Corporate governance: concepts, situational analysis and reflections on the situations based on theoretical framework of L’Huillier (2014) and Martin, Santos, Dias Filho (2004)


ABSTRACT

The article deals with the subject of Corporate Governance (CG) using qualitative analyses with a descriptive approach. After the Theoretical Framework, there are a number of situations in which organizations are observed with crises and/or successful CG applications. All these situations came from academic sources – making this study more robust, due to the fact that these texts have been normally analyzed by two other researchers linked to the subject. Such situations came from: CAPES Portal (Coordenação de Aperfeiçoamento de Pessoal de Nível Superior, Brazilian governmental organization that provides Scholarships of various degrees); the Portal Theses USP (University of São Paulo, the biggest of Brazil) and Scholar Google. The Method of the article is qualitative and descriptive. In the conclusions, there is a first part, in which we analyze such situations in the light of these authors from Theoretical Background: L’Huillier (2014) and Martin; Santos; Dias Filho (2004), that have concepts useful to analyze companies. The other authors used were associated to construct and help to understand the overview of CG framework. In a second part, there are broader analyses of these CG situations. A lot of fruitful situations were encountered, from different dates, types of organizations and issues and/or verified opportunities. Thus, the higher brightness of this article refers to the Current Theoretical Framework and this set of situations. The article ends with the exposure of its limitations and suggestions for future studies.

Keywords: Corporate Governance; Business Ethics; Business Strategies.

RESUMO

O artigo trata da questão da Governança Corporativa (GC) por meio de análises qualitativas com abordagem descritiva. Após o Quadro Teórico, há uma série de situações nas quais as organizações são observadas com crises e / ou aplicações de CG bem-sucedidas. Todas essas situações vieram de fontes acadêmicas - tornando este estudo mais robusto, devido ao fato de esses textos terem sido normalmente analisados por outros dois pesquisadores ligados ao assunto. Tais situações vieram de:

Keywords: Governança Corporativa; Ética de Empresas; Estratégias.
1 METHODOLOGIC ASPECTS

The aim of this study is to analyze situations of CG in the light of Theoretical Framework. The research was exploratory and descriptive—conducted by a qualitative approach. As for the method, the research was also historic—because bothered to analyze different CG processes of different eras, which are in some of them there was a historical approach also because there was insufficient data to which they had been analyzed over time.

Sauerbroon and Faria (2009) point out the need to return to the use of the historical method to the markets, aiming to contextualize the proper realities of the organizations to the center of studies— from the formulation of the research problem, to the development of the conclusions.

2 THEORETICAL FRAMEWORK

Oliver E. Williamson spotlights the concept of governance in 1979 as a contract control system coming from an obligation. The term "corporate governance" (CG) concerns the tools to approach the interests of minority and controlling shareholders, the shareholders and managers, and the shareholders and creditors. Based on the characteristics among the different levels of CG, the New Market of the BM&FBovespa (main Brazilian Stock Exchange) is the segment where there are more strict rules to follow. Entities that adhere to this listing segment seek higher returns on the trading of its shares, due to the increased attractiveness of investors to their roles, due to lower information asymmetry between controllers, managers and investors, and the largest number of elements that guarantee the rights of minority shareholders. The Brazilian Institute of Corporate Governance was created in 1995 to promote a more transparent management of companies, equity of rights between the partners, and corporate responsibility—having influence in the creation of more CG levels above mentioned in BM&FBovespa (PELLICANI, 2011; RAFFAELLI et al., 2015).
CG is a tool linked to the form of property; the performance of the financial system and capital markets; and the institutionalization of the economy. Thus, that system is based on shareholders and competitive capital markets. It is a mechanism that helps to competitively manage businesses and to measure the effectiveness of management. Good governance creates awards, protection and conflict resolution mechanisms, seeking that the company has its business in line with the objectives expected by the stakeholders (RABELO; SILVEIRA, 1999). CG implies transparency in the management and control tools to ensure confidence regarding the business stakeholders about corporate earnings and for the correct use of existing assets (NASCIMENTO; BIANCHI, 2005).

The pulverization of the businesses capital in the US expanded the power of the Chief Executive Officer (CEO) until the mid-1980s, making complex the task of dealing with CG. This scenario began to change with the greater importance of institutional investors, with a highlight to pension funds (VIEIRA; MENDES, 2006).

The CG is related to the theories of finance, economics, accounting, law, organizational behavior and financial crises. Thus, the adoption of good governance practices has been promoted by governments, and other stakeholders, to improve the capital market and economic development. The growth of companies leads to division between control and ownership, making it impossible to the owner to manage it and finance it. Great shareholders use to be represented in order to follow the management acts; however, part of the CG aims to reduce the asymmetry of information between large and small shareholders. There are external mechanisms linked to the laws of the market in which it operates, to the competition and to the financial market participants (PELLICANI, 2011).

Built-in tools are intended to prevent errors of managers; therefore, it is ideal that there be consensus among the Board of Directors, the large shareholders and the major lenders to defend the interests of shareholders. Large shareholders must receive special attention from the stakeholders. Since the company receives loans, the provision of information to creditors allows lower interest rates. The loans have the logic to prevent the company to only fund itself with equity capital, which has a higher cost (PELLICANI, 2011).

Active administrative councils meet with lower level managers without the presence of Directors. Councils defined the dismissal of Presidents from Baker Hughes (after three years in office) and Coca-Cola (after two years) due to insufficient performance (HITT et al., 2001). The administrative council and the independent audit –evidence of good CG practices– do not ensure that the best decision-making or that the accounting records actually reflects what happened. There are gaps in these tools to cover all the points of view of the firm, increasingly difficult to be judged, and therefore there is risk for bias in these analyzes.
In addition, these indicated practices do not act in the "theater of operations" and find limits to check any eventual damage to the business. So, CG practices should be guided by controls that provide more independent judgment on the part of stakeholders about the business progress. The controller, in its broadest sense, takes center stage in CG (NASCIMENTO; BIANCHI, 2005).

