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**COMPARATIVE STUDY BY THE CILEA
CORPORATE GOVERNANCE
IN LATIN COUNTRIES**







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IN LATIN COUNTRIES**

CREDITS

Research conducted by the CILEA, with the cooperation of the CECCAR

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BRAZIL	CONSELHO FEDERAL DE CONTABILIDADE
COLOMBIA	FEDERACIÓN DE CONTADORES PÚBLICOS DE COLOMBIA
FRANCE	CONSEIL SUPERIEUR DE L'ORDRE DES EXPERTS COMPTABLES
ITALY	CONSIGLIO NAZIONALE DEI DOTTORI COMMERCIALISTI E DEGLI ESPERTI CONTABILI
PORTUGAL	ASSOCIAÇÃO PORTUGUESA DE CONTABILISTAS ORDEM DOS TÉCNICOS OFICIAIS DE CONTAS
ROMANIA	CORPUL EXPERTILOR CONTABILI ȘI CONTABILILOR AUTORIZAȚI DIN ROMÂNIA
SPAIN	CONSEJO GENERAL DE ECONOMISTAS
VENEZUELA	FEDERACIÓN DE COLEGIOS DE CONTADORES PÚBLICOS DE VENEZUELA

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PRESENTATION

Corporate governance and social responsibility are key factors in building trust, consolidating the integrity of companies and ensuring the health and stability of the economy.

Recent debates highlight the importance of transparency, the effective operation of governance systems, ethical dimensions, the integration of governance and sustainable development as an integral part of the essence of companies, as well as the need to improve governance in the public sector. Corporate governance is the base underpinning high quality reporting and a means for restricting damaging approaches in the short term and avoiding excessive risks.

The standard definition of corporate governance is the system by which companies are managed and controlled, and as a set of relations between the company's governing body, its board of directors, its shareholders and other interested parties (OECD, 2004).

There are many factors that make governance systems around the world differ. On the one hand, there are the particular aspects of the company itself, such as its capital structure, mechanisms for remunerating executives, decision-making processes and control systems. On the other hand, there are external factors, such as the legal system, the market for corporate control, the executive labour market and the degree of competition. Although the development of governance standards has primarily been headed by the companies listed on capital markets, the issue is important for all types of businesses, including private, family and public sector companies.

To gain greater insight into the corporate governance systems in Latin countries, the Comité de Integración Latino Europa-América (CILEA) decided to embark on this project, at the proposal of the Romanian professional organization Corpul Experților Contabili și Contabililor Autorizați din România (CECCAR).

One feature that defines the economics and accounting professions that we represent is that we assume the responsibility of acting for the benefit of public interest: integrity, ethical values and professional competences are arguments in favour of the active participation of professionals for the effective operation of governance mechanisms.

With a firm commitment in this respect, after a laborious process of gathering data and drafting results, we are pleased to present this thorough comparative study to the professional community, confident that insight into the existing systems can act as a stimulus for expanding good practices in order to achieve balanced and sustainable economic development.



Ecaterina Necșulescu
Acting Chairwoman of the CECCAR



Claudio Siciliotti
Chairman of the CILEA

1. INTRODUCTION

In order to provide an informed perspective and assess the Latin experience within the global debate about how governance systems function, the CILEA authorized this comparative study on corporate governance in Latin countries, with the following objectives:

- Conducting a comparative analysis of the rules, specific regulations, principles and practices in terms of corporate governance applied in Latin countries, with the aim of evaluating the degree of convergence.
- Identifying and promoting the best corporate governance practices, based on the experience of Latin countries.
- Stimulating debate within the Latin accounting professions in terms of the contribution of the governance mechanisms that are suitable, solid and effective for sustainable and balanced economic development.
- Drafting a discussion document that includes an analysis of the situation of corporate governance in Latin countries and recommendations for improving practices.

With respect to the methodology applied, in order to gather the data, a survey was drafted and distributed to the professional associations of Economic and Accounting Sciences in Latin countries.

This survey was divided into four sections: codes and other regulations that involve issues of corporate governance, corporate governance principles in Latin countries, regulations on the capital maintenance system and information system governance.

The responses to the first section of the survey were a source of information that enabled the following aspects to be developed:

- The use of corporate governance codes in Latin countries and the application of the Anglo-Saxon principle of "comply or explain". The analysis was complemented with the results of empirical studies carried out in Latin countries.
- The development of governance codes for small and medium listed companies and for companies that are not traded on the stock exchange, as well as the experiences of Latin countries in this respect.

The second section of the survey enabled the analysis of the particular national features of corporate governance systems. The convergence of governance principles in Latin countries has been analysed, using the principles of the OECD for reference.

The third section enabled the presentation and analysis of the various capital maintenance systems in Latin countries, within the context of the current debate regarding alternative regimes and creditor protection.

The fourth section identifies the regulations used in the field of information system governance and the expansion of the use of certification with respect to information security management systems in the countries surveyed.

The CILEA sent the survey to its members and, between June 2011 and April 2012, responses were received from the following professional organizations from countries that form part of the group analysed in the Study:

COUNTRY	ORGANIZATION
ARGENTINA	FEDERACIÓN ARGENTINA DE CONSEJOS PROFESIONALES DE CIENCIAS ECONÓMICAS
BRAZIL	CONSELHO FEDERAL DE CONTABILIDADE
COLOMBIA	FEDERACIÓN DE CONTADORES PÚBLICOS DE COLOMBIA
FRANCE	CONSEIL SUPERIEUR DE L'ORDRE DES EXPERTS COMPTABLES
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ROMANIA	CORPUL EXPERTILOR CONTABILI ȘI CONTABILILOR AUTORIZAȚI DIN ROMÂNIA
SPAIN	CONSEJO GENERAL DE ECONOMISTAS
VENEZUELA	FEDERACIÓN DE COLEGIOS DE CONTADORES PÚBLICOS DE VENEZUELA



2. CODES AND OTHER REGULATIONS THAT INVOLVE ISSUES OF CORPORATE GOVERNANCE

For the purposes of this Study, the general definition of "corporate governance code" that is applied is a non-binding set of principles, regulations or practices issued by public or private organizations in reference to the internal governance of companies.

Table 1 below gives an overview of the governance codes that apply in the countries of the sample that will be analysed:

Table 1. Corporate governance in CILEA countries				
COUNTRY	OFFICIAL CODE TITLE	ISSUING AUTHORITY	TYPE OF COMPANY AT WHICH IT IS AIMED	APPLICATION MECHANISM
ARGENTINA	<i>Código de Mejores Prácticas de Gobierno de las Organizaciones para la República Argentina, 2004</i> http://www.iago.org.ar/iago/frame.eset.cfm?frame_contenido=codigo_mp	<i>Instituto Argentino para el Gobierno de las Organizaciones (IAGO)</i> (Argentine Institute for the Governance of Organizations)	Publicly traded companies and (voluntarily) private companies, both large and small.	Comply or explain
	<i>Código de Gobierno Societario¹</i> http://www.cnv.gob.ar/transparencia/CodigoGobiernoSocietario.asp?Lang=0	<i>Comisión Nacional de Valores (CNV)</i> (National Securities Commission)	Since 2012, this has applied to companies authorized to list their tradable securities publicly.	Comply or explain
BRAZIL	<i>Código das melhores práticas de governança corporativa, 2009</i> http://www.ibgc.org.br/CodigoMelhoresPraticas.aspx	<i>Instituto Brasileiro de Governança Corporativa</i> (Brazilian Institute of Corporate Governance)	All organizations	Comply or explain
COLOMBIA	<i>Código de Mejores Prácticas Corporativas</i> (known as the <i>Código País</i> or Country Code), 2007 http://www.confecamaras.org.co/phocadownload/GobiernoCorporativo/codigopais.pdf	<i>Superintendencia Financiera de Colombia</i> (Financial Superintendency of Colombia)	Companies issuing securities. However, nothing prevents companies that do not fulfil this criterion from applying the code, if they wish to make significant progress in terms of adopting best practices.	Comply or explain
	<i>Guía colombiana de gobierno corporativo para sociedades cerradas y de familia, 2009</i> http://www.supersociedades.gov.co/web/documentos/guia%20colombiana%20de%20gobierno%20corporativo.pdf	Inter-institutional committee headed by the <i>Superintendencia de Sociedades</i> (Corporate Superintendency), the <i>Cámara de Comercio de Bogotá</i> (Bogotá Chamber of Commerce) and <i>Confecámaras</i>	Private and family companies	The objective is to inform corporate business people about the most commonly recurring problems
FRANCE	<i>Code de gouvernement d'entreprise des sociétés cotées</i> (known as the AFEP/MEDEF Code), 2013 http://www.medef.com/medef-tv/actualites/detail/article/revisio-n-du-code-de-gouvernement-dentreprise-des-societes-cotees.html	<i>Association Française des Entreprises Privées - AFEP</i> (French Association of Private Companies) & <i>Mouvement des entreprises de France - MEDEF</i> (French Company Movement)	All companies issuing securities. Private companies can apply the code voluntarily (within a conceptual framework adapted to reflect the situation).	Comply or explain

¹ In 2012, the *Comisión Nacional de Valores* (CNV) approved the minimal contents of this code under General Resolution 606/2012.

COUNTRY	OFFICIAL CODE TITLE	ISSUING AUTHORITY	TYPE OF COMPANY AT WHICH IT IS AIMED	APPLICATION MECHANISM
	<i>Code de gouvernement d'entreprise pour les valeurs moyennes et petites</i> (known as the MiddleNext Code), 2009 http://www.middlenext.com/IMG/pdf/Code_de_governance_site.pdf	MiddleNext professional association	Small and medium companies issuing securities. Private companies can apply the code voluntarily (within a conceptual framework adapted to reflect the situation).	Comply or explain
ITALY	<i>Codice di autodisciplina</i> , 2011 http://www.confindustria.it/Conf2004/DbDoc2004.nsf/0/50f8c39da51541d3c125799100487bf6/\$FILE/Codice%20di%20Autodisciplina%20ed.%202011.pdf	<i>Comitato per la Corporate Governance</i> (Corporate Governance Committee), a committee founded by Abi, Ania, Assogestioni, Assonime, Confindustria and Borsa Italiana (Italian Stock Exchange)	Listed companies	Comply or explain
PORTUGAL	<i>Código de governo das sociedades da CMVM</i> , 2010 http://www.cmvm.pt/CMVM/Recomendacao/Recomendacoes/Documents/CodigoGovernodasSociedadesCMVM2010.pdf	<i>Comissão do Mercado de Valores Mobiliários</i> - CMVM (Securities Market Commission)	All companies issuing securities. Other companies can apply the code voluntarily.	Comply or explain
	<i>Código de Governo das Sociedades</i> , 2012 http://www.cgov.pt/images/stories/ficheiros/codigo_de_governo_das_sociedades_2012.pdf	<i>Instituto Português de Corporate Governance</i> - IPCG (Portuguese Corporate Governance Institute)	All companies issuing securities. Other companies can apply the code voluntarily. This is an alternative to the CMVM Code.	Comply or explain
ROMANIA	<i>Codul de Guvernanță Corporativă al Bursei de Valori din București</i> , 2009 http://www.bvb.ro/info/Codul%20de%20Guvernan%20Corporativa%20al%20Bursei%20de%20Valori%20Bucuresti.pdf	<i>Bursa de Valori București</i> (Bucharest Stock Exchange)	Listed companies. Other companies can apply the code voluntarily.	Comply or explain
SPAIN	<i>Código unificado de buen gobierno de las sociedades cotizadas</i> , 2013 http://www.cnmv.es/Portal_Documentos/Publicaciones/CodigoGov/CUBGrefundido_JUNIO2013.pdf	<i>Comisión Nacional del Mercado de Valores</i> - CNMV (National SecuritiesMarket Commission)	Listed companies, regardless of their size or level of capitalization.	Comply or explain



COUNTRY	OFFICIAL CODE TITLE	ISSUING AUTHORITY	TYPE OF COMPANY AT WHICH IT IS AIMED	APPLICATION MECHANISM
VENEZUELA	<i>Lineamientos para un Código Andino de Gobierno Corporativo</i> , 2006 http://gc.caf.com/pubs.asp?idp=5	Corporación Andina de Fomento - CAF (Andean Development Corporation)	Primarily listed companies, but it may also be applied to public limited companies and private companies.	Comply or explain
	<i>Principios de gobierno corporativo</i> Resolución N° 19-01-2005 http://www.cnv.gob.ve/LeyesNormas/Normas/019-1.pdf	Comisión Nacional de Valores (National Securities Commission)	Listed companies.	Comply or explain
	<i>Lineamientos para un Código de Gobierno Corporativo para las PyME y empresas familiares</i> , 2011 http://publicaciones.caf.com/publicacion?id=1592	Corporación Andina de Fomento - CAF (Andean Development Corporation) ²	SMEs and family companies.	Comply or explain

In some countries, a certain level of interest can be observed with respect to adapting governance codes to the size of the company. Two such cases are **France**, which has a governance code adapted to small and medium listed companies, the *Code de gouvernement d'entreprise pour les valeurs moyennes et petites* or MiddleNext Code, and **Colombia**, which has a governance code for private and family companies, the *Guía colombiana de gobierno corporativo para sociedades cerradas y de familia*.

The authors of the MiddleNext Code justify the need for recommendations suitable for small stock-issuing companies, as they consider that there are issues that are less relevant to small companies that trade on the stock exchange, in which the director is a significant or main shareholder, such as issues related to committees and remuneration. Meanwhile, other issues, such as ensuring the succession of the director and protecting the interests of minority shareholders, are more relevant for this type of company. In this code, there are four points to be monitored in terms of the executive role (competence, support, succession and the establishment of suitable remuneration that does not affect the director's judgment), as well as five points to monitor that focus on supervisory power (effective supervision, the right balance between supervisory duties and executive power, being equipped to exercise supervisory powers in terms of the material resources required to fulfil the corresponding duties, the responsibilities of the directors, and ensuring suitable conditions for the optimal performance of their mandate). The Code also identifies five points to which the board of directors should pay particular attention: informing shareholders of the main and foreseeable risks that may endanger the sustainability of the company, effective shareholder participation in the election of directors and their participation in voting, the risk of affecting the rights of minority shareholders, and the long-term administration of shareholders.

A study conducted by the *Institut Français de Gouvernement des Entreprises* (French Company Governance Institute) regarding companies that applied the MiddleNext Code in 2011³ highlights some of the features of these companies that explain their choice in terms of governance: their capital structure is characterized by highly concentrated shareholding, primarily dominated by family or individual shareholders; they generally have a unitary structure with a smaller board of directors and fewer independent board members, greater concentration of power and limited use of committees.

In line with a trend that can already be discerned in other countries and in view of Colombia's economic structure, with a predominance of private companies, in 2008, the company supervisory body, the *Superintendencia de Sociedades* (Corporate Superintendency), conducted the "*Encuesta Nacional de Gobierno*

² The *Corporación Andina de Fomento* also published "*Los Lineamientos para un código latinoamericano de gobierno corporativo*" (Guidelines for a Latin American Corporate Governance Code) in August 2013, which can be consulted at: http://publicaciones.caf.com/media/25389/lineamientos_codigo_latinoamericano.pdf

³ http://www.middlenext.com/lienhtml/130418_Rapport_2012_VFinales.pdf

Corporativo y Responsabilidad Social" ("National Survey of Corporate Governance and Social Responsibility"), a survey that aimed to diagnose the state of corporate governance of private companies in Colombia. To this end, a total of 23,499 active companies registered on this body's database were asked to take part in the survey, of which 7,414 duly completed and returned the survey voluntarily.

Colombia's code for private and family companies was developed based on this study and was published in 2009. One of the essential objectives of the code is precisely to become a tool that guarantees the continuity of the company in the current economic climate, preventing the company's failure due to problems or shortcomings in its corporate governance. This objective is based on the fact that an analysis of the most common causes of liquidation of Colombian private companies revealed that governance problems are closely related to the sustainability of companies. According to research conducted by the *Superintendencia de Sociedades*⁴, 51.6% of the cases of compulsory liquidation were due to bad administrative management of the company and 44.3% identified the existence of human resources without the necessary competences (employment of relatives without the skills required by the role) as one of the causes of the company's crisis. Meanwhile, in 37.4% of the cases of liquidation, one of the causes was the impact of family problems on the management of the company, while 32.8% blamed the lack of transparency in the management processes. The research concluded that private companies are highly exposed to threats such as disputes between the family and business issues, the concentration of power in the hands of the founder or majority shareholder, the lack of preparation for generational succession, the lack of suitability and leadership of the directors, and the absence of formal procedures.

A similar process was undertaken in order to draft the code for SMEs and family companies published by the *Corporación Andina de Fomento* (Andean Development Corporation) in 2011, entitled "*Lineamientos para un Código de Gobierno Corporativo para las PyME y empresas familiares*" ("Guidelines for a Corporate Governance Code for SMEs and Family Companies"). The code contains an adaptation of the best practices of corporate governance for such organizations. The measures it includes represent a compilation of practices aimed at consultants and companies, intended to build a code of good governance for SMEs and family companies. The code covers the following areas: shareholder rights and treatment, the general assembly of shareholders, the board of directors and senior management, financial and non-financial information, and dispute resolution in family companies.

It should be noted that the governance codes used in the countries in our sample are the result of public (generally, developed by financial market supervisors) or private initiatives. They are primarily designed for listed companies, with voluntary application to other companies. Listed companies are subject to transparency obligations with respect to compliance with the code and the principle of "comply or explain" has been adopted by all of the sample countries as the application mechanism of the governance codes.

With this approach, companies do not have to apply all of the code's regulations. In the event that one of the regulations does not correspond to the company's organizational context, it is exempt from its application. Factors such as size, ownership structure, international ownership and the demands of capital markets can be used as justification for digressing from the code.

Although this principle has the general support of regulators, companies and investors in Europe (European Commission, 2009)⁵, a selection of research has revealed limitations to its application.

The ultimate objective of the "comply or explain" principle is not to force companies to respect the code when they have good reason not to. This approach places great importance of the explanations given by the companies. However, although the research conducted by the supervisory bodies shows an improvement in terms of the application of the regulations contained in governance codes (for instance, in the case of **France**⁶ and **Italy**⁷), the quality of the explanations, the formal compliance of the declarations with the code and their reliability are cause for concern.

