

Corporate Governance

Value-conscious, goal- and future-oriented and on sustainable success aligned Corporate Governance is more but to comply with legal regulations.

Definition

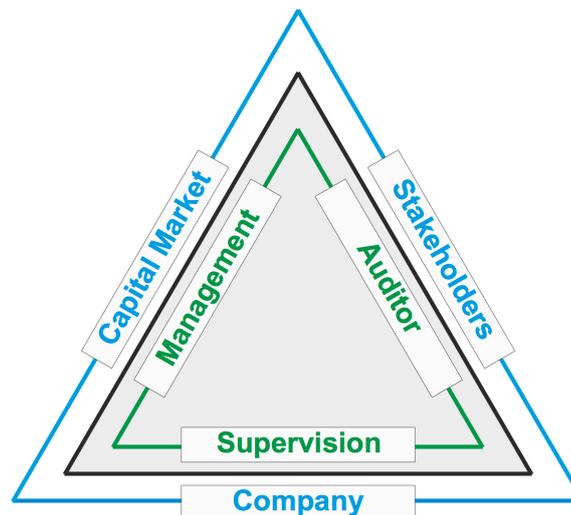
Corporate Governance (CG) stands for a

«holistic, systematic, responsible and on long-term value and sustained success aligned management, leadership and controlling of companies and organizations.»

In a broad sense it implies the legal, cultural and institutional behaviour of a company or organization.

Efficient and productive cooperation between all the stakeholders, but especially between the strategic and operational management – supervisory board and executive board –, the respect of the shareholder's interests, consistency and continuity but nonetheless agility and flexibility in the corporate strategy as well as openness and transparency in the corporate communication are key aspects of good CG. This reveals the importance of the optimal composition and structure of the management bodies.

The core issue of good CG but is the cooperation and distribution of tasks regarding managing and controlling functions within the «Internal Triangle» (Supervision – Supervisory Board / Executive Management / Auditor), the «External Triangle» (Company – Corporate Management / Capital Market – stock exchange / Stakeholders) and between the two triangles.



The basis are always the relevant legal framework (in Switzerland the Swiss Code of Obligations), the recommendations or laws concerning supervisory and executive boards (in Switzerland the «Swiss Code of Best Practice» SCBP of economiesuisse), and the accordingly to the «comply or explain» rules established disclosure obligations for listed companies (in Switzerland from the Swiss stock exchange SWX). The objective of these basics, especially of the latter two, is the creation of structural and instrumental preconditions, so that the company can undisturbed grow and develop.

Only by Implementation CG becomes a Success Factor

Optimally implemented Corporate Governance is for banks and investors a guarantee that there won't be investments made in bad projects.

The difficulty but is, and remains, the implementation of the CG-guidelines or the respective decisions and measures by the supervisory or management board of the company. The reason for this is firstly, that even if the members of the supervisory board take notice of some of these guidelines, they are not willing to implement them, and secondly, because certain members of the top management level are simply overstrained or even in the wrong job.

But markets and investors demand the implementation of future- and success-oriented CG. For companies, which have to acquire load capital there is no choice anymore. But despite the legal basis, in CG the emphasis is on people and their personality. Essential for a functioning CG therefore are not primarily corporate structures, but the functionality of the governing bodies, that is the people, the personalities with all their facets.

For an effective implementation of CG the observance of legal regulations or acting in accordance to the SCBP are only necessary conditions. Besides, and especially when the supervisory body isn't aware of significance and responsibility, they might lead to induce GC measures only to the outside. Of crucial importance but is CG and its rigorous implementation also or especially to the inside – within the company.

Supervisory bodies should focus on the following values

1. Realistic assessment of the company and its potential;
2. Resources risk-aware provided and value-oriented applied;
3. Leading positions occupied by value- and success-conscious people;
4. Investments made in accordance to the principles of added and created value;
5. Sustainable increase of the company-value;
6. Improvement of the value and added value by takeovers, mergers, demergers or outsourcing of companies, divisions or activities;
7. Cultivate corporate values, secure success and future of the company.