Considering that in collective ownership contexts there are different interests, decision making can become complex and divergent to the company's objectives. Thus, widespread ownership implies the delegation of the monitoring rights from several owners, which influences property standards and how such firms are organized. In delegation contexts, decisions are made by managers appointed to act on behalf of the owners. So a system must govern, coordinate and control the actions of the agents in charge of decision-making (SIQUEIRA; NETO, 2014).

Some kinds of failures that show the importance of CG: a) high fees to directors; b) choice of directors for friendship and not based on their abilities; c) performance awards, which leads the management to focus on short-term actions in prejudice of long-term strategic plans. A conceptual weakness regarding what is CG combined with these three strong motivations results in conflicts in the directors’ activity and also in the Board level (L'HUILIER, 2014).

The various contracts of any company are incomplete, so it is impossible that beforehand all these risks are known. Thus, it is necessary to make decisions after signature of such contracts. To manage and control the execution of such contracts, CG systems shall be set up to prevent some of the agents from using a discretionary basis on the business assets and undermine its value (SIQUEIRA; NETO, 2014).

Advantages of CG codes: a) the process of making recommendations is faster; b) are more nimbly adapted to the economic situation; c) are flexible in relation to the organization's purposes and characteristics; d) accountability of the various stakeholders is easier; e) can do effective tests, at the mold of the rules "comply-or-explain" (MAGNIER, 2014).

According to Moraru and Dumitru (2011), the risks detected by the audit can be:

• Potential risks: the most probable found in all organizations.
• Possible Risks: Potential risks that the business management seeks to minimize through effective actions.
• General risks arise from the audited company: a) risks related to economic conditions; b) risks related to the organization, such as its complexity, quality of management (the correct level in the separation of activities reduces these risks); and c) risks brought in by the use of reliable and efficient systems.
• Risks due to business operations.
• Risks related to Information Technology (IT): the collection and data processing can prevent, detect and even eliminate failures.

• Risks related to the audit procedures: these actions are based on the experience and sampling methods of the auditors, which involves difficult measurement methods.

According to Martin, Santos and Dias Filho (2004), there are three categories of business risks: property, process and behavioral. The first is linked to the loss of assets, and may be protected by procedures related to their custody. The second stems from the inappropriate use of the assets and are avoided by performing controls, and by the use of IT tools. The third category is related to Human Resources, which forms the basis of management. In this way, one can infer that corporate management at a conjectural crisis situation depends fundamentally of Human Resources, duly endowed with the IT and performance controls tools.

Understand and control the risks integrates economic activity; manage the risk can be the difference between success and failure. One research on risk management in e-commerce was applied in February/2015 to 325 professionals by Google Docs from which 62 responded. Of these, 44 were considered valid; in turn, only 27 were seized for acting in electronic commerce and also risk management. These people worked for an average of 6.9 years in e-commerce companies, and for 7.7 years in risk management. The following results were found, in regard to consideration of the risks of this business sector: a) payment by credit cards (99.0%); b) payments but can be reversed (98.8%); c) products in stock: from the availability to the correct storage (96.9%); d) profitability (96.0%); e) deliver the product, depending on the size of the country (94.3%); f) product diversion, theft (94.1%); g) complaints and social networking sites (92.7%); h) financial controls, such as SPC/Serasa (Serviço de Proteção ao Crédito/Serasa – the biggest Brazilian credit bureau, owned by Experian), because customer history can generate bad debt (91.9%); i) any conflicting information in the virtual stores (91.7%); j) site statistics (90.8%); k) to know the products of higher sales (89.4%); l) risks relating to computer platform (89.1%); m) risks of ads: in terms of consumer protection codes, there can be no clarity of communication failure (87.1%); n) withdrawal of purchases (86.9%); o) purchases not completed, usually due to lack of credit (84.7%); p) trends of the digital markets continuously evolving (83.2%); q) industry trends where it operates (82.3%); r) development of new technologies (82.2%); s) availability of efficient logistics service providers (81.1%); t) sales results from the competition (80.7%). Thus, there are financial, logistical and marketing risks (WINANDY, 2016).

Três et al. (2014), conducted a survey based on Economática (a Brazilian consulting firm specialized in publicly traded companies analysis) secondary data in a sample of 73 Brazilian companies; 41 family-controlled and 32 unfamiliar control, analyzing a full 16-year period between
1997 and 2012. One result refers to the average time of the President’s mandate: a) in the family-controlled companies, the average was 16.8 years, and the average age of these companies was 60.2 years; b) in the unfamiliar control, the average term was 7.2 years, and in them there was an average age of 57.0 years.

3 COMPARISON BETWEEN CG SYSTEMS FROM SEVERAL COUNTRIES

CG includes several control tools, internal and external, to mitigate the costs of agency managers. The dominant literature on the differences between the CG systems normally compares companies in different countries to assess whether the difference in investor protection in different legal environments brings greater concentration of ownership structure or best practice (SILVEIRA; FAMÁ, 2005). One of the goals of CG is to take into account the purposes of all company’s stakeholders, i.e., create value for all of them. Thus, as already happens in Germany and United Kingdom, the codes need to consider the interests of all stakeholders (MAGNIER, 2014).

In Germany, companies with more than 2,000 people need to rely on an Board of Director with two levels, separating the supervision from other management tasks, such as the appointment of new board members. At the first level, there are employee representatives, syndicates and shareholders. In Germany and Japan, the big banks are vital to the financing of public companies; in the first case, these banks tend to be the largest shareholders. In Japan, the bank that holds the largest number of shares up to a maximum of 5%, and the higher volume of credit, financially advises the company and monitors its managers; a consortium of banks may hold up to 40% of the capital of a public company. In the US the CG system is based on the stock market (HITT et al., 2001). Other unique point existing in Germany is the works council. It’s different from the syndicates – allowed to represent the Human Resources in conflicts, searching for more rights to them. Works council acts jointly to management, bringing results to the employees and also to the company – because the loyalty of Human Resources is enhanced. Management can empower works council to be active in a lot of decisions, playing a real co-managerial role (DILL; JIRJAHN, 2017).