For instance, in **Spain**⁸, a sample has been analysed of 520 explanations (33% of the total) included in the 2011 annual corporate governance reports with respect to the 10 recommendations of the governance code with the lowest levels of compliance. With the exception of the IBEX companies, no significant improvement can be observed in terms of the quality of information provided by the companies to explain the reasons

⁴ SUPERINTENDENCIA DE SOCIEDADES (2004). "*Causas de la liquidación obligatoria de sociedades en Colombia. Estrategias para prevenir la crisis*" ("Causes of compulsory liquidation in Colombian Companies. Strategies for preventing the crisis"), Bogotá, 2004.

⁵ http://ec.europa.eu/internal_market/company/docs/ecforum/studies/comply-or-explain-090923_en.pdf

⁶ http://www.lexisnexis.fr/pdf/DO/Rapport_AMF_2012_sur_la_gouvernance_dentreprise.pdf

⁷ <http://www.assonime.it/AssonimeWeb2/servletDocAllegati?idSelectedDocument=245226&idSelectedDocumentType=374&idSelectedAttach=245742&reserved=false>

⁸ http://www.cnmv.es/DocPortal/Publicaciones/Informes/IAGC_2011esp.pdf



that they had to digress from these recommendations. A large proportion of the information analysed is considered too generic or redundant. In response, recommendations have been sent designed to improve the quality of the explanations given in these reports. Research conducted by the *Superintendencia Financiera* of **Colombia** in 2010 shows that the level of adoption of the measures recommended in the “*Código País*” (“Country Code”) between 2007, when its evaluation began by issuing the “*Encuesta al Registro Nacional de Valores y Emisores*” (“Survey of the National Registry of Securities and Stock-issuing Companies”), and 2010, rose steadily with an 11.15% increase over the four-year period. This reflects the stock-issuing companies’ commitment to improving their corporate governance standards. Nevertheless, the level of implementation of the measures was around 60%.

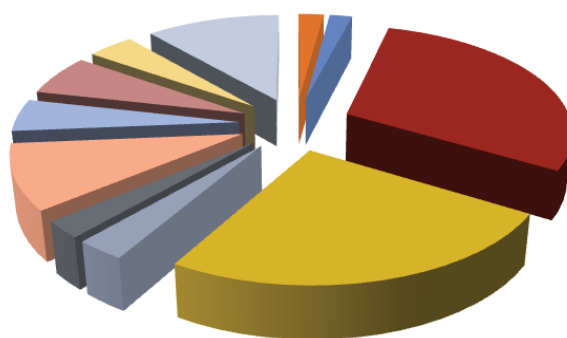
In **Portugal**, the assessment conducted by the CMVM (Securities Market Commission) gave positive results, as shown in research carried out by this organization which demonstrates that the contradiction between companies’ self assessment and the CMVM’s assessment decreased considerably in 2011 in comparison to the previous year⁹.

The structure of the governance codes, a brief overview of which can be found in Annex A of the Study, shows a high degree of convergence but a different level of development for each issue covered. It should be highlighted, however, that a high level of convergence in terms of the code’s regulations does not guarantee the same level of convergence in terms of practices. The board of directors and the mechanisms for ensuring that shareholders’ rights are respected are the most important issues covered in all of the codes.

In order to analyse the degree of interest in each of the issues dealt with in the governance codes of our sample, we have calculated the proportion of recommendations on each issue with respect to the total number of recommendations contained in the code, using a single classification. A separate analysis has been conducted in the case of governance codes designed for small and medium listed companies, due to the particular features of these organizations.

Importance of governance issues in South American codes

- | | | |
|--------------------------------------|-----------------------|--------------------|
| Internal control and risk management | Governance systems | Board of Directors |
| Shareholder rights | Conflicts of interest | Dispute resolution |
| Transparency | Auditing | Remuneration |
| Ethics and CSR | Committees | |



Graph based on the codes analysed in the present Study

⁹ CMVM: “Annual Report on the Corporate Governance of Listed Companies in Portugal”, 2012: http://www.cmvm.pt/EN/Estudos/Study%20Reports/Documents/8.4.2013.FINAL_MERGED_Annual.Report.Corporate%20Governance.%202012.pdf

Importance of governance issues in European codes



Graph based on the codes analysed in the present Study

After analysing the weighting of each of the main issues covered in the governance codes of the sample countries, certain differences can be observed in terms of the preferences for particular issues depending on the continent.

For instance, in the European codes, greater importance is given to issues such as remuneration of the board members and the committees of the board of directors, while, in the South American countries, greater emphasis is placed on issues such as dispute resolution and transparency.

Structure of the French MiddleNext code



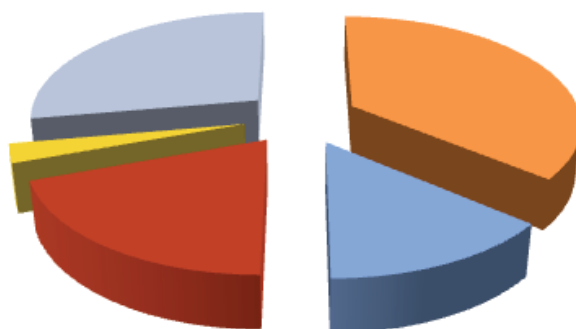
The simplified structure of the MiddleNext code for small and medium listed companies can be observed, as well as the fact that the author pays particular attention to the issue of remunerations. However, other research shows that this last issue is not as much of a concern in view of the stability of the remuneration in companies that adopted this code in 2011, compared to previous years¹⁰.

¹⁰ http://www.middlenext.com/lienhtml/130418_Rapport_2012_VFfinale.pdf



Structure of the Colombian Corporate Governance Guide for Private and Family Companies

- Management control
- Directors
- Family company governance
- Highest corporate body
- Disclosure of information



The structure of the Colombian code for private companies continues to have the main problems identified in the study conducted prior to drafting the code. The governance problems in family companies are the reason behind a significant proportion of the code's recommendations, while the transparency requirements are primarily aimed at aspects related to governance.

The issues of corporate governance are the subject of legal regulations and the codes have recently begun to be applied. An overview of the legislative sources of the countries studied can be found in Annex B.

3. GOVERNANCE SYSTEMS

3.1. GOVERNANCE MODELS USED IN THE JURISDICTIONS STUDIED

One of the aims of the Study is to ascertain the features of the governance systems in the sample countries. After analysing the responses of the CILEA member organizations with respect to each country's national legislation, we have identified the main models used in each country.

Table 2. Governance systems in the countries of the CILEA

COUNTRY	CORPORATE GOVERNANCE MODELS	COMPANY BODIES ACCORDING TO THE GOVERNANCE MODEL	APPOINTMENT MECHANISM
ARGENTINA	Unitary	General assembly of shareholders Board of directors (<i>directorio</i>)	The general assembly appoints the board of directors.
	Horizontal two-tiered	General assembly of shareholders Board of directors (<i>directorio</i>) Oversight body (<i>sindicatura</i>)	The general assembly appoints the board of directors and the members of the oversight body.
	Two-tiered	General assembly of shareholders Supervisory board Board of directors (<i>directorio</i>) ¹¹	The general assembly appoints the supervisory board. The supervisory board or the general assembly appoints the board of directors.
BRAZIL	Unitary (may alternatively be horizontal two-tiered)	General assembly of shareholders Board of directors Oversight body (<i>conselho fiscal</i>) ¹²	The general assembly appoints the board of directors and the oversight body.
COLOMBIA	Unitary	General assembly of shareholders Board of directors	The general assembly appoints the board of directors.
FRANCE	Unitary	General assembly of shareholders Board of directors Chairperson/Chief executive officer (<i>Président-Directeur Général</i> , PDG)	The general assembly appoints the board of directors, which appoints the PDG from among its members.
	Vertical two-tiered	General assembly of shareholders Supervisory board Executive board of directors (<i>directoire</i>)	The general assembly appoints the supervisory board, which appoints the executive board of directors
ITALY	Horizontal two-tiered	General assembly of shareholders Board of directors Oversight body (<i>collegio sindacale</i>)	The general assembly appoints the board of directors and the oversight body.
	Vertical two-tiered	General assembly of shareholders Supervisory board Management board	The general assembly appoints the supervisory board, which appoints the management board.
	Unitary	General assembly of shareholders Board of directors Internal committees	The general assembly appoints the board of directors which creates the internal committees.

¹¹ This may operate jointly with the *sindicatura* or instead of it. It is not compulsory for it to exist but, to do so, it must be stipulated in the articles of association.

¹² This may or not be permanent.



COUNTRY	CORPORATE GOVERNANCE MODELS	COMPANY BODIES ACCORDING TO THE GOVERNANCE MODEL	APPOINTMENT MECHANISM
PORTUGAL	Horizontal two-tiered	General assembly Board of directors Oversight body (<i>conselho fiscal</i>) ¹³	The general assembly appoints the board of directors and the oversight body.
	Unitary	General assembly Board of directors Audit committee	General assembly appoints the board of directors.
	Vertical two-tiered	General assembly General supervisory board Executive board of directors	The general assembly appoints the general supervisory board, which appoints the executive board of directors.
ROMANIA	Unitary	General assembly of shareholders Board of directors	The general assembly appoints the board of directors.
	Horizontal two-tiered	General assembly of shareholders Board of directors Oversight body (<i>cenzori</i>) ¹⁴	The general assembly appoints the board of directors and the oversight body.
	Vertical two-tiered	General assembly of shareholders Supervisory board Executive board of directors (<i>directorat</i>)	The general assembly appoints the supervisory board, which appoints the executive board of directors.
SPAIN	Unitary	General assembly Board of directors	The general assembly appoints the board of directors.
VENEZUELA	Vertical two-tiered	General assembly of shareholders Directors Oversight body (<i>comisarios</i>)	The ordinary general assembly appoints the directors and one or more members of the oversight body.

Graph of the governance models in the CILEA countries studied

- Countries with one governance model
- Countries with two governance models
- Countries with three governance models



The last observation is that there is a convergence phenomenon with respect to the main governance models and increasing flexibility in the national legislations in terms of the choice of which model to apply. Although, in the traditional unitary system, there is no formal division between the management and the supervision, according to the legislation in some countries, the board of directors can delegate powers to the managers of the level below the board and, in such cases, their duties are limited to supervising the management.

¹³ This is compulsory for listed companies and unlisted companies that exceed certain parameters in terms of the balance sheet, sales or number of employees, and is optional in all other cases.

¹⁴ For public limited companies that are not audited or which do not have a vertical two-tiered system.

The delegation of powers varies from one country to another, but there are particular common features: certain powers cannot be delegated, the board has the right to give instructions to the body that exercises the delegated powers and the board of directors must monitor how these powers are exercised.

In **Argentina**, for example, the articles of association may stipulate an executive board made up of directors whose only duty is the management of ordinary business. The board of directors monitors the activity of this executive board and exercises any other legal or statutory powers that it may have. The board of directors can appoint general or special managers, who may or may not be directors. Such status can be revoked freely. These managers can be delegated the executive duties of the administration.

In **Brazil**, the management of a company is the responsibility of the board of directors and the executive board, or of the executive board alone. Public companies must have a board of directors. The responsibilities and powers conferred by law to the administrative bodies cannot be delegated to any other body created by law or by the articles of association. The board of directors is a deliberative body with the representation of the company being reserved for the directors.

In **France's** unitary system, joint-stock companies are managed by a board of directors, which elects the chairperson and the chief executive officer (which may be the same person, known as the PDG - Président-Directeur Général) from among its members. The chief executive officer may be assisted by one, two or five directors.

In **Portugal**, unless prohibited by the articles of association, the board can appoint one or several directors, particularly in order to deal with administrative issues.

In **Romania**, joint-stock companies are managed by one or several directors, the number of which must always be odd. In the event of having several directors, they constitute a board of directors. The board of directors may delegate the management of the company to the directors and, in such cases, the majority of the members of the board of directors must be non-executive.

However, the delegation of powers is limited in some jurisdictions.

In **Spain**, for example, under no circumstances can the corporate management accounting or the presentation of the balance sheet be delegated to the general assembly. Neither can the powers assigned by the general assembly to the board be delegated, except when expressly authorized by the former.

In **Italy**, certain functions of the board of directors stipulated by the law cannot be delegated to the directors separately, such as issuing convertible debentures (Art. 2420-ter of the Civil Code (C.C.)), drafting the balance sheet (Art. 2423 of the C.C.), capital increases (Art. 2443 of the C.C.), capital reductions due to losses (Art. 2446 of the C.C.), capital reductions below the legal limit (Art. 2447 of the C.C.), drafting merger projects (Art. 2501-ter of the C.C.) or drafting demerger projects (Art. 2506-bis of the C.C.).

To ensure a balance between the executive powers and provide them with supervisory control, the regulations restrict separation in this respect.

According to **Spain's** governance code, for instance, the board of directors must perform its duties independently from the management in the best interests of the company.

In the event that the board of directors only has non-executive members and its duties are limited to supervising the management, its role is very similar to that of the supervisory board.

In the two-tiered systems, a strict separation of powers is obligatory between the board of directors and the supervisory board. This functional division is reinforced by the principle of incompatibility, which prevents an individual from being a member of the two boards at the same time.

There follows an overview of the main features of the operation of the supervisory board in the jurisdictions in which the two-tiered is permitted by law:



Table 3. Legal requirements of the supervisory board

COUNTRY	NAME OF THE SUPERVISORY BOARD	SIZE	APPOINTMENT/ DISMISSAL	LEGAL COMPETENCE REQUIREMENTS	TERM OF OFFICE
ARGENTINA	<i>Consejo de vigilancia</i>	3-15 shareholders	Appointed by the general assembly. Can be re-elected and freely dismissed.	There are no legal requirements.	The articles of association establish the term, which cannot exceed 3 years (5 years when electing the board of directors)
FRANCE	<i>Conseil de surveillance</i>	3-18	Appointed by the general assembly.	No	The term cannot exceed 6 years. This limit is reduced to 3 years in the case of public companies.
ITALY	<i>Consiglio di sorveglianza</i>	>3	Appointed by the general assembly. Can be re-elected and freely dismissed.	The articles of association can include requirements of honour, professionalism and independence.	3 years
PORTUGAL	<i>Conselho geral e de supervisão</i>	Number is specified in the articles of association, but must always be higher than the number of directors.	Appointed by the general assembly or by articles of association.	At least one member with a university degree related to exercising these duties.	4 years
ROMANIA	<i>Consiliu de Supraveghere</i>	3-11	Appointed by the general assembly or by the articles of association.	The articles of association or the general assembly can set specific conditions regarding professionalism and independence.	4 years (2 years, for the first members)

With respect to the number of mandates that can be held by members of the supervisory board, in **Romania** and **France**, no more than five mandates can be held simultaneously.

In **Romania**, in the event that a member of the supervisory board has completed three terms in the same company, they are no longer considered to be an independent member. In addition, an individual cannot accumulate more than five terms on the supervisory board of a public limited company that has its head offices in Romania. This restriction does not apply if the member of the supervisory board owns more than a quarter of the shares.

In order to determine the degree of convergence between the different countries' legislations with respect to the responsibilities of the supervisory board, we have identified all of the jurisdictions within the sample group in a certain responsibility is expressly stipulated by law (a degree of convergence of 100% means that the responsibility is expressly mentioned in all of the jurisdictions)

Responsibilities of the supervisory board



Degree of convergence between the explicit provisions of the law with respect to the responsibilities of the supervisory board

The legislations in **Italy, France y Portugal** expressly stipulate the responsibility of the supervisory board with respect to the supervision of internal control and risk management. In Portugal, among other duties of the supervisory board, the legislation stipulates the tasks of the audit committee. The responsibilities of the specific oversight body are explicitly attributed to the supervisory board in **Argentina and Italy**.



3.2. SPECIFIC OVERSIGHT BODIES

As well as the unitary and two-tiered systems used in the surveyed jurisdictions, a third type of specific model can be identified with a supervisory body appointed by the general assembly.

