte & Touche. Ineffective corporate governance figured in the list of failures.

This sequence of scandals did not affect the confidence only on capital market but also on auditors, supposed to confer accounting information and procedures. Therefore, it is time to run some considerations about auditing firms. They faced a great crisis of confidence, as they were part of the problems that culminated into scandals. To Arthur Andersen, however, the punishment was drastic. It seemed that they went out of business not in function of audit failures since many other times they faced lawsuits of this kind, but they deliberately destroyed documents obstructing justice and characterizing a widespread criminal conduct. The verdict, however, was not based on destruction itself but on an email sent to Enron warning that earnings announcements for SEC in October should be altered in order to give them less information [15]. These conducts would be considered in further regulation.

The auditing activity was born in Great Britain with industrial revolution. Joint stock companies supplied increased demand of huge sum of capital. The British Companies Act of 1845, with the purpose of protecting investor from incompetence or malfeasance of directors, required that companies must keep detailed accounting records and be annually audited by a committee of shareholders [15].

The accounting industry started to be competitive in late 1970s and in 1980s audit fees felt down drastically. From then on, this industry saw a concentration phenomenon into a Big 5 auditing firms that started also to offer consulting services to aggregate value. Besides the revenue concentration, they started to concentrate power as well, and they were protagonist on many lobbies to avoid regulation, as that of SFAS 23 in 1996 and then the auditor's independence requirement post-2000 scandal [15, 29]. Increasing consulting services turned this proximity to managers to be promiscuous. This last regulation required the separation of consulting and auditing services and was a SEC's effort to avoid problems of noncompliance. It was motivated by a scandal involving PwC in January 2000, when it came to public that more than its 1,500 auditors were accused of violating professional standards. But it suffered an intense opposition by auditing firms. Forty-six members of Congress asked SEC to withdraw, amend or delay the proposal. After lobbying that could result in a retaliatory cut on SEC's budget, it allowed companies to continue to offer other services conditioning the separately disclosure of them in November 2000. When firms disclosed revenues from tax and consulting services in 2001, even SEC was astonished [15]. An Audit Committee to oversee the audit process became a necessity more than a desirable characteristic of corporate governance (e.g. [29]).

Academic studies continued to be conducted over companies from 1990s to the first years of 2000s. The results were not so different from prior ones. There were some inconsistencies

depending on analytical method or sample but most of them highlighted the preferences to outside directors not overcommitted (when they serve on many boards, they have less time to do a good job), to separation of chairman from CEO roles, to audit committees that meet more frequently and have more financial expert members (e.g. [36, 76, 77]). All of these were considered in further regulation and codes.

The environmental conditions that surrounded these scandals yet included impression management. Besides companies that effectively had weak corporate governance, some others adopted board independence, for instance, just to demonstrate governance compliance to financial stakeholders, without actual improvements on it. It is part of verbal impression management by CEO in communications to analysts [55].

After Enron collapse news broke in November 2001, followed by revelations about Arthur Andersen and other companies involved, improvements on governance could not be postponed anymore.

More than 30 Bills were drafted along the first semester of 2002. Two of them were approved. The first was the Republican Oxley's Bill approved in April 2002 by the House of Congress. It created the special Board to regulate auditor activities and restricted consulting services provided by them. But it was softer than expected by part of Democrats. The second one, the Sarbanes's Bill, was running on Senate but in slow motion. Approved on a special Commission in June 2002, it seemed that it would not be scheduled for final approval as senators were mobilizing around the election of November. What changed the course of this history was the break out of WorldCom scandal. American society was not recovered from Enrons's scandal to face another one with that proportion. The Sarbanes's Bill was approved in July 15 by a vote of 97 to 0 [15].

Then the Act that promoted a great reform became known as Sarbanes-Oxley Act of 2002. The purpose was once again to restore investor confidence on financial market. Among many objectives, there were the enhancement of corporate responsibility and financial disclosure as so the avoidance of corporate and accounting fraud. It was a temptation to broad responsibilities and applies more severe punishments to companies and their executives [2, 9, 15, 61].