This system of CG widely adopted in US brings an inevitable short-term focus. The primacy system stakeholder prevails in Germany, demanding vision of broader spectrum of managers. Also, if a long-term approach is necessary, taking account of the interests of workers, the environment, creditors, and ethical aspects. Even in the UK, where legislation is more oriented to the stakeholders: the Companies Act, 2006, in section 172 sets out the rules to act in the interest of a British company. The Act points out that it is necessary to promote the success of the company, for the benefit of its members as a whole, with a roll very similar to what was presented above as the German CG goals (MAGNIER, 2014).
In Germany, there is increasing pressure from shareholders for greater transparency in business accounts, what has led to focus on core businesses and dispose of diversified activities. For example: a) Siemens had sold one-seventh of its operations; and b) Mannesmann had focused on its mobile phone business (HITT et al., 2001).

The Glass-Steagall Act, part of the legal framework of the Banking Act of the U.S. in 1933, prohibited investment banks also act as deposit banks or hold the direction of commercial banks (HILT, 2014). In 2000, the financial services industry in U.S. was deregulated by Financial Modernization Act, creating financial holding companies, with license to engage in: loan making and deposit taking, insurance underwriting and other insurance activities, merchant banking, investment banking, brokerage services, and other securities activities (YEAGER et al., 2004). Japanese banks had some alignment with the U.S., as in 1947 Japan launched laws similar to the Glass-Steagall. But Japanese banks more often jumped the "Chinese wall", as the guarantee and subscription of debentures and equity in the companies that received their loans (CANUTO, 1999).

4 CG RELATED TO MERGERS AND ACQUISITIONS (M&A)

Summarizing a lot of studies, Monteiro et al. (2014) points out these relations between CG and M&A:

a) Firms with poor financial performance are more likely to undergo a substitution of managers – especially in sectors not affected by economic crisis.

b) Hostile takeovers tend to occur in firms with poor financial performance, members of problematic sectors.

c) Friendly takeovers aren’t associated with poor financial performance or specific sectors, but with the search of synergies.

d) The board of directors must have power to change the directors, when there is a poor financial performance. Without this possibility, hostile takeovers act like an external CG mechanism, correcting corporate managers.

e) Defensive attitudes from managers against takeovers are against the interests of the owners of the target firm.

Armour et al. (2003) agree with the role of hostile takeovers as devices to realign shareholders interests with managers’. They add that this tool is specially useful when there are mechanisms against takeovers that can improve company’s performance.
5 GC AND SUSTAINABLE DEVELOPMENT

The CG can lead to sustainable economic development, better performance of firms; hence, the value of experienced directors and governance system leads to minimize the risk of failures. The CG must provide equal treatment to all shareholders; leaders must be accountable for their actions in a transparent manner - so that grows the confidence of all stakeholders in the business (ECKERT et al., 2014).

In studies with the Brazilian south companies Fras-le, Lupatech, Marcopolo, Petenatti, Randon, RGE and Unicasa, it was seen that, although the companies show be aware that the realization of their activities cause damage and generate consequences to the environment, generally disclose some information descriptively, report certifications, environmental practices, investment, and environmental education programs. Nevertheless, there is little information about repairs to environmental damage, environmental liabilities and accounting practices adopted (ECKERT et al., 2014).

In Brazil, there are no rules on environmental disclosure; there are some guidelines and organ recommendations that influence the preparation and disclosure of financial statements: the Federal Accounting Council, the Institute of Independent Auditors of Brazil, the CVM (Comissão de Valores Mobiliários – Brazilian institution similar to SEC) and the Accounting Pronouncements Committee. The main objective of the Social Report is to point out the social and environmental information demonstrating greater transparency to all stakeholders. It is understood by environmental policies, the declaration of an organization where it exposes its intentions in relation to its environmental performance (ECKERT et al., 2014).

6 CG IN COOPERATIVES

Laws require certain level of governance in cooperatives, such as tax advice and administration. Thus, there is a risk that does not serve to enhance nor the efficiency of the organization, nor the wealth of associates (SIQUEIRA; NETO, 2014).

Sousa Neto and Reis (2015), did a survey of a credit cooperative, from Varginha (MG). It is the second largest Rural Credit Cooperative of that State, with 15 branches and more than 10,000 members. Ten managers involved in CG were interviewed. Results: after the implementation of CG the results were: a) participation of all to ensure the institutional support of the project on the principles of the cooperative system; c) avoid conflicts of interest; d) more power to the managers; e) easier access to management information; and f) the creation of an area focused on compliance (in a form of actions to attain the standards of the Cooperative and to detect possible problems).

Siqueira and Neto (2014) researched CG in a group of cooperatives, with 27 responses:
• Of the 27 cooperatives that answered the questionnaire, all stated that their fiscal council meets to analyze the financial statements.

• About the role of the Fiscal Council in decision-making and approval of cooperative strategies, 11 units said that their councils are active in making investment decisions and 10 stated that their tax boards also work on in the approval of the organization's strategies. Still, 16 cooperatives reported that their fiscal councils meet separately to analyze the actions of the Administrative Board, performing all that preventively.

• About the external audit, nine cooperatives reported that do not adopt such control. By law of cooperatives, it is possible not to hire independent audit. Of the eighteen that have external audit, five said they audit services are contracted by the Fiscal Council or at least with their check in the hiring process. Thirteen cooperatives that have external audit reported that its Fiscal Council monitors the work of auditors, and 100% of these also pointed out that the Fiscal Council uses the information generated by the auditors to give its opinion on the financial statements to be presented to the general meeting.

• Four of the 27 cooperatives have an audit committee.

• Only seven of the 27 have internal audit and only four have stated that this organization meets with the Fiscal Council.

• Seven cooperatives hire other types of audits such as processes, control or management. In four cooperatives, there are three different types of audit.

• On 21 cooperatives, the fiscal council meets monthly. In other cooperatives, meetings vary from weekly to every six months.