There are specific oversight bodies in **Argentina, Brazil, Italy, Portugal, Romania** and **Venezuela**. There follows an overview of the operation of these boards, in order to identify the benefits that they may contribute to the effectiveness of corporate control:

COUNTRY	ARGENTINA
OVERSIGHT BODY	SINDICATURA
Appointment / Dismissal	The <i>sindicatura</i> is formed by one or more members, known as <i>síndicos</i> (administrators), appointed by the general assembly.
Competence and independence requirements	<p>The following conditions are required in order to be a <i>síndico</i>:</p> <ul style="list-style-type: none"> • Being a lawyer or public accountant, with corresponding qualifications, or a private partnership with joint liability constituted exclusively by such professionals. • Having a real domicile in the country. <p>Membership of the oversight body is not permitted for:</p> <ul style="list-style-type: none"> • Individuals disqualified from becoming director. • Directors, managers and employees of the same company or a parent company or subsidiary. • Spouse and blood relatives and collateral relatives up to and including the fourth degree, and other relatives to the second degree of the directors and general managers.
Responsibilities	<p>The powers and duties of the <i>síndico</i>, without prejudice to others that may be established by law or assigned by the articles of association:</p> <ul style="list-style-type: none"> • Overseeing the administration of the company, to which end, they must examine the accounts and documentation whenever they consider it to be appropriate and at least once every three months. • Verifying the availability and ownership of the securities in the same way and with the same regularity, as well as the obligations and the corresponding compliance. They may also request that the trial balance sheets are drafted. • Attending the meetings of the board of directors, the executive board and the general assembly in a non-voting capacity. They must be invited to all of these meetings. • Monitoring the granting and effective term of the guarantee of the directors and taking any measures required to correct any irregularity. • Presenting a written report to the ordinary general assembly based on the company's economic and financial situation, with conclusions about the annual report, inventory, balance sheet and profit and loss statement. • Reporting on the issues within the scope of their competence to shareholders representing at least 2% of the capital, at the shareholders' request. • Convening an extraordinary general assembly whenever they consider it to be necessary, as well as general and extraordinary assemblies in the event that these are not convened by the board of directors. • Including any items that they consider necessary on the agenda of the general assemblies. • Monitoring that the corporate bodies duly comply with the law, the articles of association, regulations and decisions of the general assembly. • Overseeing the liquidation of the company. • Investigating any complaints received in writing from shareholders that represent at least 2% of the capital, and reporting these complaints verbally at the general assembly, stating the relevant considerations and proposals with respect to the matters. In the event that the situation under investigation receives what the <i>síndico</i> considers to be inadequate treatment by the board of directors and they believe that urgent action is needed, they shall convene an extraordinary general assembly immediately to resolve the matter. <p>In the event that the <i>sindicatura</i> is formed by more than one member, it shall act as a collegiate body and will be known as the supervisory committee. In such cases, the articles of association shall regulate its constitution and operation, and will keep a minutes book.</p>

COUNTRY	BRAZIL
OVERSIGHT BODY	CONSELHO FISCAL
Appointment / Dismissal	It does not operate permanently. It may be constituted as and when the general assembly decides.
Competence and independence requirements	<p>This oversight body is made up of at least 3 and at most 5 full members and the same number of alternate members, elected by the general assembly from individuals who are resident in Brazil, in accordance with Law 6404/1976.</p> <p>The only individuals eligible to become members are natural persons resident in the country, who hold a university degree or have held the position of a company director or a member of the <i>conselho fiscal</i> for at least three years.</p> <p>Individuals not eligible to become members are members of the administrative bodies and employees of the company or controlled companies or companies of the same group. The same applies to the spouses or first-, second- or third-degree relatives of the company directors.</p>
Responsibilities	<p>The board's main objectives are:</p> <ul style="list-style-type: none"> • Supervising the activities of the director, through any of the members, and verifying compliance with legal and statutory obligations. • Stating opinions on the annual report of the administration, including any supplementary information in their report that they consider necessary or useful for the deliberations of the general assembly. • Stating opinions on the proposals of the administrative bodies, which will be submitted to the general assembly, in relation to the modification of the share capital, issuing debentures or subscription bonds, investment plans or capital budgets, the allocation of dividends, transformation, incorporation, mergers or demergers. • Reporting any errors, fraud or offences that are detected to the administrative bodies, through any of the members, and proposing appropriate measures for the company, and, if these bodies do not take the measures required to protect the company's interests, reporting to the general assembly. • Analysing the balance sheet every quarter, as well as any other accounting statements regularly drafted by the company. • Examining and stating opinions on the accounting statements of the financial year.



COUNTRY	ITALY
OVERSIGHT BODY	COLLEGIO SINDACALE ¹⁵
Appointment / Dismissal	Between 3 and 5 full members and 2 alternate members (Art. 2397 of the Civil Code), appointed by the general assembly.
Competence and independence requirements	The members of the <i>collegio sindacale</i> may or may not be shareholders. They must fulfil the requirements of independence and professionalism established by law.
Responsibilities	<p>Supervision of the legality and legitimacy of the administration Its supervision activity of continuous and related to the management of the company. In particular, under Art. 2403 of the Civil Code, the <i>collegio sindacale</i> supervises the following:</p> <ul style="list-style-type: none"> • Compliance with the law and the articles of association • Compliance with the principles of proper administration • The suitability of the organizational, administrative and accounting structures of the company and their effective operation. <p>Supervision of compliance with the principles of proper administration This involves verifying the compliance of the management decisions with the general criteria of economic rationality, without ever passing judgment on whether the decisions taken by the management are appropriate.</p> <p>Supervision of the diligent conduct of the directors This does not involve the supervision of the appropriateness or suitability of the management decisions, but rather it involves a deeper analysis of the aspects of legitimacy of these decisions and the verification of the directors' decision-making process. As such, by supervising compliance with the principles of proper administration, the members of the <i>collegio sindacale</i> are responsible for ensuring that the directors do not conduct operations which:</p> <ul style="list-style-type: none"> • Are outside the scope of the corporate purpose • Lead to the suppression or modification of the rights assigned to the partners by law or by the articles of association • Are in conflict with the decision taken by the general assembly or board of directors • Are clearly imprudent or risky • May compromise the integrity of the company's assets or endanger the continuity of the company <p>Supervision of the suitability of the organizational, administrative and accounting structures of the company and their effective operation involves verifying that the organizational, administrative and accounting structures are appropriate with respect to the nature and size of the company, as well as the type of activity conducted and the company's shareholder structure In the case of companies listed on regulated markets, it is expressly stipulated that the <i>collegio sindacale</i> must also supervise the suitability of the internal control system.</p>

¹⁵ For a more detailed description of the operation of this body, you can consult the study conducted in 2009 by the CNDCEC "Corporate Governance in Italy - the Collegio Sindacale":
<http://www.cndcec.it/Portal/Documenti/Dettaglio.aspx?id=f66af7c6-0493-4d16-bb9c-6df5623b8529>

COUNTRY	PORTUGAL
OVERSIGHT BODY	CONSELHO FISCAL ¹⁶
Appointment / Dismissal	<p>At least 3 members with one or two alternate members.</p> <p>The full and alternate members are elected by the general assembly for the term established in the articles of association, which cannot exceed 4 years. The first appointments can be made by the articles of association or in the constituent assembly. In the event that the term of office of the elected members is not specified, the appointment is assumed to be for four years.</p>
Competence and independence requirements	<p>The <i>conselho fiscal</i> must include an official auditor or a firm of official auditors.</p> <p>The other members may be law firms, official auditor firms or shareholders. However, in the case of shareholders, they must be legal persons with full legal capacity and must possess the appropriate qualifications and professional experience to perform their duties.</p> <p>A member is considered to independent if the individual is not associated with any particular interest group in the company and is not subject to any conditions that may affect their independent analysis or decisions, particularly with respect to the following criteria:</p> <ul style="list-style-type: none"> • Being the owner or acting on behalf or in representation of owners with a qualifying holding of more than 2% of the company's share capital. • Having been re-elected for more than two terms of office, consecutively or otherwise.
Responsibilities	<p>The <i>conselho fiscal</i> has the following responsibilities:</p> <ul style="list-style-type: none"> • Supervising the administration of the company. • Monitoring compliance with the law and the articles of association. • Verifying the reliability of the accounts, accounting records and accounting support documentation. • Verifying the volume of cash flow and the existence of any assets or securities belonging to the company or received by the company by way of a guarantee, deposit or for another purpose, whenever and however it deems appropriate. • Verifying the accuracy documents for rendering accounts. • Verifying that the accounting policies and evaluation criteria implemented by the company provide a proper evaluation of the company's assets or performance. • Drafting an annual report regarding the control activities conducted and an evaluation of the balance sheet, accounts and proposals presented by the directors. • Convening the general assembly in the event that the chairperson of the board does not fulfil their duty to do so. • Monitoring the effectiveness of the risk management system, the internal control system and the internal auditing system, if there is such a system. • Receiving the reports of irregularities submitted by shareholders, collaborators with the company or other parties. • Contracting services from experts that provide support to one or more of their members in the performance of their duties, with the contract and remuneration of these experts reflecting the importance of the commissioned tasks and the company's financial situation. • Complying with the other responsibilities stipulated by the law or the articles of association. <p>In the case of companies issuing securities listed on the regulated market, the <i>conselho fiscal</i> must certify the report of the governance structure and practices, specifying its agreement or disagreement with the annual management report and the year's accounts, as well as including a declaration signed by each of its members.</p>

¹⁶ In some companies, that do not meet the size criteria stipulated by the law, the supervision is conducted by a single supervisor (*fiscal único*).



COUNTRY	ROMANIA
OVERSIGHT BODY	<i>CENZORI</i>
Appointment / Dismissal	Three members and one alternate member, appointed by the general assembly.
Competence and independence requirements	<p>The <i>cenzeni</i> may be shareholders, except the accounting expert, who can be a third party who performs this role professionally on an individual or associated basis.</p> <p>The following individuals cannot form part of the oversight body:</p> <ul style="list-style-type: none"> a) Directors' relatives up to the fourth degree, including spouses. b) People receiving a salary or remuneration for other duties other than those of the censor of their company or other companies which have contractual relations with their company, or which are competitors of their company. c) People who are banned from becoming a member of the board of directors or the supervisory board. d) People who, while exercising the powers conferred by the position, also exercise controlling duties for the tax authority ministry and other public institutions, with the exception of cases established by the law.
Responsibilities	<p>The <i>cenzeni</i> have the following responsibilities:</p> <ul style="list-style-type: none"> • Supervising the management of the company, verifying that the financial statements are prepared legally and in line with the accounts records, ensuring that these accounts records are regularly prepared and that the evaluation of assets is conducted in accordance with the regulations established for the drafting and presentation of financial statements. • Submitting a detailed report to the general assembly, including all of the aforementioned items, as well as any observation that they consider necessary with respect to the financial statements and profit distribution. • Informing the members of the board of directors with respect to irregularities in the administration and cases in which the law or the articles of association have been breached, as well as reporting the most serious cases to the general assembly. • They have the right to demand a monthly report from each of the directors regarding the operations in progress. <p>All shareholders have the right to demand which matters should be "reprimanded", which shall be taken into account when drafting the report for the general assembly.</p>

COUNTRY	VENEZUELA
OVERSIGHT BODY	COMISARIOS
Appointment / Dismissal	One or more <i>comisarios</i> , who may or may not be partners, appointed by the general assembly.
Competence and independence requirements	<p>The Securities Market Act states that all individuals that hold the position of <i>comisario</i> must be professionals or technicians with experience in financial and commercial matters. In addition, the Act states that this position is incompatible with being a member of the board of directors and/or an employee of the company. The position may also not be held by the directors' relatives up to the fourth degree, collateral relatives up to the second degree, or spouse.</p> <p>There is a law governing the professional performance of graduates in administration, which establishes that, in order to hold this position, individuals must be qualified as a public accountant, director or economist.</p>
Responsibilities	<p>The <i>comisarios</i> have an unlimited right to inspect and supervise the company's operations. They can examine the accounts, correspondence and all of the company's documentation in general.</p> <p>In accordance with the provisions established in the Commercial Code, the <i>comisarios</i> perform the following duties:</p> <ul style="list-style-type: none"> • Inspection and supervision of: <ul style="list-style-type: none"> - Administrative management. - Economic and financial operations. - The directors' compliance with the obligations established by law, the constituent deed and the articles of association. • Undertaking the actions with respect to liability for the directors' non-compliance with their responsibilities. • Receiving the complaints of the shareholders with respect to the actions or inactions of the directors that may have negatively affected the company's assets or which they believe should be reprimanded. • Acting as a special body with the power to convene general assemblies. • Reporting duties: <ul style="list-style-type: none"> - Attending general and extraordinary assemblies of shareholders or partners, with the right to speak. - Presenting its annual report to the general assemblies of shareholders or partners. <p>The <i>comisarios</i> submit a report which explains the results of their analysis of the balance sheet and the administration, and includes any observations and proposals that they consider to be appropriate with respect to their approval and any related issues. However, all shareholders have the right to complain to the <i>comisarios</i> about any of the directors' activities that they believe should be reprimanded. The <i>comisarios</i> must mention that they have received such complaints in their report to the general assemblies. In the event that a complaint is made by a number of partners that represent at least ten percent of the share capital, the <i>comisarios</i> must explain the matters reported.</p>



The advantages of these oversight bodies are related to the independence of the board of directors, the compulsory professional competence regulations that enable the effective performance of its duties, the direct communication with the general assembly and its powers to protect minority shareholders. Other benefits of this control mechanism include the access to information for the purposes of fulfilling its supervision responsibilities and the proactive nature of certain investigations.

Some research shows a preference towards these governance and the benefits that they offer companies.

In **Italy**, a study conducted by CNDC¹⁷ shows that the compulsory *collegio sindacale* has significantly reduced the risk of insolvency and has contributed to the qualitative growth of the commercial entities. Although companies can choose between three governance models stipulated by law, the majority of companies prefer the traditional system.

In **Brazil**, a company can choose between having a permanent or temporary *conselho fiscal* created at the request of the minority shareholders that represent 10% of the common shares or 5% of the preference shares. This body's authority terminates at the following annual general assembly, but it may be renewed at the same meeting at the request of the shareholders. A study of the companies listed on the São Paulo Stock Exchange (BM&F Bovespa)¹⁸ highlights that around 40% of companies opt for having a permanent *conselho fiscal*. With respect to the interaction with the audit committee, the Brazilian code states that, while the audit committee is an oversight body with functions delegated by the board of directors, the *conselho fiscal* is a control mechanism with powers assigned directly by the shareholders and, by law, this board is not subordinate to the board of directors. When both bodies are operating, they must coordinate their activities.

Another study¹⁹, based on a database of Portuguese and Brazilian companies, where the Latin governance model is traditionally predominant, concludes that companies with the Latin model generally have a weaker level of management compared to the results of other companies. It also concludes that the transition from the Latin model to another model does not imply a reduction in the levels of discretionary accruals.

¹⁷ CNDC & FONDAZIONE ARISTEIA (2007). "Fallimenti e collegio sindacale: analisi dei tassi di fallimento delle imprese per forma giuridica e per presenza o assenza del collegio sindacale" ("Insolvency and the collegio sindacale – analysis of the rate of legal company insolvency for the presence of absence of the collegio sindacale").

¹⁸ BLACK, Bernard S.; Antonio Gledson De Carvalho; Érica Gorga (2010). "Corporate Governance in Brazil", *Emerging Markets Review*, Vol. 12.

¹⁹ ALVES, Carlos F.; Ernesto Fernando R. Vicente (2012). "Does the Latin Corporate Governance Model perform worse than others in preventing earnings management?", *FEP Working Papers*, n° 447, Oporto.

3.3. REGULATIONS REGARDING BOARD OF DIRECTORS

An effective board of directors is the central pillar of a well-governed company's governance structure. It should be highlighted that the effectiveness of the practices of the board of directors cannot be prescribed by law. However, legal and regulatory requirements can sometimes contribute to a process of reflection or the adoption of good practices.

The board of directors perform a key role in terms of corporate governance and, as such, they are the subject to the Company Law and Corporate Governance Code that apply in each country. However, although there is a common base of regulations, significant differences still remain. Recently, particularly in terms of the development of governance codes, a clear trend towards convergence can be observed, at least in terms of the formal provisions of these codes.

Table 4. Legal requirements with respect to the size and composition of the board of directors

COUNTRY		DIMENSIONS OF THE BOARD	NON-EXECUTIVE AND/OR INDEPENDENT MEMBERS	TERM OF OFFICE
ARGENTINA	Law	At least 1 member (3 members for the companies established in Art. 299 of Law 19550). The articles of association establish the minimum and maximum number, the general assembly determines the exact number.		Maximum of 3 years
	Code		A sufficient number of independent directors (IAGO). At least 20% of the members must be independent with an independent member as the chairperson (CNV)	
BRAZIL	Law	At least 3 members for Level 2 of the BM&F Bovespa (5 members for the New Market segment)		Maximum of 3 years
	Code	5 – 11	It is recommended that the board of directors is made up wholly of external and independent directors, with the majority being independent.	Maximum of 2 years
COLOMBIA	Law	5–10 (listed companies)	25% (listed companies)	
	Code	Odd number	Majority of independent members	
FRANCE	Law	3-18		Directors are elected for a period of six years and can be re-elected, with the exception of the first directors of unlisted companies, who are appointed for 3 years, in line with the articles of association.
	Code		The committees must include non-executive directors. The AFEP/MEDEF Code recommends that they account for half of the members of the board of directors in companies with capital dispersed among many shareholders with no reference shareholders, and at least a third in subsidiary companies. The MiddleNext Code proposes 2 independent directors, 1 when the board of directors has 5 members and a greater number in boards with more members.	Without prejudice to the mandate currently in progress, the term of office established by the articles of association must not exceed 4 years.



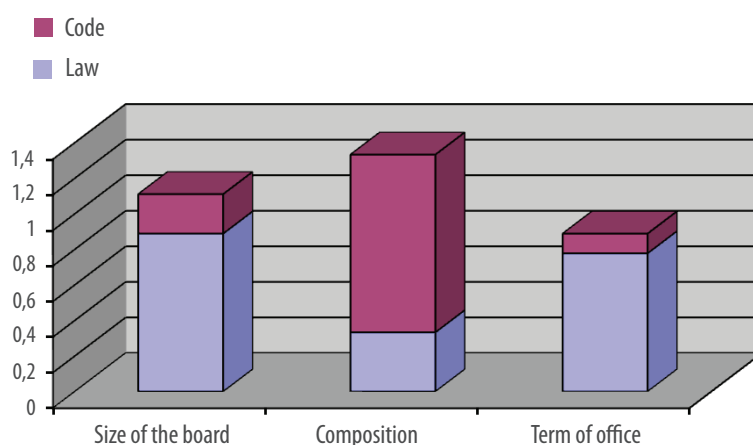
COUNTRY		DIMENSIONS OF THE BOARD	NON-EXECUTIVE AND/OR INDEPENDENT MEMBERS	TERM OF OFFICE
ITALY	Law	In the two-tiered systems, at least 2 members. The articles of association establish the minimum and maximum number, the general assembly determines the exact number.	<i>Traditional system:</i> The board of directors must include at least 1 director appointed from a list proposed by the minority shareholders (Article 147-ter TUIF). If the board of directors has 7 members, at least 1 must be independent (with respect to the company, the majority shareholder and the other directors) and meet the same independence requirements and conditions as the members of the <i>collegio sindacale</i> . <i>Unitary systems:</i> A third of the members. At least 1 director must be appointed from a list proposed by the minority shareholders (Article 147-ter TUIF). These directors must be independent and meet the same requirements as the members of the <i>collegio sindacale</i> . <i>Two-tiered systems:</i> If the board of directors has 5 or more members, at least 1 must be independent and meet the same independence requirements as the members of the <i>collegio sindacale</i> (Article 147 quater, TUIF).	3 years
	Code		A suitable number of non-executive members must be independent	
PORTUGAL	Law			Directors are appointed for a period established in the articles of association, which must not exceed 4 calendar years.
	Code		A suitable number of non-executive directors must meet the legal independence requirements, based on the size and level of share dispersion. They must represent at least 25% of the directors, unless the dimensions of the company warrant a great proportion.	
ROMANIA	Law Code	At least 3 for audited companies.	The law does not stipulate the number of independent members, but this may be established by the general assembly or the constituent deed.	4 years (2 years for the first members)
			At least 50% non-executive At least 25% independent	

COUNTRY		DIMENSIONS OF THE BOARD	NON-EXECUTIVE AND/OR INDEPENDENT MEMBERS	TERM OF OFFICE
SPAIN	Law	At least 3 members. The articles of association establish the exact number. In limited liability companies, there is a maximum of 12.		Established by the articles of association. The same for all members. Maximum of 6 years. Directors can be re-elected.
	Code	5-15	External board members (proprietary and independent) must make up the large majority, with at least a third being independent board members.	
VENEZUELA	Law	In terms of private companies, the Commercial Code does not stipulate a minimum number of directors and it does not require any directors to be independent. It stipulates no independence criteria. The Securities Market Act stipulates that the board of directors of public companies must have at least 5 full directors and their respective alternates.	The Insurance and Reinsurance Companies Act stipulates that insurance and reinsurance companies must have at least 5 members on the board of directors, with at least a third of them being independent directors. The Banking Sector Institutions Act stipulates that the board of directors must have at least 7 directors, without specifying how many must be independent.	
	Code		The corporate governance principles issued by the <i>Superintendencia Nacional de Valores</i> (National Securities Superintendency) establishes that at least a fifth of the members of the board of directors of public companies should be independent directors.	