From Supervisory Body to «Shaping and Controlling Body»

Integral if not even decisive part of CG are the rules and principles of organization, behaviour, communication and transparency by which a company is managed and controlled. They refer to the relation of the company to the stakeholders (shareholders, banks, authorities, investors, customers, suppliers, employees, public, politics, insurances, etc.) as well as the monitoring system and the leadership of the company itself. It is time that supervisory boards intensively deal with this issue.

A supervisory body but becomes a real and effective «Shaping and Controlling Body» only when the body is optimally composed, the cooperation works flawlessly, no conflicts of interest are existing, the members dispose of pronounced soft skills, they optimally complement each other in their individual strengths and weaknesses, and when they are completely independent from both the company and each other. Office cumulation like double mandates as e.g. Chairman and CEO must therefore be avoided whenever possible. This because of the danger of reduced objectivity, pursuing of personal interests, one-way information and thus difficult controlling. Furthermore, the integrity and reputation of both supervisory board and company are negatively influenced by such office cumulations.

Tasks and Legal Duties of Supervisory Bodies

To be a member of a supervisory body brings rights, but also duties for every individual member. Any infringement of the duties may lead to legal liability claims by third parties. The supervisory board as an entity cannot delegate the responsibility for these tasks to individual members or third parties. Even if the preparation, execution or controlling of individual resolutions is assigned to individual board members or committees, the responsibility however remains by the supervisory body as a whole. Moreover, in such cases the issue of organizational regulations (in Switzerland the article 716b of the Swiss Code of Obligations) giving information about the tasks and responsibilities of each body is mandatory. It is therefore important to be aware of the tasks and responsibilities of supervisory bodies.

The most important of these «mandatory tasks» can be described as follows:

▪ The Composition of the Supervisory Body

It should primarily be composed of external, completely independent people that complement each other with their professional and personal qualities as well as their age and experience. In summary, the supervisory body should be composed «heterogeneously». In addition, every member should limit the number of supervisory offices, so that conflicts of interest are avoided.

▪ An Active Overall Direction

The supervisory body is the Strategic Governance of the company. It is responsible for establishing and implementing visions, strategies, missions and principles, as well as the risk management, the ultimate direction of the company and the provision of the therefore necessary directions. By this, the supervisory body becomes the real shaper of the company, the «Shaping and Controlling Body». Other tasks of the supervisory body are the preparation and conduct of the general assembly as well as the minuting of both general assemblies and meetings of the supervisory board.

If certain tasks are to be assigned to committees, it is important to note that for most efficient and effective CG mainly three committees have successfully been proved in practice.

1. The Nomination Committee

It consists of members of the supervisory board and, where appropriate, of the executive management, and is responsible for the conception of the principles for selection and appointment of members of the supervisory body and the executive board. It also prepares the election, deselection and re-election of members and candidates.

2. The Audit Committee

It consists of independent members of the supervisory body and is responsible for the «Total Controlling» (internal and external controlling), the «Total Quality Management» (quality, environment, health, safety), and especially the controlling system, the risk management, the compliance of standards, the annual financial statement, the compilation of the annual report as well as the performance, remuneration and independence of the external auditors.

3. The Remuneration Committee

This committee also consists of independent and non-executive members of the supervisory body. It is responsible for the compensation and remuneration policy especially for the top management level, and that the company is providing competitive, market- and performance-oriented compensations, which are in accordance with the success, the value and the significance of the company and thus comprehensible.

Other committees, e.g. for strategy, technology, motivation, communication, informatics, turnaround, etc., are dependent of the branch absolutely possible and appropriate.

- **The Organization of the Company – the «Structuring»**

It should be clearly conceived, appropriately, effectively and efficiently designed, and consistently implemented. The organization of sustainably successful companies is flat and lean, the employees know exactly their tasks, competencies and responsibilities and the signature authority is principally collective by two.

- **The Appointment and Supervision of the Management – the «Monitoring»**

Among the tasks of the supervisory body are the appointing and permanent controlling of the executive management of the company within the «Total Controlling» with regard to consistent, value-conscious, future- and success-oriented implementation of the settled corporate strategy and the long-term (sustainable) economic, ecological and social responsibility of the company, as well as the execution of the by the supervisory body taken decisions. This includes the monitoring of the defined quantitative and qualitative (resp. the economic, ecological and social) objectives – the «Management by Objectives» (MbO), the «Management by Values» (MbV) as well as the professional and motivational support of the management.