7 SITUATIONS OF CG CRISIS IN COMPANIES FROM DIFFERENT SECTORS

1) The construction of the US transcontinental railways in the nineteenth century was followed by many CG issues, in times that were the country's largest companies. For example, the directors of the Union Pacific created its own construction company (Crédit Mobilier of America), which received lucrative contracts to build the line. Furthermore, there was share distribution of this construction company to important Congressmen (HILT, 2014).

2) Due to the instability of Howard Hughes and the departure of several executives at Hughes Aircraft in 1953, the Secretary of the Air Force Harold Talbott had a meeting with Hughes and made clear that the Air Force would cancel their orders with the company. Talbott gave two choices: company’s sale or the indication of its directors by Government, staying Hughes only as shareholder. Three months after this meeting, Hughes Aircraft’s shares were given to Howard Hughes Medical Institute – a philanthropic organization – and Howard Hughes no longer ran the

3) In 1983, Bernard Ebbers led a group that launched a provider of long-distance communication services, which went public in 1989. In 1998 it merged with MCI in a deal worth 40 billion. Shares rose to the peak of US$ 64.51 in June/1999. In 1998’ Brazilian privatization auction, WorldCom acquired Embratel, endowed with a network of fiber optics and four satellites. At the beginning of the new management at Embratel, the staff of the sales area of this latter grew from 100-200 people to over 1,500 professionals, because the old vision of the company, as part of the State, was monopolistic and focused on products/services. WorldCom became the second largest company in the North American market for long-distance calls, leader in the creation and delivery of IT services. It was the pioneer in bringing long-distance services with a local wireless telephony, Internet, data transmission, paging, teleconferencing and international telecommunications services. On the Internet, owned global product and service offerings (PEREIRA et al., 2002; SOLTANI, 2014). In October/1999 WorldCom tried to merge with Sprint in a business valued to US$ 129 billion, which was vetoed by the Department of Justice.

At the same time, became to public knowledge a lot of debts and rising costs, leading to falling stock market and revenues. In 2002, it requested bankruptcy protection, admitting US$ 3.8 billion improperly accounted as expenses – what contribute to inflate profits and cash flow for 15 months. At the time of bankruptcy, WorldCom had more than US$ 100 billion in assets, being the largest fall in corporate history so far. SEC imposed fines of US$ 2.25 billion to WorldCom, reduced in bankruptcy court to 750 million. Four executives were banned from acting in certain positions of public companies. The President and five other executives had total penalties of 32.4 years and had to repay US$ 49.2 million. An agreement in 2005 added US$ 6.8 billion in penalties paid by the banks that worked with WorldCom (FOX, 2003; SOLTANI, 2014).

4) In 1989, Parmalat was in crisis, with bank debt of US$ 400 million, US$ 169 million in the short term. An attempt by Kraft Foods to acquire Parmalat in the previous year had been rejected. The controlling family resolved their 1989’s problems by creating a new holding company and complex maneuvers to expand its control of the company, with support from a bank loan that was not beneficial to all shareholders; actually it was a pyramidal structure to maintain control in family hands and avoid any external control. This capital structure lasted until the collapse of the company and allowed the entry of foreign funds – launching debt securities by 44 times, amounting to €11 billion, from 1990 to 2003. In this period, Parmalat acquired more than 100 companies. In 2002, Parmalat was Italy’s largest food company and the eighth largest in the world, with 136
subsidiaries and 120 plants in more than 30 countries. However, these acquisitions become very
difficult to bring measure of the real profitability of Parmalat. In addition, investors worried about
debt of €6 billion and with €4 billion of stated cash (BUCHANAN; YANG, 2005).

According to Dibra (2016), the breakdown of Parmalat began in November 2003, when
auditors questioned profits of the firm in derivatives. After evidence of serious accounting
problems, its founder, Calisto Tanzi, resigned on 15/12/2003. A week later, the country's auditors
said that Parmalat had used dozens of offshore companies that pointed not existing assets and high
debt; also, they said that Parmalat falsified accounting for around 15 years. Finally, banks, auditing
firms and investors, have failed to question why a group that appeared to hold many cash funds did
such high loans.

On 08/12/2003 Parmalat reported delinquency in the payment of €500 million, which led
Standard & Poors to assess the bonds of the company as "junk". On 19/12/2003, Bank of America
announced a document –from an affiliate of Parmalat in Cayman Islands- declaring to hold €3.9
billion, in one of its agencies, was false. So on 24/12/2003, Parmalat requested bankruptcy
protection, equally followed by the family holding company. The breakdown of Parmalat was the
largest in Europe. On 26/01/2004, PricewaterhouseCoopers LLP pointed to €14 billion debt in
Parmalat, including €13 billion that had never been reported. Erico Bondi, CEO appointed by the
government, said that Parmalat was technically already insolvent since 1998 (BUCHANAN;
YANG, 2005).

Tanzi has admitted that at least €500 million were diverted from 1990 to 2003 to Parmatour,
owned by his daughter, which was only one of many companies participating in the pyramidal
control group. The dairy industry has low profit margins being, therefore, a serious CG problem the
fact that the family have drained so many resources themselves, to the detriment of all other
stakeholders (BUCHANAN; YANG, 2005).

An interesting detail: the profit margins of Parmalat revolved 3% per year, while the industry had
averaged 11% per year –which leads to questions about the market analysts, about banks that
bought bonds in such large-scale from a technically bankrupt company since 1998. Another
problem: the Board of Directors, as published in 2003, held 13 members, four of the family, four
executives of the group, two friends of Tanzi, a former partner, a lawyer and an accountant. In
2010, Calisto Tanzi was guilty of fraudulent bankruptcy and sentenced to 18 years. Other
executives were also sentenced to jail and had to pay €2 billion to the group and compensate the
other shareholders (BUCHANAN; YANG, 2005; SOLTANI, 2014).