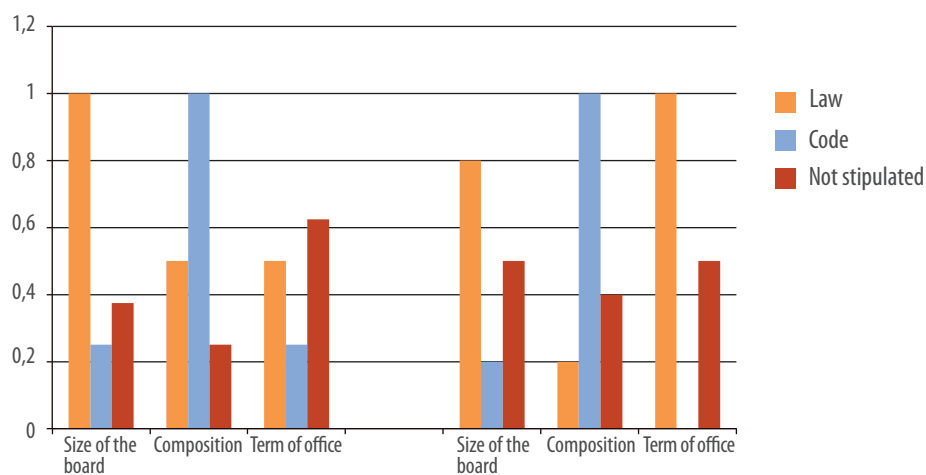


According to the research, the composition of the board (number of independent and non-executive members) is less commonly regulated by the law and more often subject to recommendations in the codes (generally applicable to listed companies through the principle of “comply or explain”).

Requirements with respect to the board



Comparative analysis of the requirements with respect to the board in South America (left) and Europe (right)



Comparative analysis shows a trend in South America towards introducing provisions related to the composition of the board into the law (for listed companies, banks, insurance companies). Meanwhile, in Europe, a trend can be observed towards introducing provisions regarding the term of office. In general, the maximum permitted term of office is longer in Europe.

The members of the board are elected by the general assembly. In **France**, both codes stipulate that the directors of listed companies must also be shareholders. The presence of non-executive members is recommended by the governance codes.

The independence criteria for members of the board of directors are specified in the regulations that apply to listed companies, as well as in the codes. In **Italy**, the same independence criteria required of the members of the *collegio sindacale* apply. In **Europe**, the independence criteria are more standardized due to the implementation of Commission Recommendation 2005/162/EC in the member states of the European Union, which relates to the role of non-executive directors and supervisors, as well as the board committees and supervisory committees, applicable to listed companies²⁰.

The evaluation criteria for assessing independence vary between the jurisdictions analysed in the study. In general, they focus on share ownership (the quantity differs between jurisdictions), the internal and external links to the company, dependent relations with the executive directors, business relations with the company, family relations with the executive directors, and independence from the current or former auditor and the consultancy firms related to the company. Dependence in terms of the structure of the group is also taken into consideration in the independence criteria.

As well as independence, when dealing with the composition of the board of directors, it is worth mentioning the importance that is now placed on aspects related to competence and diversity.

Diversity may encompass a broad range of aspects, such as sex, age and nationality. With respect to gender diversity, the situation in **Europe** is not really satisfactory, with the proportion of women on boards of directors reaching just 12%, according to research into European corporate governance in 2011²¹.

For this reason, France and Italy have introduced minimum requirements. In **France**, the law dated 27th January 2011, related to the balanced representation of women and men on boards of directors and supervisory boards, stipulates the progressive introduction of quotas to increase the number of women in the governing bodies of large companies (six years after the law was passed, the presence of women should reach 40%). In **Italy**, equal access has been regulated with respect to the boards of directors and oversight bodies of listed companies, through Law 120/2011, which establishes a minimum proportion of a third for the less represented gender.

In the legislations in the jurisdictions studied, competence criteria for members of boards of directors are established by the general assembly or the articles of association. In **Italy**, the articles of association may stipulate requirements with respect to honour, professionalism and independence.

The governance codes contain general or specific recommendations regarding the competences required. The most detailed description of these competences is found in the **Argentine** and Brazilian codes. In Argentina, the code issued by IAGO recommends that a member of the board has relevant knowledge and experience in accounting and finance, the particular sector, management, crisis management, leadership and strategy, among others. In **Brazil**, the code recommends that the members of the board have experience in change and crisis management, identifying and controlling risks and staff management, as well as knowledge of finance, accounting, law, the organization's businesses, the national and international market and best practices of corporate governance, and the ability to read and understand management, accounting and financial reports, with an understanding of company legislation and the risk profile of the organization.

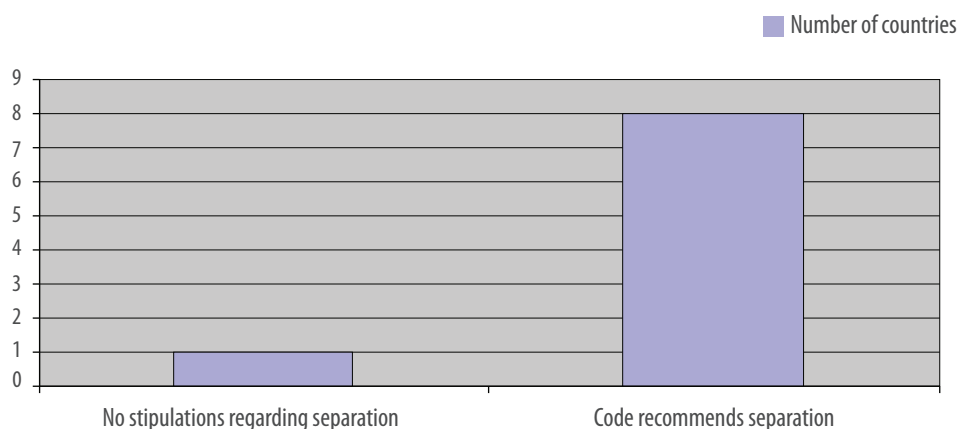
To ensure that the members of the board dedicate enough time to their duties, the legislation in **Colombia**, **France** and **Romania** limit the number of simultaneous mandates of office to five. According to the AFEP/MEDEF code, in France, a director cannot hold more than four board positions in other listed companies outside of the group. Meanwhile, a chief executive officer cannot hold more than two board positions in other listed companies outside of the group. In **Brazil**, the code recommends a maximum of five board positions in the case of external directors and at most two in the case of the chairperson.

²⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:052:0051:0063:ES:PDF>

²¹ HEIDRICK & STRUGGLES (2011). "Challenging board performance: European Corporate Governance Report" 2011.



Separation between the position of the chairperson of the board of directors and the position of the chief executive officer



The separation of the positions of the chairperson and the chief executive officer is generally recommended in the jurisdictions, with the exception of **Argentina**, where no stipulation is made on the matter.

In **Brazil**, the code recommends that the chief executive officer is not a member of the board of directors. In the event that the roles of chairperson of the board of directors and the chief executive officer are performed by the same person, it is recommended that independent directors take responsibility for chairing discussions which involve a conflict between the two roles.

According to the **Código Andino** (Andean Code), the chairperson of the board of directors and, if applicable, the vice-chairperson must be elected from among the external directors. The chairperson of the board of directors must not be the same person as the chief executive officer.

In **France**, the Commercial Code stipulates an additional possibility for companies that have opted for a unitary structure: a traditional board of directors headed by a president-director general (PDG), or a board in which the role of the PDG is divided between a chairperson of the board of directors, who chairs the board, and a chief executive officer, who manages it. In public limited companies with less than 150,000 euros in capital, the duties of the board of directors may be performed by a single person.

In **Italy**, the code stipulates that the board of directors must appoint an independent director as the principal independent director, in the event that the chairperson of the board of directors is the chief executive officer of the company.

3. 4. EVALUATION OF THE MEMBERS OF THE BOARD

The governance codes recommend annual evaluation of the members of the board in **Argentina, Brazil, Romania, Spain** and **Venezuela** (*Código Andino*).

The code in **Brazil** stipulates that the evaluation should be conducted every year, overseen by the chairperson and with the option for the participation of external experts. Instruction 480/2009 of the CVM requires the disclosure of the evaluation mechanisms. According to empirical research conducted by IBGC/Booz& Co²², however, such disclosure is an uncommon practice.

In **Spain**, the code recommends that the entire board is evaluated once a year with respect to the following:

- The quality and efficiency of the operation of the board.
- The performance of the duties of the chairperson and chief executive officer of the company, based on the report drafted by the appointments committee.
- The operation of the board's committees, based on the reports drafted by each of the committees.

In **France**, in the case of companies with securities traded on the regulated market, the AFEP/MEDEF code recommends that the board of directors regularly analyses its organization and operation. First and foremost, it must ensure that the relevant issues are prepared and discussed in an appropriate way, as well as measuring the effective contribution of each director in their respective duties. As well as conducting an annual analysis of their operation, the code also recommends that boards of directors perform a formal evaluation at least once every 3 years, possibly overseen by an independent director with the support of an external consultant, with the shareholders being informed in the annual reports about the performance of the evaluations and possibly any follow-up actions. In addition, the code recommends that the non-executive or salaried directors meet regularly without the presence of the other directors, in order to evaluate the performance of the chairperson, chief executive officer and the managing directors, and to reflect on the future of these directors.

In **Italy**, the oversight body (*collegio sindacale* and supervisory board) has general powers for constant and continuous evaluation and supervision.

In **Portugal**, in the annual management report, the board of directors must report on the self-evaluation of its performance and the governance system adopted, outlining the measures taken or planned, with proposals for improving the company's governance system.

In **Romania**, according to the code of the Bucharest Stock Market, the board must regularly evaluate its own size, structure and performance, as well as that of its committees, and the cooperation with the executive directors under the coordination of the chairperson.

²² IBGC/Booz& Co (2009). "Panorama da Governança Corporativa no Brasil" ("Overview of Corporate Governance in Brazil").



3.5. REMUNERATION OF THE MEMBERS OF THE BOARD

Transparency in terms of remuneration has been adopted for listed companies in all of the jurisdictions studied. The codes often include recommendations regarding remuneration policy and the compensation of members of the board.

In **Argentina**, the law establishes the following limits: the maximum amount of payment for all reasons that can be received by members of the board of directors and the supervisory board, if applicable, including salaries and other remunerations for the performance of permanent technical and administrative duties cannot exceed 25% of profits.

In **France**, as a general rule, directors receive a fixed annual sum known as the *jetons de présence* or fees for attendance, the amount of which is set by the general assembly. The board of directors freely sets the part corresponding to each director, underpinned by a principle of equality. The fees for attendance should not be confused with the payments made to each director for particular activities: employment contract of the salaried directors, remuneration of the chairperson, chief executive officer and delegated general directors, and extraordinary remunerations for missions or particular mandates. The AFEP/MEDEF code recommends that, in the case of companies that trade their shares on the regulated market, the board of directors distributes the fees for attendance taking into account the diligence of the directors and the time they dedicate to their duties. The remuneration may be fixed or variable (based on turnover or profit), or a blend of the two. The governance codes recommend that measures are taken to establish the remuneration of the executive directors. The remuneration of the chairpeople must be set by the board of directors, based on the proposal of the remunerations committee, in accordance with the following principle: balanced, clear, consistent and moderate remuneration taking all of the elements into account (fixed, variable, stock options free shares, fees for attendance, retirement conditions and individual benefits). They add that the remuneration of the chairperson must take into consideration the market, the work that they have performed, the results obtained, the responsibility assumed and the particular missions conducted.

In **Spain**, the code recommends that, in particular, external board members should be excluded from any remuneration systems that incorporate variable remuneration that is conditional of the evolution of profits or any other financial management indicators (for instance, operating results or EBITDA) or the list price of a share at a particular time. The same code recommends that the remuneration of the external board members is the amount required to compensate the commitment, qualification and responsibility that the position entails, but not as high as to compromise their independence.

In **Romania**, the code recommends a remunerations policy aligned to the companies' strategic and long-term interests.

3.6. BOARD ADVISORY COMMITTEES

The legislation and governance codes establish the option for the board of directors to set up specialized committees.

Table 5. Legal requirements of the board committees and commissions

COUNTRY	ADVISORY COMMITTEES	COMPULSORY/ VOLUNTARY	NUMBER OF MEMBERS	INDEPENDENT AND/OR NON-EXECUTIVE MEMBERS	PROFESSIONAL QUALIFICATION REQUIREMENTS
ARGENTINA	<i>Comité de auditoría</i> (audit committee)	Compulsory for companies that publicly trade their shares regulated by the <i>Comisión Nacional de Valores</i> , organizations regulated by the Central Bank of the Argentine Republic or by the <i>Superintendencia de Seguros de la Nación</i> . Voluntary in other cases. In the case of companies regulated by the CNV, small and medium public limited companies are exempt from the requirement to constitute an audit committee	At least 3	Appointed by the board of directors. Majority constituted by independent directors (IAGO). Majority constituted by independent directors by independent directors and chaired by an independent member (CNV). Independent majority (Law 26.831/2012).	Each member must accredit sufficient suitability and experience in issues of accounting and auditing, finance and risk management (IAGO). Skill-acquirement programmes with respect to international accounting regulations, auditing and internal control, and specific regulations regarding capital markets (CNV).
	<i>Comité de remuneraciones</i> (IAGO, CNV) (remuneration committee)	Voluntary	At least 3 (IAGO) 3 members of the administrative body (CNV)	Majority constituted by independent directors (IAGO). Independent majority, chaired by an independent member of the administrative body (CNV).	Each member must accredit sufficient suitability and experience in human resources, remuneration policies and risk management (IAGO). Sufficient suitability and experience in human resources policies (CNV).
	<i>Comité de nominaciones y gobierno corporativo</i> (IAGO) (appointments and corporate governance committee)	Voluntary	At least 3	Majority constituted by independent directors.	Each member must accredit sufficient suitability and experience in terms of the various aspects of corporate governance and accredited experience in company leadership.
	<i>Comité de nombramientos</i> (CNV) (appointments committee)	Voluntary	At least 3 members of the administrative body.	Independent majority, chaired by an independent member of the board of directors.	Members that accredit sufficient suitability and experience in human capital policies.



COUNTRY	ADVISORY COMMITTEES	COMPULSORY/ VOLUNTARY	NUMBER OF MEMBERS	INDEPENDENT AND/OR NON-EXECUTIVE MEMBERS	PROFESSIONAL QUALIFICATION REQUIREMENTS
	<i>Comité de gestión de riesgos</i> (CNV) (risk management committee)	Voluntary. If it does not exist, its functions are performed by the audit committee.			
	<i>Comité de finanzas</i> (IAGO) (financial affairs committee)	Voluntary	At least 3	Majority constituted by independent directors	Each member must accredit sufficient suitability and experience in terms of the various aspects of management and financial control of a company.
BRAZIL	<i>Comitê de auditoria</i> (audit committee)	Compulsory for organizations regulated by the central bank or the national securities commission. Voluntary in other cases.	At least 3	As far as possible, exclusively independent and non-executive members of the board. Preferably formed exclusively by directors. If this is not possible, companies should try to ensure that there is a majority of directors who are coordinated by one director, who should be independent if possible.	All of the knowledge related to the matter in question. At least one member must have proven experience in the field of accounting or auditing.
	<i>Comitê de recursos humanos / remuneração</i> (human resources/ remuneration committee)	Voluntary		Exclusively independent members of the board of directors. Without the presence of executive directors.	Members must have specific knowledge related to human resources/ remuneration
	<i>Governança, finanças, sustentabilidade</i> (governance, financial affairs, sustainability)	Voluntary		Preferably should be formed exclusively by directors. If this is not possible, companies should try to form them in such a way that they are coordinated by one director, who should be independent if possible, and include a majority of directors.	Members must be specialists in the topic.
	<i>Conselho consultivo</i> (advisory board)	Voluntary. Considered good practice, particularly for organizations in the early stages of adopting the code.		Preferably independent.	

COUNTRY	ADVISORY COMMITTEES	COMPULSORY/ VOLUNTARY	NUMBER OF MEMBERS	INDEPENDENT AND/OR NON-EXECUTIVE MEMBERS	PROFESSIONAL QUALIFICATION REQUIREMENTS
COLOMBIA	<i>Comité de auditoría</i> (audit committee)	Compulsory for organizations subject to inspection and supervision by the <i>Superintendencia Financiera de Colombia</i> and stock-issuing companies subject to this institution's control.	3 members of the board of directors.	An independent majority, if the articles of association state that there are independent members on the board of directors. The chairperson must be independent	Members must have experience and knowledge related to the issues related to the function assigned to the body.
	<i>Comité de nombramientos y retribuciones</i> (appointments and remunerations committee)	Voluntary		At least 1 member of the board of directors	
	<i>Comité de gobierno corporativo</i> (corporate governance committee)	Voluntary		At least 1 member of the board of directors	
FRANCE	<i>Comité d'audit</i> (audit committee)	Compulsory in companies with securities traded on an organized market, banks and insurance providers.	At least 3 recommended	At least 3 recommended, of which at least 1 must have specific competences in the financial or accounting field and be independent. The governance codes go further by recommending that independent directors represent 2/3 of the committee members. They must not include any company executive director. With respect to the audit committee, company A should avoid appointing directors from another company that has a director from company A as a member of a comparable committee.	At least 1 member must have specific competences in financial and accounting matters and be independent. From the time of their appointment, the members with financial and accounting competences must report on the accounting, financial and operative features of the company.