In order to operationalize this enforcement, SOX created the Public Company Accounting Oversight Board—PCAOB, to oversee the activities of the auditing profession. PCAOB was under SEC direction and was funding by auditing firms and clients. The banning of consulting activities was not required but it was explicitly prohibited nine specific services deemed incompatible with auditing: bookkeeping, financial information system design and implementation, actuarial services, internal audit outsourcing, investment banking services, legal advice, appraisal services and executive recruiting [15]. The main responsibilities of the Board contemplate registering public accounting firms and conducting periodic inspections to ensure that they comply with expected standards. They can investigate and impose sanctions to audit failures. It is not a surprise that once again a strong congressional lobby took place to prevent the indication of a president for PCAOB that would execute SOX's requirements effectively.

SOX, along its eleven chapters [3]:

- Required that audit firms rotate the lead engagement partner every 5 years.
- Prohibited auditing services to firms where CEO, CFO, CAO or controller was previously employed at the accounting firms and has participated in the audit of that company in previous years.
- Emphasized the auditor's responsibilities to board of directors, investing public and managers.
- Required Audit Committee members to be independent and responsible for appointing, compensation and overseeing the company's independent auditors. They should receive and investigate complaints about accounting and auditing matters. One of their members should be financial expertise and all should be also members of Board of Directors.
- Required corporate executives to certify in writing that financial statements comply with standards, free of misrepresentation. If there was a problem with that, this certification would allow them to be subject to civil and criminal penalties (20 years in prison). Those internal controls that were fragmented to dilute and diffuse culpabilities now lose efficacy.
- Prohibited loans to officers and directors.
- Limited benefits plans to employees.
- Required more disclosure of off-balance sheet financing.
- Increased the maximum prison sentences for securities fraud executed by mail and wire (20 years) and for documents destruction during a federal investigation or bankruptcy (20 years).

SOX required that SEC regularly revised companies disclosures and statements considering some red flags: if they restated financial information many times, if stock price suffered a huge volatility in comparison to other companies, emerging companies with disparate proportion between profit and prices and companies that significantly affect economy. These aspects of its revision all addressed to signals presented on corporate fraud companies showing that things were not going that good but were overlooked.

SEC had proposed management reporting on internal control effectiveness a couple of times before, as in 1979 and 1988, but only with SOX, there was a final rule about it. The SOX's section 404 relates to it. It requires that an internal control report be produced annually. This report attests the responsibility of directors in structuring and keeping an internal control system proper to accountability.

Although Section 404 did not mention COSO, it was then the main available instrumental to execute its requirements. COSO revised and reissued the Internal Control Guidance and continued to improve it until the recent version of 2013, yet addressing to Section 404 of SOX. Context of 20 years back did not include internet, email, outsourcing activities, and the role of boards and audit committee was pretty different, which required some updated. All of these changes had affected internal control management. This revision also emphasized principles

and its attributes (not so explicit in 1992 version) and broadened the objectives. SOX focused on financial reporting but framework focused also on compliance and operation as well [40, 78].

The COSO is a framework organized in Cubes. The COSO 2013 combines three categories of objectives: operations, reporting and compliance. These objectives are reached with good internal controls in five integrated components: environment, risk assessment, activities, information and communication and monitoring activities. All these controls are spread into different levels of company structure: entity as a whole, divisional, operating unit and functional level. Although SOX does not require IT audit in this frame, COBIT was seen as a complementary framework to COSO internal control. COBIT focuses on IT processes and their relationship with internal control, based on COSO definition [40, 41].

SOX still requires that be provided information about risk taken by company and mainly material weaknesses. There are many forms to manage risks but the framework issued by COSO, The Enterprise Risk Management (ERM)—Integrated Framework, known as COSO 2, also became popular worldwide. The distinction of the frameworks developed by them was that it started with objectives and not with risks. There are risks in achieving those objectives and controls to mitigate them. It is important to company explicit that some strategies require risks to be taken and other risks are taken by choice.

Since SOX, other requirements about risk oversight processes were issued. Audit Committees were required to oversee these processes by New York Stock Exchange in 2004 and SEC required broad information about board's role in risk oversight in 2009 [79]. This movement turned more intense after 2008 crunch, to be commented in the next section.

One of the main issues highlighted in 1990s, which figured as part of problem in some corporate scandals of early 2000s, was the stock option not expensed—a risk neither measured nor disclosure. Despite feverous academic discussion about that (e.g. [25, 80]), FASB proposed the SFAS 123R in December 2004, requiring that employee stock options be valued on the date they were awarded and expensed the vesting period of them. It was an intermediary solution. This discussion leads to the controversy regarding the adoption of IFRS in USA.