5) The French Vivendi has built a media group with revenues of €41.6 billion and profits of
€2.3 billion in 1999. The company said that their balance sheets was in good shape despite the
global crisis, and paid a dividend of €1/share in May/2002. However, the company had a negative cash flow – admitted in July/2002. That is, the positive situation of exchanges in the 1990s generated positive situations to shareholders and company management. But with the end of the market boom, in mid-1999, President Jean-Marie Messier inflated profits, still aiming to get good results for himself, deceiving the market. In 2001, were announced surprisingly losses of €13.6 billion. In 2002 the losses rose to €23 billion and the debts were €12.3 billion. The value of the company fell 70% and the Board fired Messier. He had used resources from Vivendi to buy an apartment for more than US$ 17 million in New York and maintain a luxurious lifestyle, as well to their family. So, Messier has been considered by an example of high selfishness and despotism (SOLTANI, 2014).

6) Cor Boonstra was hired by Philips in 1996. In a few years, discontinued or sold 40 businesses, trying to focus on the remaining 80, with 234,000 employees. Philips even strengthened some of its acquisitions with, such as medical equipment. But the group still continues with poor results. For example: Sony generates 44% more revenue than Philips, with less 59,000 employees. The difficulties of undertaking a better restructuring plan at Philips can partly be explained by the CG practices of the group, managed by a complex set of standards from Philips Foundation, which includes most of the company's directors and gives them power over the Board. So the dissatisfaction of the investors just can be shown by the sale of company shares (HITT et al., 2001).

8 CG PROBLEMATIC SITUATIONS IN FINANCIAL INSTITUTIONS

1) In 1826, several insurance companies of New York, directed by executives without political connections that would allow them to act as banks, performed typical operations of the banking system, such as the issuance of instruments to finance their loans. It came to light that some of the most important and well-paid industry executives have not been in any meeting of the Council for years and did not perform any supervisory activity on the directors. There were a crisis, which undermined stock prices and increased the financial risks. A New York newspaper reported that insurers’ speculators did fraudulent deals involving subsidiaries to achieve its growing obligations. When one of these companies became bankrupt, there was a panic in the entire financial sector, with several breaks (HILT, 2014).

2) In 1930, Chase bought the Equitable Trust Company, a concern of which the Rockefeller family owned about 10% since the beginning of the century. The crash of the Stock Exchange coincided with the death of the president of Equitable; the family feared for their future, putting in the Presidency an uncle of David Rockefeller, and making a merger with Chase, who created the world's largest bank at the time. However, the Chairman of the Board, Albert Wiggin, made loans
in favor of himself and his partners, and earned US$ 10 million selling shares of Chase during the crash of the Stock Exchange (ROCKEFELLER, 2003).

3) BPL, Banca Popolare di Lodi, was the first Italian bank with cooperative style, created in 1864. In 1987, it was still a local bank, with 37 branches. From 1996 to 2004 invested €5.5 billion in the acquisition of nine banks and rose from 25th to 10th position among the biggest country's banks. In 1998, it went public on the stock exchange. BPL reached 970 branches in 2004, when he planned to buy Banca Antonveneta, but ABN Amro also tried to buy that bank to enter Italy’s market. On 30/04/2005, at the annual meeting of Antonveneta, BPL and its partners showed its list of directors, because they had bought a sufficient number of shares. The CONSOB [Italian organization equivalent to the SEC] declared this purchase illegal, since there was no public offering of shares to the minority shareholders that have the right to sell. CONSOB led to: a) annulment of the cited annual meeting; b) the President of the Central Bank of Italy authorized the BPI (Banca Popolare Italiana, the new name of the BPL) to launch offer to the minority on 11/07/2005 at the same price set by ABN Amro; c) on 02/08/2005 the CEO of BPI was suspended for two months and the shares that BPI had bought from Antonveneta were taken over by the Justice which saw illegality in the purchase; d) the CEO of BPI was arrested; e) the President of the Italian Central Bank was fired on charges of supporting the BPL in this attempt to buy Antonveneta; f) ABN Amro received the green light to buy Antonveneta after buying the shares that BPI had bought; g) BPI had €700 million loss in that year. In 2005 became public that the CEO of BPI had committed fraud in the attempt to buy Antonveneta and in others acquisitions of years before, being convicted in December/2011 to 3.5 years in prison for: falsifying balance sheets, handling in stock, creating offshore companies to hide revenue from illegal operations. CONSOB forced BPL to republish their balance sheets 2004, which came out profits from €171.6 million to losses of €23.3 million (ZONE et al., 2013).

9 FATAL CG CRISIS IN THE US – ENRON

Kenneth Lee Lay obtained in 1965 its Masters in Economics, and began working at Humble Oil; in his time in that company obtained a PhD in Economics. In 1968 he joined the Naval Officer Candidate School, and quickly in the Pentagon. In 1971 he began to work at the Federal Power Commission. In 1973, he joined Florida Gas, as corporate development vice president. In 1979, the company was purchased by the Continental Group; after two years, Lay was part of the Transco pipeline company with the largest share of the Houston market in New Jersey and New York. In Transco he reached the positions of President and Chief Operating Officer. The long distance gas transportation business is more complex than the pipelines, since the gas needs to be pumped; plus
it was a very regulated business. In 1978, the gas sector was deregulated, cutting the prices by half.

In 1984, Lay assumes the positions of CEO and Chairman in Houston Natural Gas, which started to buy/sell with weekly prices, reducing the share of long-term traditional contracts. Finally, the gas market has become a commodity. In 1984, Houston Natural paid US$ 1.2 billion for two pipeline systems, doubling in size. In 1985, the competitor InterNorth bought Houston Natural for US$ 2.3 billion. The new company had US$ 12.1 billion in assets, 37,000 miles of pipelines and 15,000 workers, the second of the US industry. Lay took the maximum points of the new company, renamed Enron in February/1986. Traders from Enron Oil exceeded its limits and even forwarded false values to company headquarters, hoping to resolve the situation; the worst happened: losses of US$ 142 million, and Enron did not bring to public the problems. Enron Oil & Gas was active in gas exploration, working in the US, Egypt, Syria, Malaysia and Ecuador (FOX, 2003).