- **The Financial Control – the «Internal Controlling»**

Within the framework of «Total Controlling», the surveillance of the finances (capital, income, costs, budgets) is among the most important tasks of the supervisory body. It also includes the creation and monitoring of the Balanced Scorecard (BSC) resp. the Sustainable Balanced Scorecard (SBSC) and a short-, medium- and long-term financial and liquidity planning. In order to properly meet this responsibility and to be able to implement measures in due time, the supervisory body has to be continuously informed about the financial condition of the company, expected bottlenecks, crises situations and accruals. The notification of the competent authorities or judge in case of over-indebtedness is task of the supervisory body as well.

- **The Auditor – the «External Controlling»**

The control body or external auditor establishing the for stock corporations legally required audit report, which also is part of the «Total Controlling», has in every respect to be independent of the supervisory board and the company, and should in critical situations be involved for support.

Characteristics of Members of Supervisory Bodies

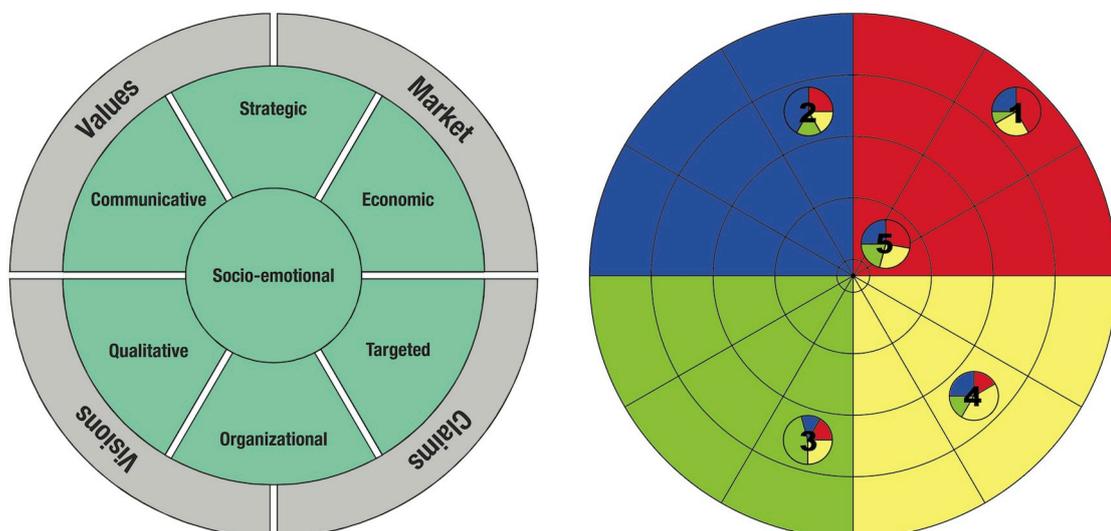
To fulfil their tasks, the members of supervisory bodies must have extensive knowledge and competencies. Apart from the needed legal, economic, ecological and social knowledge, knowledge of the company (financial situation – especially liquidity and capital structure –, shareholders, members of the supervisory and executive board and their basis attitude, corporate strategy, visions, culture, philosophy, principles, risks, organization, competencies and responsibilities, partnerships, satisfaction of shareholders, customers and employees) and the activities of the company (offerings – products and services –, market conditions, figures and indices, competition, uniqueness), there should also be specific characteristics and skills. These include visionary, strategic, economic, ecological, organizational, qualitative and relational competencies as well as target and social skills, but also duty of care (due diligence), leadership qualities, courage, credibility and internal independence. They should be able to assess situations in an objective and unconventional way, to handle paradoxes and to set the right priorities. They should be future- and sustainability-oriented, stand up openly and dynamically for their independent opinion and they should have the assertiveness to establish uniform thinking as principle within the company. Their high readiness for dialogue should be characterized by critical team spirit and it should show a convincing communication ability toward the inside and outside. They should have integrity in all respects and align themselves with high ethical standards.