COUNTRY	ADVISORY COMMITTEES	COMPULSORY/ VOLUNTARY	NUMBER OF MEMBERS	INDEPENDENT AND/OR NON-EXECUTIVE MEMBERS	PROFESSIONAL QUALIFICATION REQUIREMENTS
	<i>Comité de sélection ou des nominations</i> (appointments committee)	Voluntary		It does must not include any executive director and must have a majority of independent directors.	In principle, committee members are elected based on their competences.
	<i>Comité des rémunérations</i> (remunerations committee)	Voluntary		It does must not include any executive director and must have a majority of independent directors.	In principle, committee members are elected based on their competences.
ITALY	<i>Comitato per le nomine</i> (appointments committee)	Voluntary	At least 3. However, in the case of stock-issuers with a board of directors composed of no more than 8 members, the committees may have only 2, who must be independent.	Majority of independent directors.	
	<i>Comitato per la remunerazione</i> (remunerations committee)	Voluntary	At least 3. Only 2 independent members in stock-issuers with a board of directors composed of no more than 8 members.	Majority of independent directors.	At least 1 member must have knowledge and experience of finance and remuneration policies.
	<i>Comitato controllo e rischi</i> (controlling and risk committee)	Voluntary	At least 3. Only 2 independent members in stock-issuers with a board of directors composed of no more than 8 members.	Independent directors. Alternatively they can be formed by non-executive directors, with a majority of independent members. In this case, the chairperson is elected from among the independent directors. If the stock-issuing company is controlled by another listed company or under the management or coordination of another company, it must be formed exclusively by independent directors.	At least 1 member must have knowledge and experience of accounting, finance or risk management.

COUNTRY	ADVISORY COMMITTEES	COMPULSORY/ VOLUNTARY	NUMBER OF MEMBERS	INDEPENDENT AND/OR NON-EXECUTIVE MEMBERS	PROFESSIONAL QUALIFICATION REQUIREMENTS
PORTUGAL	<i>Comissão de auditoria</i> (audit committee)	Compulsory in the case of companies with unitary systems.	At least 3	Non-executive members. In companies issuing securities traded on the regulated market, there must be a majority of independent members.	At least 1 member who is independent and has higher education qualifications related to the performance of their duties, knowledge of auditing or accounting.
	<i>Comissão de remunerações</i> (IPCG, CNVM) (remunerations committee)	Voluntary		Members, with a majority of independent members of the board of directors (CNVM).	At least 1 member must have knowledge and experience of remuneration policies (CNVM).
	<i>Comissão de Nomeações</i> (IPCG) (appointments committee)	Unless the size of the company warrants it, it shall be attributed to a committee.		At least 1 independent member.	
	<i>Comissão para as matérias financeiras</i> (Law) (financial affairs committee)	Compulsory in the case of companies issuing securities traded on a regulated market and companies that exceed certain size criteria.		At least 1 member who is independent and has higher education qualifications related to the performance of their duties, as well as knowledge of auditing or accounting. In companies issuing securities traded on a regulated market, there must be a majority of independent members.	At least 1 member with relevant higher education qualification and knowledge of auditing or accounting.
ROMANIA	<i>Comitet de audit</i> (audit committee)	Compulsory for companies in the public interest	At least 2	Non-executive directors. At least 1 independent member (Government Ordinance 90/2008). According to the code, there must be a sufficient number of independent directors. The chairperson of the board cannot chair the audit committee. The committee must be chaired by an independent director.	At least 1 independent member who has competences in terms of accounting and/or auditing (Government Ordinance 90/2008). The code recommends training programmes for the committee members



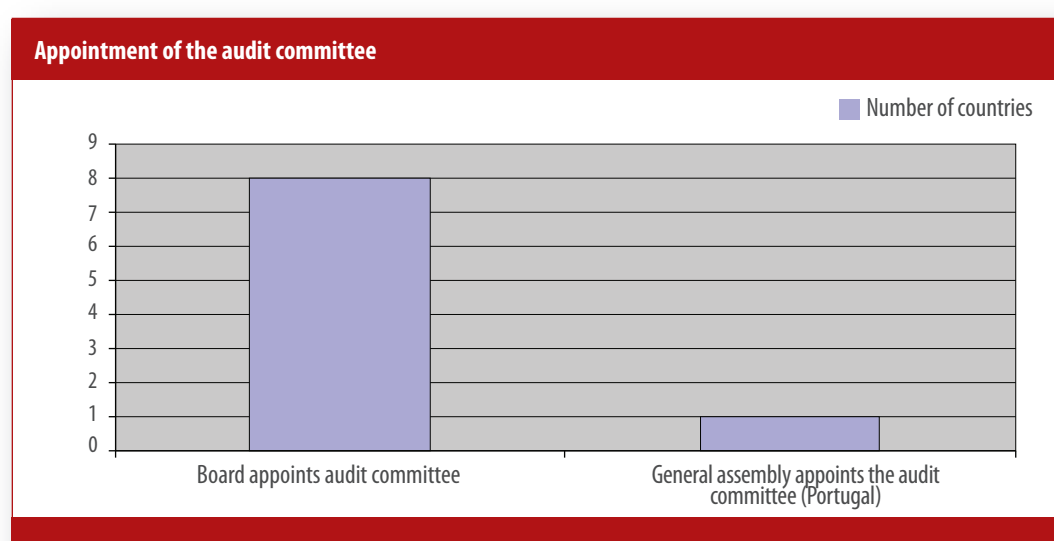
COUNTRY	ADVISORY COMMITTEES	COMPULSORY/ VOLUNTARY	NUMBER OF MEMBERS	INDEPENDENT AND/OR NON-EXECUTIVE MEMBERS	PROFESSIONAL QUALIFICATION REQUIREMENTS
	<i>Comitet de remunerare</i> (remunerations committee)	Voluntary	At least 2	Non-executive directors. Sufficient number of independent directors.	The code recommends training programmes for the committee members.
	<i>Comitet de nominalizare</i> (appointments committee)	Voluntary	At least 2	Mainly independent directors.	The code recommends training programmes for the committee members.
SPAIN	Comité de auditoría (audit committee)	Compulsory for listed companies	At least 3	At least a majority of non-executive members of the board of directors. At least 1 independent member, appointed based on their knowledge and experience in the field of accounting, auditing or both.	Knowledge of accounting, finance and management. In particular, the chairperson must have knowledge and experience of accounting, auditing and risk management. At least 1 independent member, appointed based on their knowledge and experience in the field of accounting, auditing or both.
	<i>Comité de nombramientos y retribuciones</i> (appointments and remunerations committee)	Voluntary	At least 3	External directors with an independent chairperson. The majority must be independent.	Knowledge, aptitudes and experience
	<i>Comisión de cumplimiento o de gobierno corporativo</i> (corporate governance committee)	Voluntary	At least 3	Majority of non-executive members of the board of directors, with an independent chairperson.	

COUNTRY	ADVISORY COMMITTEES	COMPULSORY/ VOLUNTARY	NUMBER OF MEMBERS	INDEPENDENT AND/OR NON-EXECUTIVE MEMBERS	PROFESSIONAL QUALIFICATION REQUIREMENTS
VENEZUELA	There are no compulsory regulations regarding the creation of these committees. In practice, they vary depending on the nature of the company. There may be committees for purchasing, corporate controlling, environmental issues, financial investments, internal and/or financial auditing among others.				They must be people with a proven professional reputation, with strengths in terms of the duties to be performed, independence from the other organizational units.
	<i>Comité de auditoría</i> (audit committee)	Voluntary			People with proven professional experience in the field of auditing The board of directors evaluates these competences.

The denomination of these committees is not standardized. The audit committee is compulsory for listed companies in all of the jurisdictions in Europe (by virtue of Directive 2006/43/EC²³) and all of the jurisdictions in South America except **Venezuela**.

In Italy, the corporate governance code (*codice di autodisciplina*) recommends an oversight and risk committee (*comitato controllo e rischi*).

In all of the countries except **Portugal**, the members of the audit committee are appointed by the board.



²³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:157:0087:0107:ES:PDF>



In order to determine the level of convergence between the legislations in terms of the responsibilities of the audit committee, we have identified all of the sample jurisdictions in which a responsibility is explicitly stipulated by law (a degree of convergence of 100% means that a provision is specifically mentioned in all of the jurisdictions).

RESPONSIBILITIES OF THE AUDIT COMMITTEE	DEGREE OF CONVERGENCE
Supervising the financial reporting presentation process.	100.00%
Supervising the effectiveness of the company's internal control, the internal auditing, when applicable, and the risk management systems.	100.00%
Supervising the external audit of accounts	88.89%
Reporting comprehensive information to the market with respect to the operations in which conflicts of interest exist with members of the company's administrative bodies or the majority shareholders.	11.11%
Proposing the appointment of the auditor to the general assembly.	11.11%
Expressing an opinion on the rationality of the proposed remuneration and share option plans of the company's directors and directors who make up the administrative body.	11.11%
Expressing an opinion on compliance with the legal requirements and the rationality of the conditions for issuing shares or securities that can be converted into shares, in the event of capital increase with the exclusion or limitation of preferential rights.	11.11%
Verifying compliance with the applicable rules of conduct.	22.22%
Issuing a sound opinion with respect to operations with related parties in the cases established by law.	11.11%
Issuing a sound opinion and reporting it to the markets in accordance to the provisions set by the national securities commission every time that there is or may be a potential conflict of interest within the company.	11.11%
Supervising the management of the company.	11.11%
Verifying the cash and stocks of any type of company goods or assets.	11.11%
Supervising compliance with the law and the company's articles of association.	11.11%
Receiving reports of irregularities.	11.11%

In **Italy**, the legislation stipulates more specific responsibilities regarding the supervision of internal control and risk management. In **Portugal**, the audit committee also has specific responsibilities as a supervisory body. In **Argentina** and **Brazil**, the audit committee verifies compliance with the rules of conduct. In addition, in Argentina, it also has specific powers in relation to conflicts of interest.

Empirical research shows that, even in the case of listed companies, the recommendation of having a committee is not implemented by all companies. Even the audit committee, which is compulsory, does not exist in all of the listed companies. Although the board of directors performs the duties of the audit committee in some organizations, with a few exceptions, neither the legislation nor even the code stipulate qualification requirements comparable to the requirements of the audit committee.

3.7. EMPLOYEE PARTICIPATION MECHANISMS WITH RESPECT TO CORPORATE GOVERNANCE

In terms of the employee participation mechanisms with respect to governance, various situations exist in the jurisdictions analysed, as summarized below:

- Involvement of the employees in the structure of the different committees (Brazil)
- Whistleblowing mechanism, by which the companies have procedures which enable employees to report such issues (Spain)
- Worker Committees (Portugal, stipulated in the Employment Code - Law 7/2009, Art. 426-428)
- Inclusion of employees who own over 3% of the capital on the board of directors of listed companies (France)
- Trade union participation (Venezuela)

3.8. MECHANISMS FOR PROTECTING MINORITY SHAREHOLDERS

There are many ways in which majority shareholders and/or the boards of directors can benefit from a company to the cost of minority shareholders.

In view of the high degree of concentration in terms of company ownership in the jurisdictions analysed. The protection of minority shareholders is a significant concern. There are legal regulations regarding the protection of minority shareholders in all of the jurisdictions analysed.

For instance, in **Argentina**, the articles of association can stipulate the appointment of one or more directors or *síndicos* (administrators) by the majority. In **Brazil**, the law stipulates that the owners of 5% or more of the common shares or owners of preference shares without the right to vote that represent at least 10% of the company's share capital have the right to elect a member of the board of directors.

In **Spain**, the law considers any clause of the articles of association null and void if, directly or indirectly, it sets the maximum number of votes that can be cast by a single shareholder or companies belonging to the same group.

In **Portugal**, shareholders can request access to the information that they consider necessary, using the services of an auditor. The law stipulates the right of minority shareholders to call a general assembly and add points to the agenda. For a number of directors that represent at least a third of the board, the articles of association can stipulate the separate election of people proposed by groups of shareholders, on the condition that none of them own shares that represent more than 20% or less than 10% of the capital.

In **Romania**, the approval of the general assembly is required in the case of significant transactions involving the company's assets. Shareholders that represent at least 10% of the capital can request the services of one or more experts to analyse the management of the company.

In **Venezuela**, there is a *comisario* (statutory auditors board) for companies with shareholders or participation shares, whose role is to receive complaints from minority shareholders and act in their defence.

There are disclosure requirements with respect to transactions with related parties in all of the jurisdictions.

In **Argentina**, the Capital Markets Act establishes the procedure that applies in the case of contracts between related parties. The board of directors or any of its members may request that the audit committee issues a statement regarding whether the conditions of the transaction may reasonably be considered to be in alignment with the normal and standard conditions of the market. The company may request a report by two firms of independent assessors. After having approved such contracts, the board of directors must make the reports of the audit committee and the firms of independent assessors available to the shareholders.



In **Colombia**, reviewing transactions between related parties is the responsibility of the board of directors. However, it is the general assembly that approves this type of transaction. The code recommends that the transactions are reviewed by the audit committee.

In **Italy**, the code recommends that the board of directors establishes procedures for the approval and execution of transactions conducted between the company or its subsidiaries with related parties. There is a definition of the specific transactions (criteria for identifying the transactions) that must be approved with the consultation of the internal control committee and/or the support of independent experts. The regulations issued by the company that supervises the Italian stock market (CONSOB) in 2010 stipulate the procedure that applies to transactions with related parties. The election procedure for the members of the board of directors by lists of candidates (*voto di lista*) has been compulsory for listed companies since 2007, with the aim of ensuring the representation of minority shareholders.

The most commonly used management mechanisms for conflicts of interest are disclosure and abstention from voting.

In **France**, the law stipulates the list of prohibited agreements (taking out a loan in the name of the company, authorizing an overdraft for oneself, using the company as a guarantee or collateral for a commitment with third parties). In a similar way, in **Romania** and **Portugal**, the law establishes restrictions on transactions between the company and members of the board.

In the legislation that regulates operations involving squeeze-out rights or sell-out rights, the intervention of an independent expert is required to establish the settlement for the minority shareholders.

4. LEGAL REQUIREMENTS REGARDING CAPITAL MAINTENANCE

The regulations regarding capital maintenance aim to protect different interests. As structures, public limited companies are separate from their shareholders and, as such, they have to be responsible with respect to their obligations. This responsibility is extremely significant and requires regulation to limit the possibility of the company becoming increasingly incapable of paying its debts. One important aspect of the legislation is creditor protection, using regulations that prevent money being taken out of a company if it goes against the company's interests. Other minimum requirements can be stipulated regarding equity. A certain level of protection of creditors' interests is essential for maintaining their interest in the sustainability of the company. Legal systems regarding capital maintenance contain provisions with respect to minimum capital, distributions to the shareholders, and capital increase and decreases.

Based on an analysis of the provisions regarding capital maintenance in the sample countries, it can be observed that the minimum requirements with respect to capital are more commonly found in the European jurisdictions (although these are reduced in the case of limited liability companies). In general, the share capital required under the European legislations studied is higher than the minimum of 25,000 euros that is stipulated in the European Union regulations (Directive 77/91/EEC).

Contributions in kind are authorized in all of the jurisdictions. For the purposes of evaluating the contribution, some of the legislations studied require the presence of an expert (**Argentina**), a valuation assessor (Venezuela), an independent auditor (**Portugal**), three assessors (**Brazil**), and one or several experts (**Romania**). In **France**, subscribers can request the appointment of an expert to analyse the contributions (known as the *commissaire aux apports*).

The allocation of interim dividends is permitted in **Brazil** and **Portugal**. In **Argentina**, this is only possible in the case of the companies stipulated in Article 299 of Law 19550/1972. In **France** and **Italy**, the law allows advance payment of dividends. In **France**, advance payments may only be made if the company has made profits equal or higher than to the advance payment in question since the start of the financial year. In Italy, advance payments may only be granted in the case of companies that have been audited in accordance with the stipulations of its articles of association. The allocation of advance payments of dividends is not permitted in the event that, since the last approved balance sheet, losses have been recorded in last or previous financial years. In general, capital modifications and distributions are subject to the approval of the general assembly.

The following table gives an overview of the requirements regarding and reserves stipulated by law before distribution can be made in the jurisdictions studied:

COUNTRY	MINIMUM SHARE CAPITAL	RESERVES REQUIRED BEFORE DISTRIBUTION
ARGENTINA	SA \$12,000 SRL No	Distributions for net profits corresponding to a balance sheet for the financial year that is regularly drafted and approved. Profits cannot be distributed until they cover losses recorded in previous financial years. The following reserve requirements are stipulated: <ul style="list-style-type: none"> • Statutory reserve: 5% of the net profits up to a level equivalent to 20% of the capital • Other reserves: must be reasonable and in line with prudent administration
BRAZIL	No	The following reserve requirements are stipulated: <ul style="list-style-type: none"> • Statutory reserve : 5% of the net profits up to a level equivalent to 20% of the capital • Reserves determined by the articles of association • Reserves for contingencies (a part of the net profit to compensate for a reduction in future profits due to potential losses) • Retention of profits determined by the investment budget presented by the administration bodies to the general assembly The law stipulates a compulsory dividend. A reserve for realizable profits may be constituted when the amount of the compulsory dividends exceeds the amount net profit.