In 1980s, Enron focused on the deregulated gas market. A subsidiary was the first of the pipeline industry to only transport gas, without selling it. By 1990, the spot market has accounted for 75% of gas sales, increasing price volatility. Several mechanisms were created, such as futures and derivatives, making the gas market almost a copy of stock market. In 1990, Enron Finance hired Jeffrey Skilling as chief executive. In January/1991, the accounts of the company began to use a technique of the financial market, yet not used in other sectors, "mark-to-market", which accounts for contracts in the future market at current prices, already launching their profits. This technique emphasizes the short term, even if there were supply contracts for twenty years (FOX, 2003).


In 1993, Enron invested US$ 1.2 billion in a gas thermal power plant in England (Teesside), with long-term contract for a plant of ICI; problems arose in the supply contract that caused damage to Enron US$ 675 million in 1997. Enron acquired a system of pipelines in Argentina for US$ 561 million and invested in a gas thermal power in Guatemala. Until 1995, came investments in:
pipelines in Colombia, gas thermal power plants in the Dominican Republic and China. The company had big losses from India trying to provide energy (FOX, 2003).

In October/1994, Enron sold 500MW of electricity/hour; the volatility of this market is the double of that occurs in the gas sector, by the inability to be stored, Enron saw an opportunity, working in the arbitration between buyers and sellers of energy (FOX, 2003).

In 1997, the share of sales of Enron Energy Services to the California Public Employees’ Retirement System, the largest US pension fund, was the first of Special Purpose Entities (SPEs) created by Enron and run by some of its executives. There was enrichment of Enron executives who ran such SPEs on the sidelines of the Enron’s interests. Such employees were benefited from having simultaneously sensitive data of SPEs and Enron. According to the SEC, an SPE must be controlled by foreign investors, otherwise it would be a subsidiary. On 30/06/1999, Enron's Board of Directors formalized the commitment to the creation of SPEs, admitting years later that had liberated the interest conflict’s practice. That is, such SPEs were not created “in the shadows” but with permission from Enron’s highest authority. Thus, was forgotten the role of the Board of Directors to monitor the executive offices and to protect the interests of investors, and there was given unlimited power to some executives. Some conflict of interests: a) Enron’s executives benefited from that company and SPEs data, profiting for themselves (for example, Andrew Fastow, Enron's chief financial officer, received US$ 4.5 million in 2000, 180 times more the US$ 25,000 invested in a SPE); b) such SPEs were hidden of Enron accounting; c) banks and individuals were invited by Enron's financial personnel to join SPEs; d) there were different banks selling equal stakes of the same SPE to Enron by differences of up to ten times in value, showing that Enron directors benefited to manage such businesses; e) some of these SPEs relied on Enron stock as collateral for an obligation from "third parties" to Enron itself; and f)there were managers of the banks that sold and bought back shares in SPEs with huge profits for Enron, which had arranged the scheme – this became public on 27/06/2002, when the US Court accused of fraud three former employees of NatWest bank. In 1997, Lay fees were set at US$ 1,675,000/year, plus the option to purchase 950,000 shares of the company if their valuation surpassed 10%/year. In February/1997 Lay already held 1.49% of the company. This practice encouraged to take high risks (FOX, 2003; DIBRA, 2016).

The responsible for the international area, Rebecca Mark, competed with Jeffrey, and took too bold decisions: Enron participated in the Brazil-Bolivia pipeline, invested in power plants in Turkey, Italy and Poland. In 1998 acquired the British Wessex Water for US$ 2.2 billion. The analysts did not like this diversification in an area of intensive capital, and Enron’s shares began to fall. In 1999, it acquired the Canadian Philip Utilities Management, which designed and built water
treatment plants and sewage, for US$ 120 million. Also in 1999 it acquired 49.9% of the concession of water and sewage of Cancun for US$ 38.5 million and a concession in Buenos Aires, with 2 million customers, for US$ 439 million, with high default rates. Rebecca resigned the presidency of Enron’s water unit and the Enron Board in August/2000. In 2001 Enron took US$ 326 million of losses in the Argentine unit of water (FOX, 2003).

When buying Portland General in 1997, it had a fiber optic network. Enron began to sell excess capacity broadband. With two partners, Enron built 1.620km of more lines, from Los Angeles to Portland. In 1997, Enron bought Optec to link corporate customers to its fiber optic network. In the second quarter/2001, Enron issued US$ 102 million of losses in this unit. Up around 2000, Enron acquired the Garden State Paper, recycler of paper, for US$ 72 million. In 2000, acquired for US$ 413 million the metals trading MG, active in 14 countries. This year was created EnronCredit.com, to fund customers of EnronOnline. The credit granting of Enron was its largest business, with US$ 500 million/day in commodities. The price of the company's stock rose from US$ 43.44 at the beginning of 2000 to US$ 64.50 in June. Enron grew from US$ 5.9 billion in revenues in 1987 to US$ 13.3 billion in 1996, US$ 40.1 billion in 1999 and US$ 100.8 billion in 2000. But all of its business were accounted as revenues, not only the margins of buying/selling contracts –as the sector of brokerage uses to do (FOX, 2003).

From 1990 to 2000, Enron changed from a pipeline company to a derivative trading firm. Along the way, there were many wrong strategic decisions, lack of consistency and consensus. Early in this period, the strategy was to Lay: build the first global integrated natural gas company. Due to the physical difficulties of transporting and selling natural gas, such a view was already a source of value creation. But with Jefffrey as President and CEO since January/1997, Enron lost focus, turning into a trading company based on knowledge, entering new markets, such as electricity and water, capital-intensive business. The Jeff actions to join electricity and broadband needed that deregulation had taken place long before. The capital-intensive assets showed low profitability, with a race for growth, only point in common between Lay and Jeffrey (GRANT; VISCONTI, 2006).