Since the above-mentioned competencies are more or less strongly pronounced, every supervisory body should ideally be composed such that the members optimally complement each other in terms of knowledge and qualities and thus form a whole.

Education and experience of the members are no longer sufficient. The mutually complementary typological and structural composition of the members is of fundamental importance. Assessments have to be made both with the members already in charge and new candidates to determine their personality structure. On basis of these assessments and the defined professional requirements, heterogeneous, powerful and functioning leading teams have to be composed.

Furthermore, every supervisory body should not, as often called for, have only one «Lateral Thinker» – which anyway will be sidelined if he too often thinks «lateral» –, but all the members should be «lateral thinkers». For «lateral thinkers» dispose of the skill to look at «things» from quite another angle and thus to present unconventional proposals.

The graphics below show on the one hand the needed external and internal competencies of members or candidates of supervisory bodies, and on the other hand an example of a personality analysis – the «Board Evaluation» – of a five-person supervisory body.



The «Board-Evaluation» serves as a basis for the professionalization of the supervisory body. Board audits show the strengths and weaknesses of both the supervisory body as a whole and its individual members. Thereby it is recorded, whether the objectives have been met, the professional and social competencies are sufficient, strategic thinking is result-oriented implemented, and whether the cooperation with the executive management works and harmonizes. Whether CG is effective and credibly implemented and whether the principles are also internally fully assimilated. This «internal CG» is of crucial importance. The guidelines must not exist just formally, they must be lived and actively demonstrated by the supervisory body. Only in this way a supervisory body becomes the «Shaping Body» of a company.

At the same time an assessment of all the members of the operational management is recommended, with profile of strengths and weaknesses revealing here too the potential for optimization. The «Management Evaluation» shows in which areas of professionalism and personality there is a need of additional support by the supervisory body and which controls need to be improved. The analysis of both governing bodies leads to processes of optimization in terms of CG, which should improve the company result and ensure sustainable corporate success. Furthermore, «by friendship» hidden weaknesses of both the bodies are revealed.

Very special personal qualities and skills are required from a supervisory body in case of a Turnaround (reorganization and restructuring). Firstly the company has to be strategically repositioned (focus on core competencies, mergers, joint ventures, demergers, sale of companies, divisions or assets), secondly measures to recapitalize the company or to reduce the costs have to be taken, or even the active support of the operational management in governing the company or the finances. In situations like this the supervisory body must show qualities such as decision-making ability, quickness of action, communication strength and the ability to recognize at an early stage when external help is needed.

According to the rules of CG, aspects such as the «collecting» of supervisory offices and the allocation of offices due to personal relationships should finally have had their day. Also should present members of supervisory bodies not simply as a matter of course be proposed for re-election, but only after a close examination of their performance, competencies and benefit for the company. This approach is within the framework of required professionalism of supervisory and governing bodies strictly necessary.

Corporate Governance as Added Value

Value-conscious and future-oriented CG brings important advantages to a company. The resulting added values are mainly due to the relations within the «External Triangle» (Company – corporate management / capital market – stock exchange / stakeholders) and concerns particularly the following:

- The **Creditworthiness** and hence the amount of credit and lending rates are influenced by the bank's rating.
- **Customers and Suppliers** have more confidence in the prospects of the existence of long-term and successful relations.
- In case of **Sale** of a company or a business division, CG is examined as part of the due diligence process (examination of for purchase relevant data), what positively influences the sales price resp. the proceeds.
- In the case of **Liability Lawsuits**, CG will in the future be examined before apportioning any blame.
- The **Stock Corporation Law** will, with regard to CG, in the near future with highest probability be tightened.

Links to Corporate Governance

- www.corpgov.net
Links and literature references on the issue of Corporate Governance.
- www.economiesuisse.ch
«Swiss Code of Best Practice» and CG-recommendations for Swiss companies.
- www.swx.com
Guidelines of the Swiss Stock Exchange (SWX) regarding information duties of CG.
- www.nzz.ch
«NZZ Fokus» about CG (Competence, Controlling and Responsibility in Companies).
- www.corporate-governance-code.de
Access to the German «Corporate Governance Code» of the corresponding Government Commission.