After 2000 scandals, an increased number of countries started to adopt the International Financial Reporting Standards (IFRS) set by International Accounting Standard Board (IASB). Now, there are 149 jurisdictions that had already converted to it. Its mission is to bring transparency, accountability and efficiency to financial markets around the world, contributing to financial stability. The specific IFRS no 2—Accounting for Share-Based Payments started to be discussed on 2000 and was issued in 2004 [81]. Differences between IFRS 2 and SFAS 123R would impact earnings report, effective tax rate and cash flow [82]. A bigger challenge lies on the fundamental difference between European and American standards. While American rules privilege *form over essence* and are more rules-based model, Europeans privilege *essence over form* and are more principle-based model. There are other economic implications to U.S. companies and political ones to FASB, which does not want to lose its supremacy [83, 84].

An important signal that companies were misrepresenting and enforcements were putting increased pressure on them was the restatements level. In 1997, 116 listed companies in the USA

restated their financial reports, between 1997 and 1989 there were 292, but the number increased to 330 companies only in 2002. After SOX, in 2004 and 2005, there were 1,818 earning restatements [15, 62]. A study conducted over 919 restatements between 1997 and 2002 found that the most of them were driven by deceptive accounting practices [85]. Approximately 10% of all listed companies restated their financial information at least once during this period of time [15].

Corporate accounting scandals led to important reactions that created laws, rules and code of conducts. Over the time, all these regulations become cumulative and environment more complex. Increased penalties, punishments, stricter regulations seemed not to avoid creative accounting and malpractices [67, 86, 87]. Instead of being effective against misconducting, all these effort turn environment yet more complex and vulnerable [9].

Notwithstanding, it is worthy to point out that SOX did not reverse the deregulation of financial market. There was an amendment to SOX approved in 2003—The Securities Fraud Deterrence and Investor Restitution Act that actually limited states activities to uncover frauds. Therefore, mutual fund was protected from over regulation. FASB and SEC continued to be politically influenced by lobbies [29].

6. The 2008s crisis: a different one

The credit crunch of 2008 was surrounded by a market overleveraged, debt misrated by rating agencies and incorrect investment banking models [88]. The result was that financial institutions, investors, analysts and rating agencies underestimated the level of toxicity of assets held in portfolios—consciously or not [9]. Complexity, lawful creative accounting and greed, all elements presented in prior frauds and scandals, contributed to it.

Trading models were usually constructed by traders that do not know how to interpret data within them. Some of them had never read the financial statements of companies used to model, but financial sector rely on them [88]. Although the reputation of rating agencies had been affected by 2000s scandals as they kept their high rating level up to the scandal time or too near (and it does not matter here if there was corruption involved on it), financial market used them to give credibility to portfolios. And once again, they sustained ratings even when scandals were eminent, like in Bear Stearns case [9, 88].

Financial market was too leveraged with credit derivatives, based on bad lending practices. When the leverage is high, the quality of loans should also be high to reduce risk. Mortgage loans conceded to people that could not afford the payments, known as sub-prime, were packaged up creating the securitization instrumentals as collateralized debt obligation (CDO) that could be backed by many combination of debt: credit derivatives, asset-backed securities, mortgage-backed securities and the most famous as credit default swaps (CDS) and collateralized mortgage obligation (CMO) [9, 88].

What intensified the effect of contamination of this crisis on entire financial market was the fact that losers were not only the investors that deliberated bet on financial game but people aware of it around the world. The participation of hedge funds in this crisis deserves a comment.

Hedge funds are for rich investors and as rich they enacted an image of sophisticated investors. Many public pension funds and other institutional investors allocated their money in hedge funds. In 1990, there were a few hundred hedge funds managing up to US\$ 50 billion assets. In 2008, there were around 8.000 global hedge funds managing almost US\$ 3 trillion in assets—all of these under little regulation [88]. The illusionism and the spectacle used in Enron's world were intensified within this financial folly. The excuse for secrecy was used by hedge funds. It was not so different from Enron's discourse about measurement of its derivatives. What is new and not regulated open a window to flourish this modus operandi [70].

The greed was also fed by spectacular possibilities of getting rich fast, increasing the anxiety to goes beyond. The whistle blowing and articles in media questioning the performance of hedge funds were misled [89]. It is important here to recover the team phenomenon described by Goffman [57] years ago. He stated that people create a mutual confidence on each other within the team leading to a reciprocal dependence where the objective is to sustain the representation, the impression to determined audience. The reciprocity is reinforced with the purpose of self-protection, reaffirming the consensus. Open disagreement with consensus is not socially accepted. That what's happened in 2008.