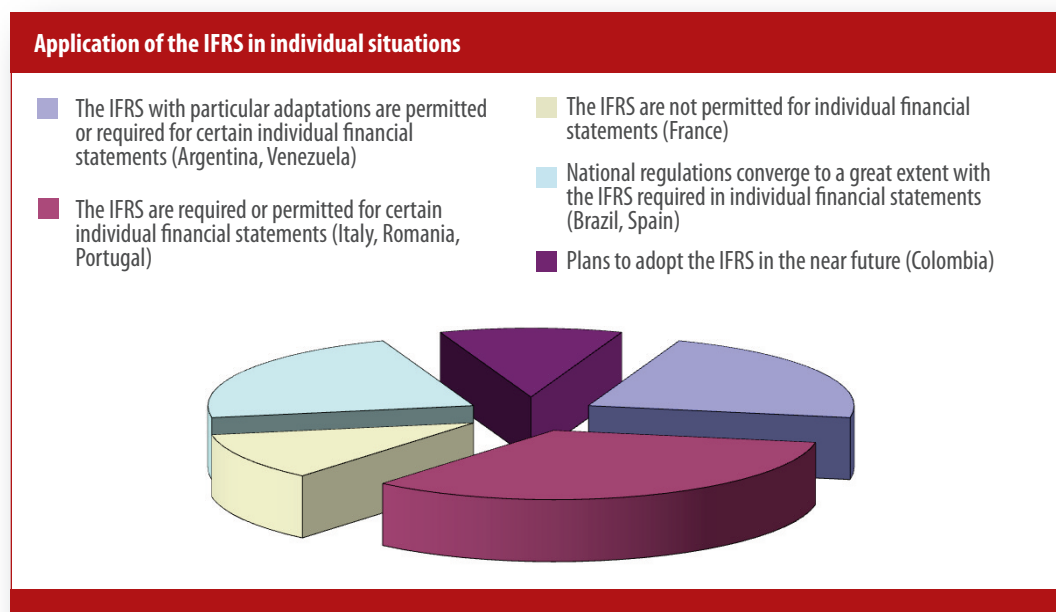
COUNTRY	MINIMUM SHARE CAPITAL	RESERVES REQUIRED BEFORE DISTRIBUTION
COLOMBIA	No	<p>The following reserve requirements are stipulated:</p> <ul style="list-style-type: none"> • Statutory reserve: 10% of the net profit for each financial year up to a level of at least 50% of the subscribed capital • Other statutory reserves • Extraordinary reserves stipulated by the general assembly <p>If the sum total of the statutory reserve, other statutory reserves and extraordinary reserves exceeds 100% of the subscribed capital, the compulsory percentage of net profit that must be distributed rises to 70%.</p>
FRANCE	SA 37. 000 € SRL 1 €	<p>The following reserve requirements are regulated by law:</p> <ul style="list-style-type: none"> • Statutory reserve: 5% of the net profit up to 10% del capital. • Reserve determined by the articles of association.
ITALY	SA 120. 000 € SRL 10. 000 €	<p>The following reserve requirements are constituted:</p> <ul style="list-style-type: none"> • Statutory reserve: no less than a twentieth of the annual net profits up to a level equivalent to a fifth of the share capital. • Reserve for treasury shares. • Reserves determined by the articles of association.
PORTUGAL	SA 50 000 € SRL 1 €	<p>The following reserve requirements are stipulated:</p> <ul style="list-style-type: none"> • Statutory reserve: a proportion of at least a twentieth of the company's profits up to a level equivalent to a fifth of the share capital. • Reserve for treasury shares.
ROMANIA	SA 90. 000 Lei (25. 000 €) SRL 200 Lei	<p>The following reserve requirements are constituted:</p> <ul style="list-style-type: none"> • Statutory reserve: 5% of net profit up to 20% of the capital. • Reserves determined by the articles of association. <p>Restrictions apply to the distribution in the event that the costs of constitution and distribution have not been amortized, and if the losses caused by the correction of errors have not been covered.</p>
SPAIN	SA 60. 000 € SRL 3. 000 €	<p>The following reserve requirements are stipulated:</p> <ul style="list-style-type: none"> • Statutory reserve: 10% of the profit of the financial year until it reaches a level of at least 20% of the capital, to be used for compensation for losses. For the company to be able to distribute dividends once the capital has been reduced, the statutory reserve must reach 10% of the new capital. • Reserve for treasury shares (for the cost of treasury shares, this must be maintained even if the shares are not sold) • Reserve determined by the articles of association.
VENEZUELA	Only for SRL 2000 Bolívares	<p>The following reserve requirements are stipulated:</p> <ul style="list-style-type: none"> • Statutory reserve: Annually, at least 5% of the net profits must be set aside to create a reserve fund, up to the level stipulated by the articles of association, which must not exceed 10% of the share capital. • Statutory reserve stipulated for specific purposes.

One challenge for the current capital maintenance system is the conflict of interests between creditors and shareholders. It is in the creditors' interest for the company to accumulate the maximum levels of reserves, while, in contrast, shareholders want to maximize the return on the capital.

The application of the IFRS to individual financial statements complicates the situation even further. These capital maintenance systems are based on the quality of the accounting result. The IFRS are designed with

the investor in mind, while capital maintenance requirements tend to favour creditor protection in most of the jurisdictions. The use of the IFRS enables a more widespread use of fair value and has greater impact on the benefits available in terms of the distribution of dividends. This raises some doubts with respect to the suitability of the current capital maintenance system, in which the amount distributed is determined based on the IFRS financial statements. Certain adaptations are required by law in **Italy**.

The IFRS or the IFRS convergent standards broadly affect or will affect the jurisdictions studied.



Alternative systems have been proposed with additional controls with respect to liquidity and future cash flows (known as the solvency test). These systems propose a redefinition of "profit distribution" and an approach focusing on the solvency of the company (defined as the capacity to pay its debts within the normal course of business on maturity of the term) and excessive indebtedness.

Further analysis is required to ascertain whether the current system must be revised.



5. REQUIREMENTS REGARDING INFORMATION SYSTEM GOVERNANCE

The adoption of good practices with respect to information system governance must be a priority for innovative companies capable of responding to new demands and capitalizing of new opportunities. A study conducted by the MIT Center for Information Systems Research revealed that the profits of companies that implement good IT governance practices were 20% higher than those of their competitors²⁴.

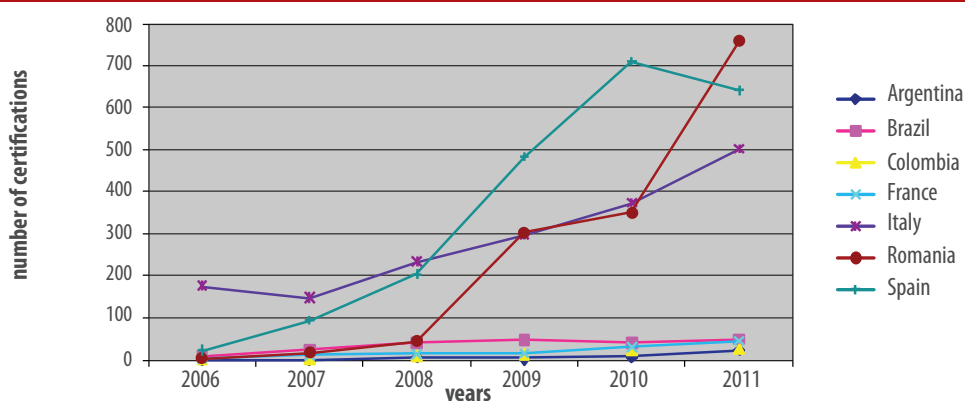
IT governance refers to the system used to manage and control the current and future use of IT (ISO 38500). It covers the evaluation and management of the use of IT to support the organization, and monitor its use in the execution of plans. It includes the strategy and policies for using IT within the organization and forms part of the corporate governance strategy.

In the jurisdictions studied, the aspects related to information technology governance are particularly found in multinationals, listed companies and financial institutions. The standards that are most commonly applied in IT management in the sample jurisdictions are the following:

- Standard ISO/IEC 38500:2008 Corporate governance of information technology, which establishes an operational framework for IT governance and enables support to be provided to senior management with respect to legal, ethical and regulatory aspects related to the use of IT within the organization.
- Reference model Control Objectives for Information and related Technology, which sets out 34 processes related to IT that are common to all organizations. Each process is described in detail, including inputs and outputs, key activities, objectives, performance indicators and a basic maturity model.
- Standard ISO/IEC 27001 Information technology - Security techniques - Information security management systems – Requirements, which specifies the requirements needed to establish, implement and improve Information Security Management Systems (ISMS). It is based on the best practices indicated in ISO/IEC 27002, formerly known as ISO/IEC 17799.

In the same way as its predecessor BS 7799-2, Standard ISO 27001 is certifiable. The number of certifications has increased significantly in recent years, highlighting the importance of the protection of information for the performance of organizations' activities.

Evolution of the number of ISO 27001 certifications in the sample countries



Data developed for this study based on the results of the ISO survey 2011

In the countries in the sample, the greatest increase has been recorded in **Romania, Spain** and **Italy**. In the case of Spain, this evolution has been enhanced by the data protection legislation. In Romania, Instruction 2/2011 of the CNVM, regarding information system auditing by authorized bodies that are regulated and supervised by the national securities commission, stipulates minimum certification requirements for monitoring the information systems used by the entities authorized, regulated and supervised by the national securities commission.

²⁴ <http://cisr.mit.edu/research/research-overview/classic-topics/it-governance/>

6. CONCLUSIONS

In all of the countries in the sample studied, there are codes of good corporate governance practices that are applied in accordance with the principle of “comply or explain”. These codes are primarily aimed at listed companies. However, their application is recommended for other companies, with the recommendations being adapted to their specific characteristics.

Some of the studies conducted in the sample countries highlight certain difficulties with regard to the application of this principle, related to formal compliance with the code and the quality of the explanations. However, research also shows an improvement in terms of the implementation of the best practices of corporate governance.

Reinforcing the compliance mechanism may offer a solution with respect to improving the quality and reliability of the declarations.

The legislations and codes analysed also provide potential solutions, such as the following:

- Increasing the responsibility of the corporate bodies with regard to governance practices (the legislation in **Italy** is one example in this respect)
- Certification of the governance reports (already stipulated under the legislation in **Portugal**)
- The existence of an external body that monitors compliance with the code (and proposed by **France’s** AFEP/MEDEF code)
- Greater quality requirements with respect to the explanations (proposed in the aforementioned code in **France**)

In view of the fact that the companies subject to these codes have different characteristics in terms of size and ownership concentration, certain initiatives have been developed to adapt the governance codes to small and medium enterprises.

Some of the research shows that the different features of these organizations (mainly related to the nature of the company and the ownership concentration) give rise to concerns and different options in terms of corporate governance.

Governance codes are useful tools for the promotion of good governance practices, but the preference towards compulsory stipulations demonstrated by the companies in the jurisdictions analysed highlights the need for imperative provisions in terms of the minimum standards of governance.

The financial crisis has brought about changes in the regulations related to corporate governance in the countries studied. However, not all changes have necessarily been caused by the crisis in all cases.

Among others, the following changes can be observed:

- Growing requirements in terms of governance and transparency for listed companies
- Greater control of the executive functions, supervision increasingly entrusted to non-accounting specialists.
- Increase in shareholders’ rights in listed companies, new regulations regarding Statutory audit
- Reporting requirements with respect to the remuneration of companies’ administrative and supervisory bodies
- Simplification of the legal framework in order to reduce administrative costs
- Greater control by the state

The analysis of the governance systems has shown that the main governance models applied are the unitary model, the vertical two-tiered model (with supervisory board and board of directors) and a specific horizontal



two-tiered system, known as the traditional or Latin model in some countries (with an oversight body appointed by the general assembly). Most of the legislations enable companies to choose between the different governance systems. The most commonly used systems are the unitary model and the Latin model.

The existence of specific oversight bodies has been identified in **Argentina, Brazil, Italy, Portugal, Romania** and **Venezuela**. Requirements related to the appointment of members, competence and independence criteria, access to information and the responsibilities of the oversight body are stipulated in the legislation. Although there are certain difference between the regulations in the various legislations with respect to the characteristics of these bodies, a range of benefits of having such bodies can be put forward: independence of the board of directors, compulsory professional competence regulations that ensure the effective performance of their duties, direct communication with the general assembly and the body's powers to protect minority shareholders. Other advantages of this control mechanism include access to information for the purposes of fulfilling their supervision responsibilities and the proactive nature of certain investigations. Some of these benefits have been confirmed by empirical research conducted in Italy, Brazil and Portugal.

With respect to regulations related to the board of directors, the research shows that its composition (proportion of independent and non-executive members) is not primarily regulated by law, but rather it is more generally subject to the recommendations of the codes (generally applicable to listed companies with the "comply or explain" mechanism). Comparative analysis highlights a trend towards introducing provisions in the laws in relation to the composition of the board of directors in **South America** (for listed companies, banks and insurance firms). Meanwhile, aspects regarding directors' terms of office have been more widely introduced in **European** laws. The maximum term of office is generally longer in Europe. Greater concern can also be observed in Europe with respect to the diversity of the board in terms of age and sex.

Obligations regarding diligence and loyalty to the company and shareholders can be found in all of the jurisdictions. The separation between the roles of chairperson and the chief executive officer is generally stipulated in the codes or in the legislation as an option. The responsibilities of the board in terms of the supervision of the internal control system and risk management are developed the furthest in the **Italian** legislation and code. In **France**, the chairperson of the board drafts a report on internal control. The evaluation of the board is recommended by the codes, primarily on an annual basis.

The codes in **Europe** pay great attention to issues related to remuneration. The board of directors may create advisory committees, the denomination of which is not standardized. The audit committee is compulsory for listed companies in all of the **European** jurisdictions (by virtue of Directive 2006/43/EC) and in the **South American**, except **Venezuela**. The other committees are subject to the recommendations of the code and their existence in practice is lower.

In most cases (with the exception of **Portugal**), the audit committee is appointed by the board of directors. In Italy, the legislation stipulated more specific responsibilities regarding the supervision of internal control and risk management. In **Portugal**, the audit committee is granted specific powers as a supervisory body. In **Argentina** and **Brazil**, the audit committee verifies compliance with norms of conduct and, in Argentina, it also has specific powers related to conflicts of interests.

Although, in the absence of an audit committee, its responsibilities are performed by the board of directors, the legislation and codes do not establish the same criteria in terms of the minimum competences required for the effective performance of the duties.

With respect to the participation of employees in corporate governance, the greatest representation can be found in the legislation in **France**, which stipulates the inclusion of employees who represent more than 3% of the capital on the board of directors of listed companies.

The legislations in **Argentina, Brazil, Italy** and **Portugal** facilitate the representation of minority shareholders on the board of directors. In **Argentina, Brazil, Colombia** and **Italy**, the audit committee has

specific responsibilities with respect to the approval procedures for transactions with related parties. The Argentine code (IAGO) explicitly stipulates that independent directors must approve the transactions between related parties involving majority shareholders. In Brazil, the code recommends that, as far as possible, the transactions between related parties are based on independent evaluation reports with hypotheses and information approved by third parties. These reports must not come from any party involved in the transaction.

The legislations of **France, Portugal** and **Romania** set restrictions on transactions between members of the board and the company. Certain operations require the approval of the general assembly. The specific executive control bodies have responsibilities in terms of the protection of minority shareholders' rights.

Capital maintenance systems are generally designed with creditors in mind. Although many countries have the option of applying the IFRS or the standards' convergent regulations when drafting individual financial statements, only in the case of Italy, the benefits established in compliance with IFRS are subject to certain adjustments with a view to distribution.

The ISO 27001 standard is the most commonly used regulation for the certification of information security management systems in the jurisdictions studied. The greatest number of companies with this certification are found in **Romania, Spain** and **Italy**.



ANNEX A – TABLE WITH OVERVIEW OF THE STRUCTURES OF THE GOVERNANCE CODES IN THE COUNTRIES STUDIED

COUNTRY	CORPORATE GOVERNANCE CODES	BRIEF DESCRIPTION
ARGENTINA	<i>Código de Mejores Prácticas de Gobierno de las Organizaciones para la República Argentina</i>	<p>The code includes principles regarding:</p> <ul style="list-style-type: none"> • The board of directors (general responsibility, incorporation, independence, knowledge, aptitudes and values, duty of loyalty and diligence, operation, specific responsibilities of the chairperson) • The board's committees • Shareholders' rights (equal treatment, supply of information, the general assembly) • Conflicts of interest • Transparency, fluency and integrity of information • Auditing (internal and external) • Administration and dispute resolution • Interest groups and social responsibility
	<i>Código de Gobierno Societario</i>	<p>The code includes the following principles:</p> <ul style="list-style-type: none"> • Ensuring transparency of the relation between the stock-issuing company, the economic group that it heads and/or forms part of, and related parties. • Establishing the foundations for sound administration and supervision of the stock-issuing company • Ensuring an effective policy for the identification, measurement, administration and communication of the business risk • Protecting the integrity of the financial information with independent audits • Respecting shareholders' rights • Upholding a direct and responsible link with the community • Remunerating fairly and responsibly • Promoting business ethics • Expanding the scope of the code
BRAZIL	<i>Código das melhores práticas de governança corporativa</i>	<p>The code is divided into six chapters:</p> <ul style="list-style-type: none"> • Ownership • The board of directors • Management • Independent auditing • The conselho fiscal • Conduct and conflicts of interest
COLOMBIA	<i>Código de Mejores Prácticas Corporativas (Código País)</i>	<p>The code includes a set of measures regarding the following issues:</p> <ul style="list-style-type: none"> • General assembly • Board of directors • Disclosure of financial and non-financial information • Dispute resolution
	<i>Guía colombiana de gobierno corporativo para sociedades cerradas y de familia</i>	<p>The guide contains a set of measures, each with an explanation of the situation that constitutes an irregularity in terms of corporate governance of private and family companies in Colombia, which the guide aims to reduce.</p> <p>These irregularities have been identified based on the information gathered by the Superintendencia de Sociedades in different periods of supervisions.</p> <p>It contains measures regarding:</p> <ul style="list-style-type: none"> • Management control • The board of directors • The directors • Disclosure of information • Family companies