In August/2001, the day after Jeffreys’s resignation, the shares that had a peak of US$ 90, fell to US$ 36.85. Even Lay sold US$ 101 million in shares between February/1999 and July/2001, in over a hundred different days. Other executives also sold shares just before the tragic end. In July/2001, Fastow sold his shares in the SPE in which it participated, leading the market to doubt the existence of conflicts of interest in the company.In august/2001, Arthur Andersen, Enron’s external auditor, realized that had made a mistake: in one complex transaction of one SPE, was accounted as an asset nothing less than US$ 1.2 billion that was a debt. In 17/08/20101, The Wall
Street Journal detailed the SPEs schemes. Company’s debt was US$ 13 billion plus US$ 3.9 billion due in short term, and there were not being accounted. In October/2001, Enron released that their SPEs reduced by US$ 1.2 billion shareholder’s value, bringing the panic. On 24/10/2001, Enron dismissed Fastow; causing a quickly disappearing of credit, so that in a few days EnronOnline almost cease to operate. The shares dropped to US$ 6 on 06/11/2001 and to US$ 0.61 at the end of November/2001. Another trigger to the breakdown of Enron was the refusal of a competitor in acquiring it, leading many trading companies to stop doing business with it (FOX, 2003; SWARTZ; WATKINS, 2003; DIBRA, 2016).

In August/2001, SEC punished Arthur Andersen for their inadequate work. In October/2001, Andersen began destroying documents, publicly admitting this practice on 17/01/2002, whit led to the criminal conviction for obstruction of justice and the prohibition by the SEC to audit public companies. Andersen had already lost more than half of its staff and most of this customers. Enron sought bankruptcy on 12/02/2001, in what was the largest in history until then: with assets of US$ 62 billion, 36 offshore subsidiaries and more than 2,800 SPEs. Thousands of layoffs took place, followed by sales of assets (FOX, 2003).

The collapse of Enron was extremaly expensive: more than US$ 500 million in legal fees, plus US$ 87 million in legal fees specialized in bankruptcies and US$ 76 million to an accounting firm also focused on bankruptcies. The Public Company Accounting Reform and Investor Protection Act (Sarbanes-Oxley Act), of 2002, was partly a response to Enron’s problems. In 2003, Enron’s bankruptcy amounted to US$ 67 billion with only US$ 12 billion in assets; lenders received in average US$ 0.144 to US$ 1.00 due. Three banks, JP Morgan Chase, Citigroup and Merryll Lynch had to pay US$ 366 million in fines due to their roles in Enron’s break (SWARTZ; WATKINS, 2003; YEAGER et al., 2004).

10 FATAL CG CRISIS IN BRAZIL – SADIA

By the end of 2008, when came the obligation to point out the financial statements in accordance with accounting changes introduced by Law 11.638/2007, the accounting rules for derivatives in Brazil were not defined, and there was only an old Instruction (CVM number 235 of 23/03/1995) on the subject. But, despite being common, to exporting companies, to use foreign exchange derivatives to avoid losses in export revenues, the volume of Sadia's operations in 2008 exceeded the protection threshold, featuring speculation: the company announced to the market that on 09/25/2008 the company's value fell from R$ 7.7 billion (2nd quarter/2008) to R$ 2.7 billion at the end of 2008. Sadia’s crisis has generated an opportunity of acquisition by the rival Perdigão, justified because Sadia’s financial problems were not impacting neither on its customers nor on its
suppliers. In addition, in overseas, Perdigão worked in commodities, while Sadia had a strong brand, charging up to 15% more for their products. Perdigão, on the other hand, held a leaner cost structure (CORDEIRO, 2013).

Sadia created a better management for the internal environment than Perdigão, but both found it difficult to compete in the new climate of openness, and problems faced in the 1990s (FLECK; LUDKEVITCH, 2007).

Perdigão became very diversified, working in supermarkets, sawmills, hotels, gas stations, transport, forestry and others. In the 1970s, the food business has become the most important, but only in 1980 that started selling other assets. In the 1980s, it grew 20% per year through acquisitions and indebtedness; but the absorption of the acquired companies was not efficient because the administrative costs were not diluted, ie not created the expected synergies from Mergers and Acquisitions. Perdigão’s professional management was established in 1994, when a number of pension funds, led by WEG bought the nearly bankrupt Perdigão from its founding family. WEG was founded in 1961 producing electric motors. After reaching the Latin American leadership in the sector, in the 1980s it entered new sectors: equipments, transformers, chemistry (1980), drives (1981) and automation (1986); then it installed overseas factories. WEG was one of the three largest manufacturers of industrial electric motors in the world. From 1994 to 2008, Perdigão multiplied by 26 times its revenue and by 35 times its market value. By 2007 Perdigão had always been less than Sadia. In 2007, Perdigão began to work with milk’s products, buying Eleva, and surpassing its rival. Thus, the acquisition of Sadia would account for Perdigão more than just doubled in size, and would praise its directors. In 2006, Sadia tried unsuccessfully to acquire Perdigão; so, the roles were ironically reversed in a short time. On 08/06/2009, Sadia announced the sale of its Russia factory, for US$ 77.5 million, to mitigate its cash shortfall after losing more than R$ 700 million with derivatives. The next day, the two companies registered the merger at CADE(Conselho Administrativo de Defesa Econômica –institution responsible for judging acquisitions in Brazil to prevent the formation of cartels). In the operation, Sadia shareholders received 32% of the resulting company (SCHIAVINI et al., 2011; CORDEIRO, 2013).

11 CG PRACTICES IN GOVERNMENT ORGANIZATIONS

1) Campanário et al., (2014) studied the 2006 implementation of CG practices in the centenary IPT (Instituto de Pesquisas Tecnológicas). Since 1976, the management of IPT was in charge to the Executive Board, who, in turn, reported to an Advisory Council. This just checked the technical strategy, approved the accounts and prepared lists of three names of the Executive Board at the choice of the State’s Governor. People from military, industrial, Academy and other areas of
the government formed the Advisory Council, a technical body. In 2006, it was created the Administrative Council, with changes in the Executive Board and the Advisory Council, which received only a consultative role. The Board kept operational issues. In addition, a Fiscal Council was set up to update reports about the accounting and patrimonial panorama, to the independent audit and to the internal audit. The accounting practices were prescribed to meet the standards of the São Paulo government, which allow access to facilities, data and files of the board of directors by the Council of Administration and the Fiscal Council. Operations such as investment and service contracts also pass by the State Court of Auditors. The Fiscal Council presented a good performance, with the exception of an attempt to hire an independent auditing company. Members of the Administrative Board came from posts in the Government, without expertise in the performance of IPT, which decisions therefore worsened.