If this impression management was efficient to general public and useful to specialized one that chose to participate in the folly, it should not be overlooked and ignored by SEC. Derivatives instrument had also been used by Enron to spectacular fraud. SOX promoted a huge change in corporate governance and accounting activities but did not reach this market functioning [87]. As SEC did not halt securitization activity, investment banks accelerated it in 2007. It seemed that there was a conflict of interest as some SEC's officials used to work for investment banks, for law firms that represented them, became affiliated with a private equity fund or even started one financed by investment banks [88].

Rating agencies were part of this spectacle. Seen as providers of comprehension concerning complex asset-backed securities tranches, they misrated them, which were used by financial institutions to justify investment and leverage. In March 2007, Bloomberg asserted that 90 percent of bonds in the AAA index of S&P were not even investment grade, in other words, would be rated above BBB- (see [88]).

When the world's second largest private equity firm collapsed, on March 2008, their assets were mostly AAA rated and they affected many important creditors. The American response was an exchange of these AAA papers for treasuries, issuing a US\$ 200 billion lending program to provide liquidity to the U.S. banking system. This unprecedented action included U.S. taxpayers in losers list.

Accounting rules allowed some classification that could favor financial firms to hide the effective risk embodied in its assets. Then SEC, after this billionaire program, encouraged companies to classify assets using models with significant unobservable inputs. If FASB rules allowed companies to do it under some circumstances, SEC was announcing that that was the circumstance [88]. Accounting errors and some investigation were in course in 2006, but they were not red flag enough to halt the folly.

This collapse was spread around the world as bank system is interlinked, turning to be a global credit crisis. Nationalization and public rescue programs were replicated in Europe in order to protect financial system (see [9]). Financial stability depended on taxpayers and probably the extension of social impacts of increasing public debt was not been measured yet.

Carlyle Group, Bear Sterns, Lehman Brothers, AIG, Merrill Lynch, Wells Fargo and many others, were directly involved on this crisis. The Madoff case, however, was pretty different. It was a corporate fraud like others of 1990s that survived longer as its distinction was that there was no transaction at all, no business. SEC received six complaints against Madoff between 1992 and 1998 [90, 91], which raised many red flags [92]. Notwithstanding, Madoff Ponzi scheme was only broke out when investors started to demand their money back as they were losing with credit crunch in other investments. Only in 2008 investors took of US\$ 12 billion from Madoff's fund, and this led to the collapse of it. The Madoff case turned explicit how feeder funds activities were so unregulated [9, 93].

One of the important responses was The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 [94]. This Act finally imposed some regulation back over financial market. Among recommendations, Federal Reserve should supervise any company that gets too big to fail. The consequence was the increase of its reserve requirement. President Trump has announced that this increased reserve drained financial resources from banks and decreased their competitiveness.

The Volcker rule prohibited banks from using hedge funds in its behalf and determines 7 years to bank get out of hedge fund business. Banks lobbies were successful in delaying this approval (only in 2013), and new pressures can decrease enforcement by regulators.

The Act required that risky derivatives like CDS be regulated and all hedge funds and other advisors as well. All of them must be registered with the SEC. It created an Office of Credit Ratings at the SEC in order to oversee rating agencies, with the power to require methodologies and deregister them.

It created the Consumer Financial Protection Bureau under U.S. Treasury Department to assure that homeowners be aware of risky mortgage loans, to oversees and regulates credit activity, and also require banks to verify borrower's income, credit history and job status. Banks and funds in 2008 crisis overlooked all of this information. As it depends on public budget, it is easy to relax the enforcements on it. Under the same U.S. Treasury Department the Act created a Federal Insurance Office in order to increase supervision of insurance companies, mainly over those that create a risk for entire system, like AIG.

Finally, the Act gave power to the Government Accountability Office to audit Fed's emergency loans like that in financial crisis and required that The Treasury Department approve any other emergency loan given by the FED. This was a response to protect taxpayers from new financial folly.

7. Corporate Governance after 2008 global crisis

After the great shock, corporate governance is still considered important by shareholders and investors particularly during times of financial trouble [4, 95].

The OECD report on financial crisis in 2010 pointed out the weaknesses in corporate governance that contributed to financial crisis. They run about the lack of risk assessment and disclosure, high-risk exposure, lack of financial experience among board members and remuneration still linked to short term gains [96].