COUNTRY	CORPORATE GOVERNANCE CODES	BRIEF DESCRIPTION
FRANCE	<i>Code de gouvernement d'entreprise des sociétés cotées</i> ("AFEP/MEDEF Code")	<p>It includes recommendations regarding:</p> <ul style="list-style-type: none"> • The board of directors • Separation of the roles of the chairperson of the board and the executive director • The board of directors and the general assembly • The composition of the board • Representation of the various categories • Independent directors • Evaluation of the directors • Board meetings • Access to information regarding the directors • Training and qualifications of the directors • The term of office of the directors • The board committees • The auditing committee • The appointment committee • The remuneration committee • The number of terms of office of the managers and directors • The ethics of the director • Remuneration of the directors • Information regarding the remuneration of executive directors and the application of the recommendations
	<i>Code de gouvernement d'entreprise pour les valeurs moyennes et petites</i> ("MiddleNext Code")	<p>This code defines and differentiates between two categories for each type of power within the company (executive power, supervisory power, "sovereign" power): "points to monitor", which aim to encourage the board of directors to examine their challenges, without having to give explicit and detailed responses, and recommendations, which are the standards that companies that follow the code must implement.</p> <p>The recommendations deal with the following aspects:</p> <p>Regarding the directors:</p> <ul style="list-style-type: none"> • R 1: Set of factors regarding the employment contract and corporate mandate • R 2: Definition and transparency of the remuneration of the company's executive directors • R 3: Severance payments • R 4: Supplementary retirement scheme • R 5: Stock options and free assignment of shares <p>Regarding supervisory powers (the administrators)</p> <ul style="list-style-type: none"> • R 6: Implementation of internal board regulations • R 7: Ethical standards of the members of the board • R 8: Composition of the board and the presence of independent members on the board • R 9: Election of directors • R 10: Terms of office of the members of the board • R 11: Information regarding the members of the board • R 12: Implementation of committees • R 13: Board meetings and committee meetings • R 14: Director remuneration • R 15: Implementation of systems to evaluate the board's performance <p>Regarding sovereign power (the shareholders)</p>



COUNTRY	CORPORATE GOVERNANCE CODES	BRIEF DESCRIPTION
ITALY	<i>Codice di autodisciplina</i>	<p>The code includes 10 articles regarding:</p> <ul style="list-style-type: none"> • The role of board of directors • The composition of board of directors • Independent directors • The board committees • The appointment of board members • Director remuneration • Internal control and risk management • Legal auditors • Shareholder relations • Unitary and two-tiered systems <p>Each article is divided into principles, criteria and comments.</p> <p>The criteria define the recommended conduct for achieving the objectives set in the principles section.</p>
PORTUGAL	<i>Código de Governo das Sociedades, CMVM</i>	<p>It includes recommendations regarding:</p> <ul style="list-style-type: none"> • The general assembly (the board of shareholders, meetings, participation, voting and voting rights, quorum, minutes, company control measures) • The board of directors and the supervisory board (structure and functions, incompatibility and independence, appointment eligibility and criteria) • The reporting policy for irregularities • Remuneration • The executive director, the executive committee and the executive board • The general and supervisory board • The financial committee, the audit committee and the supervisory board committees. • Reporting and auditing • Conflicts of interest • Shareholder relations
	<i>Código de Governo das Sociedades, IPCG</i>	<p>It includes recommendations regarding:</p> <ul style="list-style-type: none"> • The companies relations with investors and transparency • Operation of the corporate bodies • Relations between the corporate bodies • Conflicts of interest • Governance report • Shareholders and the general assembly • Executive administration • Supervision and control • Performance evaluation and remuneration • Appointments • Risk management • Financial reporting • Financial and controlling • External auditing

COUNTRY	CORPORATE GOVERNANCE CODES	BRIEF DESCRIPTION
ROMANIA	<i>Codul de Guvernanță Corporativă al Bursei de Valori din București</i>	<p>The recommendations deal with issues related to:</p> <ul style="list-style-type: none"> • Corporate governance structure • Owner rights with respect to financial instruments • The role of the board of directors • The structure of the board of directors • The appointment of members of the board • Remuneration of the members of the board • Requirements in terms of transparency, internal control and risk management, conflicts of interest • The corporate information system • The social responsibility of stock-issuing companies and the administration system
SPAIN	<i>Código unificado de buen gobierno de las sociedades cotizadas</i>	<p>The code includes 53 voluntary monitoring recommendations regarding the internal governance of listed companies. These recommendations can be classified into 5 blocks:</p> <ul style="list-style-type: none"> • Articles of association and the general assembly (R1 to R6) • Board of directors (R7 to R25) • Directors (R26 to R32) • Director remuneration (R33 to R36) • Committees (R37 to R53)
VENEZUELA	<i>Lineamientos para un Código Andino de gobernanza corporativa</i>	<p>The code contains 51 specific measures organized systematically, indicating the internationally accepted standards of corporate governance. These measures cover issues related to:</p> <ul style="list-style-type: none"> • The rights and equal treatment of shareholders • The general assembly • The board of directors • Oversight and reporting with respect to the financial statements • The annual good corporate governance report • The stipulations in the articles of association regarding arbitration as a form of dispute resolution
	<i>Principios de gobernanza corporativa Resolución N° 19-01-2005</i>	<p>The Resolution establishes the following principles:</p> <ul style="list-style-type: none"> • The presence of independent directors • The definition of independence • Responsibilities of the audit committee • Transparency requirements
	<i>Lineamientos para un Código de gobernanza corporativa para las PyME y empresas familiares</i>	<p>The measures included cover the following areas:</p> <ul style="list-style-type: none"> • Shareholder rights and treatment • The general assembly • The board of directors and senior management • Interest groups and social responsibility • Financial and non-financial reporting • Dispute resolution • Family companies



ANNEX B – LEGISLATIONS AND REGULATIONS IN THE COUNTRIES STUDIED²⁵

ARGENTINA

Companies:

- The Commercial Companies Act (Law 19550/1972)
<http://www.cnv.gov.ar/leyesreg/Lawes/19550.htm>

Capital markets:

- The Capital Markets Act (Law 26.831/2012)
<http://www.infoleg.gov.ar/infolegInternet/anexos/205000-209999/206592/norma.htm>
- National Securities Commission Regulations (CNV), drafted in 2001, approved by General Resolution 368, updated by General Resolution 620
<http://www.cnv.gob.ar/LawesReg/CNV/esp/TOC2001.pdf>
- General Resolutions of the CNV
http://www.cnv.gob.ar/LawesReg/marco_regulatorio3.asp?Lang=0&item=4

Corporate governance:

- General Resolution 606/2012 of the CNV, which establishes the minimal contents of the Corporate Governance Code for listed companies
<http://www.cnv.gob.ar/transparency/CodigoGobiernoSocietario.asp?Lang=0>
- Communication A 5201/2012 of the *Banco Central de la República Argentina*, which establishes the obligation, from January 2012 onwards, for the organizations under its control to have effectively implemented a corporate code.
<http://www.bcra.gov.ar/pdfs/texord/t-lingob.pdf>

Miscellaneous:

- Resolutions of the FACPCE
<http://www.facpce.org.ar:8080/infopro/categorias.php?categoria=3>
- Regulations of the *Superintendencia de Seguros* (Insurance Superintendency)
<http://www2.ssn.gob.ar/index.php/la-superintendencia/normativa>
- Regulations of the *Banco Central de la República Argentina* (Central Bank of the Argentine Republic)
<http://www.bcra.gov.ar/>

BRAZIL

Companies:

- Civil Code (Law 10.406/2002) which contains a section specifically for limited companies.
http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm
- Public Limited Companies Act (Law 6404/1976) and subsequent amendments
http://www.planalto.gov.br/ccivil_03/LEIS/L6404consol.htm

Companies:

- Law 6.385/1976, which establishes the *Comissão do Mercado de Valores Mobiliários* (CVM – national securities commission) and regulates capital markets
<http://www.cvm.gov.br/>
- Regulations established by the CVM, which apply to listed companies
<http://www.cvm.gov.br/>
- Instructions of the CVM which set out good governance regulations for stock-issuing companies, related to takeover bids, disclosure of information, accounting standards, restrictions for majority shareholders and independent directors:
358/2002 <http://www.cvm.gov.br/asp/cvmwww/atos/exiatio.asp?file=\\inst\\inst358consolid.htm>
361/2002 <http://www.cosif.com.br/mostra.asp?arquivo=icvm361>
- Instruction 480/2009 of the CVM, regarding the registration of securities issuers listed on regulated markets, and the delegation of the right to vote at the general assembly:
http://www.cvm.gov.br/asp/cvmwww/atos/Atos_Redir.asp?Tipo=I&File=\\inst\\inst481.doc
- Declarations of the CODIM regarding best practices with respect to reporting information to the market:
<http://www.codim.org.br/>

²⁵ This section is not comprehensive. It contains the main legislative sources in the countries studies.

Corporate governance:

- In 2001, the São Paulo Stock Exchange (BM&F Bovespa) implemented its special segments for companies that voluntarily commit to the supplementary governance standards above and beyond the standards required under Brazilian Law:
<http://www.bmfbovespa.com.br/pt-br/noticias/2013/BMFBOVESPA-anuncia-proposta-de-avancos-em-seus-segmentos-de-listagem-2013-10-16.aspx?tipoNoticia=1&idioma=pt-br#1>
- BM&F Bovespa establishes a corporate governance system that is extremely different for the companies in the New Market segment
<http://www.bmfbovespa.com.br/empresas/download/RegulamentoNMercado.pdf>
- Level 1 listed companies, as established by BM&F Bovespa, have to adapt measures that promote transparency and investors' access to information:
<http://www.bmfbovespa.com.br/empresas/download/RegulamentoNivel1.pdf>
- Level 2 of BM&F Bovespa is similar to the New Market segment, although with a few exceptions:
<http://www.bmfbovespa.com.br/empresas/download/RegulamentoNivel2.pdf>
- Publications of the Brazilian Institute of Corporate Governance (IBGC):
Cadernos de Governança Corporativa
<http://www.ibgc.org.br/CadernosGovernanca.aspx>
Guia de Orientação para o Conselho Fiscal
<http://www.ibgc.org.br/CadernosGovernanca.aspx?CodCaderno=2>

Miscellaneous:

- Regulations established by the Central Bank of Brazil for financial institutions
<http://www.bcb.gov.br/?legislacao>
- Regulations established by *Superintendencia de Seguros Privados* (SUSEP) the insurance providers:
<http://www.susep.gov.br/>

COLOMBIA

Companies:

- Commercial Code (Decree 410/1971)
http://www.secretariasenado.gov.co/senado/basedoc/codigo/codigo_comercio.html
- Law 222/1995, which amends Book II of the Commercial Code, issuing a new insolvency system, as well as other provisions:
http://www.secretariasenado.gov.co/senado/basedoc/ley/1995/ley_0222_1995.html

Capital markets:

- Law 964/2005, which regulates the securities market:
http://www.secretariasenado.gov.co/senado/basedoc/ley/2005/ley_0964_2005.html
- Law 1328/2009, which established regulations with relation to financial issues, insurance, securities markets and other provisions
<http://web.presidencia.gov.co/leyes/2009/julio/ley132815072009.pdf>
- Resolution 116/2002
<https://www.superfinanciera.gov.co/jsp/loader.jsf?lServicio=Publicaciones&lTipo=publicaciones&lFuncion=loadContenidoPublicacion&id=13103>

Corporate governance:

- Public Notice 7/2011, which amends Public Notice 28/2007, regarding the adoption of the Colombian Code of Best Corporate Practices
<https://www.superfinanciera.gov.co/jsp/loader.jsf?lServicio=Publicaciones&lTipo=publicaciones&lFuncion=loadContenidoPublicacion&id=13103>
- Public Notice 56/2007, which amends Public Notice 28/2007, which establishes the obligation for diligence and sends out the survey which gathers information for the securities market with respect to the adoption of the recommendations of the Colombian Code of Best Corporate Practices
<https://www.superfinanciera.gov.co/jsp/loader.jsf?lServicio=Publicaciones&lTipo=publicaciones&lFuncion=loadContenidoPublicacion&id=13103>
- Decree 3923/2006, which regulates the election of independent members of the boards of directors of stock-issuing companies
<https://www.superfinanciera.gov.co/jsp/loader.jsf?lServicio=Publicaciones&lTipo=publicaciones&lFuncion=loadContenidoPublicacion&id=13103>
- Decree 1925/2009, which partially regulates Article 23 of 222/1995, and other concordant regulations, in relation to conflicts of interest and competence with the company with respect to the company directors
<http://web.presidencia.gov.co/decretoslinea/2009/mayo/28/dec192528052009.pdf>



Miscellaneous:

- Decree 2555/2010
<http://www.minhacienda.gov.co/HomeMinhacienda/regulacionfinanciera>
- Decree 663/1993
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=1348>
- Public Legal Notice
<https://www.superfinanciera.gov.co/jsp/loader.jsf?lServicio=Publicaciones&lTipo=publicaciones&lFuncion=loadContenidoPublicacion&id=15464>
- Decree 2955/2010
<http://web.presidencia.gov.co/decretoslinea/2010/agosto/06/dec295506082010.pdf>

FRANCE

Companies:

- Commercial Code (consolidated version 2012)
<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000005634379&dateTexte=20120624>
- Law 420/2001, regarding new economic regulations
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000223114&fastPos=1&fastReqId=680767719&categorieLien=cid&oldAction=rechTexte>
- Law 706/2003 regarding financial security (consolidated version 2013)
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000428977&fastPos=1&fastReqId=1209863287&categorieLien=cid&oldAction=rechTexte>
- Law 842/2005, regarding confidence and the modernization of the economy
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000451890&dateTexte=&categorieLien=id>
- Law 1223/2007, for promoting labour, employment and purchasing power:
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000278649&dateTexte=&categorieLien=id>

Capital markets:

- Monetary and Financial Code
<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072026&dateTexte=20120625>

Corporate governance:

- Law 649/2008, which includes a number of provisions that adapt company law to European Community law:
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019117371&dateTexte=&categorieLien=id>
- Law 103/2011, regarding the balanced representation of women and men of board of directors and supervisory boards, as well as professional equality:
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023487662&dateTexte=&categorieLien=id>

ITALY

Companies:

- Civil Code, Book V, Chapters V and VI
<http://www.altalex.com/index.php?idnot=36501>
<http://www.altalex.com/index.php?idnot=36502>
- Legislative Decree 6/2003 (amended by Legislative Decree 37/2004 and Legislative Decree 310/2004), for the organic reform of regulations of capital companies and cooperatives:
<http://www.camera.it/parlam/leggi/deleghe/03006dl.htm>

Capital markets:

- Legislative Decree 58/1998, single text of provisions related to financial intermediation (TUIF), with subsequent amendments:
http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_it/regolamentazione_bancaria_finanziaria/compendio_tuif/DLgs_58_98_agg_DL_179_e_DLgs_184_ott_2012.pdf
- Law 262/2005 (amended by Legislative Decree 303/2006), provisions to safeguard saving and regulation of financial markets:
<http://www.camera.it/parlam/leggi/05262l.htm>
- Deliberations and recommendations of the CONSOB
<http://www.consob.it/main/regolamentazione/tuf/tuf.html?queryid=main.regolamentazione.tuf&resultmethod=tuf&search=1&symlink=/main/regolamentazione/tuf/index.html>

- Regulations with provisions in terms of transactions with the related parties (adopted by the CONSOB through deliberation n°. 17221, dated 12th March 2010, and subsequently amended by deliberation n°. 17389, dated 23rd June 2010)
<http://www.consob.it/main/documenti/Regolamentazione/normativa/reg17221.htm>

Corporate governance:

- Legislative Decree 173/2008
<http://www.camera.it/parlam/leggi/deleghe/08173dl.htm>
- Law 120/2011 which amends Legislative Decree 58/1998 (TUIF), with reference to parity access to the of the administration and control bodies of listed companies
<http://www.altalex.com/index.php?idnot=15109>

Miscellaneous:

- Conduct regulations of the *collegio sindacale* for unlisted companies edited by the *Consiglio Nazionale dei Dottori commercialisti e degli Esperti Contabili*
<http://www.cndcec.it/Portal/CMSTemplates/TxtAtch.aspx?id=bc7a5c6b-014f-4ba1-92c6-a3a9ce27e3df&idT=83bd8612-568b-4d28-9203-d40757b51f2a&mode=3>
- Legislative Decree 39/2010 on legal auditing
http://www.rgs.mef.gov.it/_Documenti/VERSIONE-I/Strumenti/Riferiment/D-Lgs-/DLgs27-01-2010_39.pdf
- Resolutions, instructions and recommendations of the Bank of Italy
http://www.bancaditalia.it/vigilanza/normativa/norm_naz
<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2004;310>

PORTUGAL

Companies:

- Decree Law 262/1986, Commercial Companies Code
http://www.dgpi.mj.pt/DGPJ/sections/leis-da-justica/livro-v-leis-sobre/pdf2215/dl-262-1986/downloadFile/file/DL_262_1986.pdf?nocache=1182251871.74

Capital markets:

- Financial Securities Code
http://www.cmvm.pt/CMVM/Legislacao_Regulamentos/Codigo%20dos%20Valores%20Mobiliarios/Documents/CodigoVM_Versão%20Consolidada.pdf

Corporate governance:

- Resolution 49/2007, good governance principles for public sector companies
<http://dre.pt/pdf1s%5C2007%5C03%5C06200%5C17731776.pdf>
- Information from the Portuguese Institute of Corporate Governance
http://www.cgov.pt/index.php?option=com_content&task=blogcategory&id=10&Itemid=20

Miscellaneous:

- Specific legislation on the banking and insurance sectors
<http://www.bportugal.pt/en-US/Supervisao/Pages/Legislacaoenormas.aspx>
<http://www.isp.pt/NR/exeres/380168E0-EB92-4F21-8F7E-866B231382AD.htm>



ROMANIA

Companies:

- Commercial Companies Act (Law 31/1990) with subsequent amendments
http://www.onrc.ro/documente/legislatie/noi/legea_31_1990.pdf

Capital markets:

- The Financial Securities Market Act (Law 297/2004) which standardizes the Romanian legislation with the European directives, including corporate governance principles
<http://www.cnvmr.ro/pdf/legi/ro/Legea-297-2004.htm>
- Regulations and instructions of the Financial Securities Commission
<http://www.cnvmr.ro/legislatie/instructiuni/ro/2013.htm>

Corporate governance:

- Ministry of Finance Order 3055/2009, which approves the accounting regulations standardized with the European directives that establish the obligation to present the declaration of corporate governance
http://static.anaf.ro/static/10/Anaf/legislatie/OMFP_3055_2009.pdf
- Declaration of comply or explain
<http://www.bvb.ro/info/Rapoarte/Diverse/Comply%20or%20Explain%20Statement.pdf>

Miscellaneous:

- Professional regulations issued by the CECCAR
<http://ceccar.ro/ro/?portfolio=standarde-profesionale>
- Accounting Act 82/1991 with subsequent amendments
http://static.anaf.ro/static/10/Anaf/legislatie/Legea_contabilitatii.htm
http://static.anaf.ro/static/10/Anaf/legislatie/OUG_37_2011.pdf
- Regulations issued by the National Bank of Romania
<http://www.bnro.ro/Reglementari-BNR--3267.aspx>
- Regulations issued by the Insurance Supervisory Committee
http://www.csa-isc.ro/index.php?option=com_content&view=category&layout=blog&id=10&Itemid=95&lang=ro
- Regulations issued by the Supervisory Committee of the private pensions system
<http://www.csspp.ro/legislatie/4>
- Government ordinance N° 93/2012 FSA
<http://codfiscal.net/oug-932012-infintarea-organizarea-si-functionarea-asf-autoritatea-de-supraveghere-financiara/>

SPAIN

Companies:

- Commercial Code
<http://www.boe.es/buscar/pdf/1885/BOE-A-1885-6627-consolidado.pdf>
- Royal Legislative Decree 1/2010, which approves the consolidated text of the Capital Companies Act
<http://www.boe.es/buscar/pdf/2010/BOE-A-2010-10544-consolidado.pdf>
- Law 3/2009, regarding structural modifications of commercial companies
<http://www.boe.es/buscar/pdf/2009/BOE-A-2009-5614-consolidado.pdf>
- Royal Decree 1784/1996, which approves the Regulation of the Company Register
<http://www.boe.es/buscar/pdf/1996/BOE-A-1996-17533-consolidado.pdf>

Capital markets:

- Law 24/1988 on the Securities Market
<http://www.boe.es/buscar/pdf/1988/BOE-A-1988-18764-consolidado.pdf>
- Law 12/2010, which amends Law 19/1988 regarding accounts auditing, Law 24/1988 on the Securities Market and the consolidated text of the Public Limited Companies Act, approved by Royal Legislative Decree 1564/1989 to adapt to the European Union regulations
<http://www.boe.es/boe/dias/2010/07/01/pdfs/BOE-A-2010-10421.pdf>

Corporate governance:

- Order ECC/461/2013, which stipulates the content and the structure of the annual corporate governance report, the annual remunerations report and other reporting instruments of listed public companies, savings banks and other organizations that issue securities traded on official markets
<http://www.boe.es/boe/dias/2013/03/23/pdfs/BOE-A-2013-3212.pdf>

Miscellaneous:

- Regulation of credit institutions
<http://www.bde.es/bde/es/secciones/normativas/>

VENEZUELA**Companies:**

- Commercial Code (Extraordinary Official Gazette N° 475, 21st December 1955)
<http://docs.venezuela.justia.com/federales/codigos/codigo-de-comercio.pdf>

Capital markets:

- Securities Market Act (Official Gazette N° 39489, 17th August 2010)
http://sudeban.gob.ve/uploads/N8/ck/N8ck0ZVUSs_pYKyCpPSiQA/Ley-de-Mercado-de-Valores-Vigente-pdf.pdf
- Regulations of the *Superintendencia Nacional de Valores* (National Securities Superintendency)
<http://www.cnv.gob.ve/>

Corporate governance:

- Corporate governance principle (Official Gazette N° 38129, 17th February 2005)
<http://www.cnv.gob.ve/LeyesNormas/Normas/019-1.pdf>

Miscellaneous:

- Regulations and practices set by the *Colegio de Contadores Públicos*
<http://www.fccpv.org/>
- Regulations of the *Superintendencia de la actividad aseguradora* (Insurance Activities Superintendency)
<http://www.sudseg.gob.ve/regulaciones>
- Regulations of the *Superintendencia de las Instituciones del Sector Bancario* (Banking Sector Institutions Superintendency)
<http://sudeban.gob.ve/webgui/inicio/publicaciones3/normas-prudenciales>



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http://www.iae.edu.ar/antiguos/Documents/Revista15/IAE15P62_Los_organos_de_gobierno_en_la_Pyme_argentina.pdf
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<http://www.google.ro/url?sa=t&rct=j&q=Panorama%2Bda%2BGovernan%C3%A7a%2BCorporativa%2Bno%2BBrazil&source=web&cd=1&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.ibgc.org.br%2FDownload.aspx%3FRef%3DPesquisaConhecimento%26CodPesquisa%3D20&ei=Hvjbuai8LoPvOtTvgNgG&usq=AFQjCNF0vekY0xJZfGzegwNa4k1FPg3pUw&bvm=bv.48705608,d.Yms>
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COLOMBIA

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<http://www.amf-france.org/Publications/Rapports-etudes-et-analyses/Gouvernement-d-entreprise.html>
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http://www.middledenext.com/lienhtml/130418_Rapport_2012_VFfinale.pdf
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ANNEX D – SURVEY ON WHICH THE STUDY IS BASED

FIRST PART CORPORATE GOVERNANCE CODES AND OTHER REGULATIONS ON ISSUES RELATED TO CORPORATE GOVERNANCE

1. Is there a code of best practices on corporate governance in your country (Corporate Governance Code)? (If there is more than one, please answer questions 2-3-4-6-7 for each case)

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

2. If the response to the first question is affirmative, please indicate the code's official title, the name and type of the issuing authority (governmental agency, commission appointed by the government, regulator of the securities market, a joint body with representatives of investors, companies and academia, academic association, association of investors, association of directors, etc.).
3. What are the objectives of this Code (or Codes)?
4. What type of company does it apply to (companies listed on the stock market, all companies, listed companies but other companies may apply it voluntarily, etc.)?
5. What other laws, regulations, administrative guidelines and recommendations address corporate governance issues? What is their scope of application? How do they interact with the best practices established in the Corporate Governance Code (for example, company law, capital market law, other regulations issued by supervisory bodies, etc.)?
6. What mechanism is in place for ensuring compliance with each regulation, law, administrative directive, recommendation, Code, etc.?
7. What reporting requirements apply in this respect and to what type of companies are they applicable?
8. Has the global financial crisis led to changes in the regulatory framework covering corporate governance issues?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

9. If the response to the question above is affirmative, please indicate what changes were made.

SECOND PART CORPORATE GOVERNANCE PRINCIPLES APPLIED IN LATIN COUNTRIES

PLEASE NOTE: For the open questions below, please specify the law, regulation, administrative directive, recommendation, etc., the issuing authority, whether or not its application is compulsory, and the type of entities to which it is applicable.

II.1. REGARDING THE GOVERNANCE SYSTEM

10. What type of governance system can companies under the legal framework in your country?
- ☐ A unitary system
 - ☐ A two-tiered system (with a board of directors and supervisory board)
 - ☐ Companies may choose between a unitary system and a two-tier system or another system (specify which):but, in practice, the most commonly used is thesystem.
11. Which body is responsible for the effective administration of the company?

PLEASE NOTE: If the corporate governance system in your country is unitary, please go to question 20.

II.2. REGARDING THE SUPERVISORY BOARD

12. What are the responsibilities of the supervisory board?
13. Are there training requirements and/or independence requirements that must be met by the members of the supervisory board?
What are these requirements?
14. Are there any transparency requirements in this respect?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

15. If the response to the question above is affirmative, please specify to which types of companies these requirements apply.
16. What are the conditions for the appointment and dismissal of the members of the supervisory board?
17. What is the term of office and the maximum number of terms that the members of the supervisory board may have?
18. Are there any restrictions with respect to being member of the supervisory board and of the board of directors at the same time?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

19. Are there limits for the minimum and maximum number of members of the supervisory board?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

II.3. REGARDING THE BOARD OF DIRECTORS

20. Are there any requirements or recommendations on the existence of a rigorous and transparent procedure for appointing the members of the board of directors?
21. What are the criteria for the appointment and dismissal, the appointment procedure, the term of office and the maximum number of terms of the members of the board of directors?
22. Are there any restrictions with respect to becoming a member of several boards of directors in the same time?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

23. Are there training and experience requirements for the members of the board of directors?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>



24. If the response to the question above is affirmative, please specify:

- a. ☐ Who assesses the compliance with these requirements?
- b. ☐ What are the transparency requirements in this respect?
- c. ☐ To what kind of companies do they apply?

25. Are there any requirements with respect to the separation of the functions and duties of the chairperson of the board of directors and the chief executive officer?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

26. Are there requirements regarding the maximum or minimum number of members for the board of directors?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

27. If the response to the previous question is affirmative, please specify these requirements.

28. What are the requirements regarding the presence of non-executive members on the board of directors?

29. What are the requirements regarding the presence of independent members on the board of directors?

30. What are the criteria for assessing their independence? Who evaluates their compliance?

31. Are there any transparency requirements in this respect? If so, to what kind of companies do they apply?

32. Are there any restrictions related to the operations between the company and members of the board of directors?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

33. If the response to the question above is affirmative, please specify them.

34. Is it a requirement for the members of the board to be natural persons?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

35. What powers does the board of directors have? Can it delegate any of its powers? If so, to whom and what kind of powers?

36. Are there any requirements or recommendations regarding the obligation of regular evaluation of the performance, competence and effectiveness of each member of board?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

37. What reporting requirements does the board have to observe regarding procedure and self-evaluation and to what kind of entities do these requirements apply?

38. What responsibilities does the board have regarding the information provided to the owners?
39. What is the procedure for the determination of the remuneration of directors, members of the board and of the supervisory board (if applicable)? Are there any size restrictions? Are there any differences between the executive directors and other directors? Please specify the principles used to determine each type of compensation (salaries, benefits in kind, shares, stock options, severance indemnities, supplementary pensions). What transparency requirements are in place and to what type of companies do they apply?
40. What responsibilities does the board have with respect to ensuring a sound and efficient internal control system? Are there any reporting requirements in this respect and to what kind of companies do they apply? What are the requirements related to internal auditing?
41. Are there mechanisms in place to ensure that the directors have access to specific and relevant information that is available at the appropriate time?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

42. If the response to the question above is affirmative, please specify these mechanisms.
43. What confidentiality requirements must be met by the members of the board?
44. Are there mechanisms and transparency requirements in place for the prevention and resolution of the conflicts of interest between the board members and the company?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

45. If the response to the previous question is affirmative, please specify these mechanisms and requirements.
46. What are the legal provisions concerning the board members' obligations of diligence and loyalty?

II.4. ADVISORY COMMITTEES

47. Can the board of directors (or the supervisory board) establish advisory committees?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

48. If the response to the previous question is affirmative, please indicate the companies for which they are required (please specify for each committee type).
49. What are the requirements for the appointment and the structure of these committees (number of independent and/or non-executive members, incompatibilities), their responsibilities and evaluation criteria for their activity (specify for each type of committee), communication procedures with other bodies and reporting requirements?
50. Are there requirements regarding the minimum or maximum number of members of these committees?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

51. If the response to the previous question is affirmative, please specify these requirements.



52. Are there any requirements for regularly reviewing the structure of these committees?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

53. Who appoints and who can dismiss the members of these committees?

54. Are companies required to have an audit committee?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

55. If the response to the previous question is affirmative, please specify to which organization this applies.

56. Please specify which of the following responsibilities are specifically reserved for the audit committee:

- a. ☐ Monitoring the financial reporting process;
- b. ☐ Monitoring the effectiveness of the company's internal control, internal audits, where applicable, and risk management systems;
- c. ☐ Monitoring the statutory audit of the annual and consolidated accounts;
- d. ☐ Reviewing and monitoring the independence of the statutory auditor or audit firm and, in particular, the provision of additional services to the audited entity.
- e. ☐ Other responsibilities. Please specify

57. Who appoints the members of the audit committee?

58. Who can dismiss a member of the audit committee and under which circumstances?

59. What conditions are there with respect to the presence of independent and/or non-executive directors on the audit committee?
What are the criteria for assessing the independence of members? Who evaluates this?

60. What professional competence requirements are there for the members of the audit committee? Who assesses these skills?
What transparency requirements are there in this respect and to what type of organizations do they apply?

61. Is there any incompatibility between the position of chairperson of the board of directors and the position of chairperson of the audit committee?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

62. Are there conditions for incompatibility with respect to becoming a member of the audit committee?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

63. What requirements are there regarding the remuneration policy of the audit committee? Who approves this policy? Are there any restrictions on the remuneration of members of the audit committee?

64. Are there any requirements for a rigorous evaluation of the performance of the audit committee?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

65. If the response to the previous question is affirmative, please specify these requirements.

66. Are there other control bodies with responsibilities in terms of the governance of organizations? If so, what are their functions and responsibilities? For what type of companies they are established? What are the requirements for their appointment and structure (number of independent and/or non-executive members, incompatibilities), option of dismissal and criteria for evaluation of their activity, communication procedures within and outside the company and the reporting requirements?

II.5. OTHER ISSUES

67. Are there any reporting requirements for transactions with related parties? To which entities do they apply?

68. Is there an effective framework for insolvency, in order to ensure the enforcement of creditors' rights? What laws are in place for achieving this objective?

69. Do corporate control markets operate effectively and transparently? What laws are in place for achieving this objective?

70. Are there mechanisms for employee participation in the governances of organizations?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

71. If the response to the previous question is affirmative, please specify what these mechanisms are.

72. What decisions are reserved for the (ordinary and extraordinary) general assembly and what quorum and majority conditions must be fulfilled in order to make these decisions?

73. Are there any deviations from the principle that one share is equal to one vote?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

74. What provisions are there concerning the rights of minority shareholders in the case of transactions with the controlling shareholder?

75. Do majority shareholders have the option of purchasing the shares of the minority shareholders in certain conditions (a 'squeeze-out mechanism')?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

76. Do minority shareholders have the option of forcing the controlling shareholders to buy their shares in certain circumstances (a 'sell-out mechanism')?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>



77. How is the remuneration received by the minority shareholders determined in these situations? Who performs the evaluation?
Is a report from an independent expert required?

78. What mechanisms are in place to ensure the participation of the owners in the decision-making process and the equitable treatment of all shareholders?

79. Are organizations required to publish a report on corporate governance?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

80. If the response to the previous question is affirmative, to what type of organizations does this apply? Are there certification requirements?

THIRD PART REGULATIONS ON THE CAPITAL MAINTENANCE SYSTEM

81. Please specify the provisions of the laws in your country regarding the following issues, indicating if there are any differences depending on the type of the entity:

a.	Minimum share capital	
b.	Can the authorized capital be established?	
c.	Are there restrictions with respect to companies subscribing to their own shares?	
d.	What types of capital contributions are there?	
e.	How are contributions in kind evaluated? Who performs the evaluation? Is a report from an independent expert required?	
f.	What is the legal term for the subscription and payment of capital contributions?	
g.	What are the legal consequences if the deadlines for financing are not met?	
h.	Who takes the decision to conduct a capital increase?	
i.	Are there restrictions regarding the acquisition of an entity's own shares?	
j.	How is the value of distributions calculated (dividends, reserves)?	
k.	Are there any restrictions with respect to distributions?	
l.	Who approves the distributions and what are the quorum conditions?	
m.	Is it possible to distribute interim dividends (for periods of less than one year)?	
n.	What are the legal consequences of the distribution of dividends that do not come from actual profits?	
o.	Can owners grant loans to the entity?	
p.	What are the legal provisions regarding capital reduction?	
r.	What factors trigger the insolvency of an entity?	

FOURTH PART INFORMATION SYSTEMS (IS) GOVERNANCE

82. What are the legal or regulatory requirements and standards relating to information systems governance used in your country?
83. How would you rate the situation with respect to information systems governance within the organizations in your country?
- ☐ Organizations have not yet identified yet the challenges of IS governance.
 - ☐ The issues have been identified but no measures have been put in place to address them
 - ☐ The main business leaders are aware of the contribution of IS to the development of companies and are starting to get involved in setting the objectives assigned to IS.
 - ☐ Performance indicators have been established and incorporated into company planning. Regular reporting is made to the General Management.
 - ☐ The challenges of IS governance are shared between the Information Systems Manager and the entire management team. IS are integrated into decision-making and planning processes.
 - ☐ The steering of the IS is based on a continuous improvement approach. Companies are aware of the potential contribution of IS in terms of create competitive advantages.
84. What are the requirements for the certification of information security management systems?
85. Who is responsible for information security?
86. How are the concerns of all stakeholders taken into account when defining an information security policy?
87. How is information security integrated into all policies?
88. How is it ensured that IT failures do not endanger the organizations and impede their ability to operate?

IN ORDER TO RECEIVE THE RESULTS OF THE STUDY, PLEASE PROVIDE THE FOLLOWING INFORMATION:

PROFESSIONAL ORGANIZATION

ADDRESS

POSTAL CODE

CITY

COUNTRY

E-MAIL

SEND FOR THE ATTENTION OF:

NAME AND SURNAME/S

POSITION

If various organizations from the same country respond jointly to the survey, please complete the information above for each organization.

CONTACT PERSON FOR POSSIBLE CLARIFICATIONS REGARDING THE RESPONSES:

NAME

TELEPHONE NUMBER

E-MAIL

WITH THE COOPERATION OF



The Comité de Integración Latino Europa-América (CILEA) is an association founded in 1997 which brings together professional organizations in the field of Economic and Accounting Sciences from Latin countries in Europe and the Americas, representing a group of over a million professionals in total.

The CILEA International Studies series was initiated in 2013 with the aim of systematically collating and disseminating the research conducted by the CILEA regarding topics of professional interest. The series includes studies which generally deal with technical aspects of the work of professionals for SMEs in Latin countries, presenting comparative results. Another objective is to develop and publicize proposals from the CILEA with respect to issues that affect SMEs and small and medium professional firms that are not commonly subject to research at an international level.

The series does not aim to propose binding guidelines for the member countries, but rather to formulate useful reflections and guidance for the debate and professional practices which may gradually contribute towards the regulation of these issues by the competent authorities.

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