2) Law No. 12.490/2011 restructured “Empresa de Correios e Telégrafos”, ECT, state-owned concern in charge of postal service. New mechanisms to control the organization were created: an Administrative Council, an Executive Committee (formed by the President and eight Vice-Presidents) and a Fiscal Council, focusing on the desire for improvements in corporate governance. It was also created a General Assembly as the highest arm of decision-making. The new law allows the creation of subsidiaries and the acquisition of other companies (TEIXEIRA, 2014).

12 CONCLUSIONS

1) Analysis of situations in the light of the Theoretical References’ fails:

1.1) (L'HUILLIER, 2014):

a) High fees to directors: Parmalat, Vivendi, Enron.

b) Choice of executives for relationship and not for their skills: Parmalat, Philips.

c) Awards to the short-term actions, harming broader strategy: WorldCom, Vivendi, Enron.

1.2) Types of business risks (MARTIN; SANTOS; DIAS FILHO, 2004):

Property: US transcontinental railways (interest conflicts), Enron, Parmalat, WorldCom, Vivendi, BPL, Sadia.

Process: Philips, insurance companies of New York in 1826, Hughes Aircraft (before corrective measures “suggested” by Talbott), Enron (ineffective Board of Directors, distorted accounting practices, SPEs), BPL.

Behavior: Enron (extreme competition among its personnel, fraud, interest of executives above company’s goals), Parmalat, WorldCom, Vivendi, BPL.

2) The situations brought by the academic literature in the spot of Theoretical Framework also could show some conclusions:
The studies about Cooperatives, as Varginha, with ten thousand rural members, show that the capillarity of CG processes can be possible.

Hughes Aircraft shows an important regulation from a Govern –based on national security– what ensured its contracts and its growth.

The complex business network that “controlled” Parmalat hampered the analysis of their statements, and allowed securities releases by dozens of times; However, financial analysts and banks have their share of blame to release significant resources to this firm; it seems that the custom to be well evaluated and large (something like "too big to fail" or "herd effect") led the financial markets to ignore high risks.

The problems of WorldCom and Vivendi seem the simplest type: improper accounting entries to inflate its results, highlighting the failures of CG systems to detect the huge "hidden" values from the stakeholders. Chase is a similar situation, showing the need for regulation in the financial sector, due to their importance in dealing with public resources.

Philips illustrates the CG systems problems inadequate to current standards of a globally competitive market.

The problems of insurance companies of New York in 1826 point out the importance of controls over such companies, using public resources, and hence needs solidity.

BPL illustrates a sinister set of problems: illegal practices in a financial institution, which received inadequate support of the capital market authority in an acquisition of a rival bank. It is up to praise the public system, which acted in the protection of minority and punishing those involved in such practices.

Enron was the result of deregulation, despite making some innovations. But it didn’t survived, because there were high-risk in a lot of businesses and the absence of compliance – showed in the incredible situations so-called SPEs. This, unfortunately, did not avoid it from having an astonishing admiration in the media (elected from 1996 to 2001 as the most innovative company in the US by Fortune magazine) and among Wall Street analysts (FOX, 2003), whose ratings were not consistent with the reality, because for years they were misinformed about their accounting: already in 1987 there were major problems in trading company Enron Oil, which were hidden from the public (FOX, 2003). It is also unbelievable the criteria chosen by Fortune to assert that by six years Enron was more innovative than Apple, Amazon or eBay, for example.

The collapse of Enron was not due to lack of credit; after all, if there were assets, they would have some production and revenue –sources of intrinsic value. The evaporation of Enron means that its derivatives were fragile. Enron and WorldCom show authoritarianism of management and accounting with hidden fraud. One example of how the most honest accounting can be misleading:
the depreciation brings numerous possibilities of unreal accounting entries as business assets have become obsolete (GREENSPAN, 2007).

Analyses of Grant and Visconti (2006) on the dual strategies of Enron are timely, raising the question of how Wall Street and Fortune could be evaluating so well that "monster". In addition, capital-intensive affairs had low profitability, something known for Wall Street. The authors also show the additional risk of Jeffrey leading the firm to regulated sectors, such as broadband and electricity, becoming infeasible to Enron receive the image of "company focused on knowledge".

The most serious illegal practices of Enron are the thousands of SPEs and their functioning and its “innovative accounting” (FOX, 2003). Moreover, growth “at any cost” led to the assumption of unacceptable risks, as can be seen in its failures in India, England, and in Buenos Aires. Vogel (2011) states that the deregulation of telecommunications in the United States occurred in 1996, coming three years after the acquisition of TCI by AT&T, because cable systems and conventional telephony converges. It stands out: there were three years between the new legal framework and the aforementioned acquisition, one attitude markedly opposed to the insistent pursuit of Enron to growth.

Sadia paid the price of speculation, after all, how to explain to those who lost funds in the business that an operation designed to protect foreign exchange income was the source of fatal problems precisely at a time of weak quotation of Brazilian money? In other words, the insurance that was purchased was the source of irreparable damage to the “protected” asset.

In the arena of public organizations, both IPT as ECT had positive aspects in the restructuring implemented, considering that it is natural the existence of potential new aspects to be polished in the future.

The study is rich, bringing situations of many types of success in various organizations, countries and dates. It was limited to rely solely on academic studies, which, on the one hand are more robust, on the other do not present the latest situations of CG success/crisis – typically brought about by business literature. Future studies can focus on certain companies through Case Studies, through primary data.

REFERENCES