It reinforces the responsibility of boards on executive remuneration definition, on the establishment of an explicit governance process that defines the role and duties of compensation consultants and on making this process transparent. It is important to note that those consultants were not so independent as expected and were too closed to managers since 1990s.

It states that risk management should consider compensation and incentive systems, and its process and assessment about its effectiveness should be disclosure. This theme is a direct result of credit crisis.

It recommends that internal control functions report directly to audit committee and risk management directly to the board. SOX and SEC required some improvements on internal control, but this recommendation addresses the responsibilities over processes.

Board structure, composition and working practices have being related to good governance and avoidance of frauds. This report considers that these characteristics can vary depending on complexity of business and so they need to be adequate to it.

For those companies that are subject to supervision, this report recommends that this include issues regarding to skills and competence of board members related to general governance and risk management. Assessment of independence and objectivity of board members could include the length of time members serve under the same CEO. The lack of competence and financial skills was pointed as an important factor in 2000–2008 crises as board members overlooked some important red flags and did not do the right questions about business (e.g. [21]).

Finally, it recommends the need to improve the exercise of shareholder rights, especially institutional shareholders that figured as important victims in financial crisis.

Sharing this diagnose, UK and US regulators took some steps to encourage banks to improve its culture by governance and added regulatory enhancements to financial supervisory regime in name of global financial stability. Although the UK and the US are too different, they converged on ideas to increase penalties to failures and to change focus from interest of shareholders over all other stakeholders to interest of clients [97].

The OECD non-binding principles of Corporate Governance were revised in 2004 after 2000 scandals and in 2010 after credit crunch. From 1999 version, it was included an item to help companies to enhance the effectiveness of corporate governance framework.

In 2004, this item stated: “The corporate governance framework should **promote transparent and efficient markets**, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities” [p. 17]. It follows with some recommendations to do it. In the 2010 version it states: “The corporate governance framework should **promote transparent and fair markets, and the efficient allocation of resources**. (...)” [p. 13]. All elements of 2004 were repeated here to help jurisdiction in articulating legal, institutional and regulatory framework that affect corporate governance. The subtle substitution of *efficient market* to *fair market and efficient allocation of resources* addresses to concerns on focusing only shareholders over other stakeholders before 2008 crisis. The new concern should be on global financial stability. Specifically, it added a sub item related to stock market regulation that should set standards, supervision and required enforcement of corporate governance rules. Other sub-item was added related to the importance of international co-operation among regulators in providing arrangements for exchange of information. The 2010 version also explicit the *comply or explain* principle as a recommendation to jurisdictions in its implementation arrangements. This enhances enforcements.

Other detachments were made in function of its importance change. The sub-item related to institutional investors was detached in 2010 and states that they should disclose their corporate governance policies and consider other forms of shareholder engagement. Another detachment relates to information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board. This sub item was within remuneration theme in 2004.

In synthesis, the main items of OECD 2010 are: (a) ensuring the basis for an effective corporate governance framework; (b) the rights and equitable treatment of shareholders and key ownership functions; (c) institutional investors, stock markets, and other intermediaries; (d) the role of stakeholders in corporate governance; (e) disclosure and transparency; and (f) the responsibilities of the board.

Legal and regulatory apparatus and corporate governance codes around the world were adjusted to the main aspects related to frauds and scandals in financial crises. As cultural, economic and legal arrangements are different among countries, the degree of enforcement can also be different. The last financial crisis showed that restrictions would be bypassed if there is a huge economic interest in game.

Corporate governance is important to govern in shaping its legal and regulatory frameworks, incorporating governance requirements. It is important to drive shareholders and stakeholders in arising the right questions about business. If they have skills to do it, if they want to do it or are sensitive to impression management that cloud their mind, this is out of reach of all these frameworks.

A global survey on governance conducted by McKinsey in 2011, unfortunately did not present a better result than the previous one in 2008. Boards have not increased time spending to discuss company's strategy, and 44% simply review and approve companies proposed strategies [98]. The main findings were that some directors have inadequate expertise about business and have no time to more dedication. Delloite's report on risk management added to this discussion the market volatility that has been driven ERM in companies pos-crisis [99].

If these surveys reflect reality abroad, we still have a big problem to face. Probably managers and boards are not applying what was learned from prior crisis in required speedy and intensity.

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