



APIA

Administrateurs Professionnels
Indépendants Associés

Good governance, a key factor for the lasting success of SMEs

Good governance

Good company governance involves striking the balance between three powers

- sovereign power: shareholders and members at meetings
- executive power: senior managers and executive committee
- supervisory power: board of directors (or equivalent).

Good governance

High-quality governance creates value for the company and its shareholders

- it generates trust among stakeholders,
- it takes account of economic necessities and entrepreneurial risks,
- it contributes to lasting success.

Theoretical organisation of governance

Company governance is aimed at steering the company and making sure that the aim of creating value for the company is addressed.

Example of large corporations:

1) Corporate governance

= refers to company law and is based on senior officials

relates to meetings of shareholders

relates to the board of directors (or supervisory board, advisory board or strategic committee).

2) Operational governance

= involves the management and is based on labour law (contracts of employment), commercial law (commercial agreements etc.)

relates to the executive committee,

the entrepreneur, company directors, managerial staff and employees.

Particularities of SMEs and very small enterprises

The leader of an SME is very often

- the only shareholder or holds shares with their family,
- not supported by a board of directors (case of limited companies and many simplified joint stock companies in France),
- supported by few managerial staff who could make up an executive committee.

Leaders of SMEs often have the same questions and feel the same needs

Need to feel less alone

- Exchanging with peers other than shareholders or employees
- Being able to state doubts

Need for reassurance and support for very personal choices

- Organising succession
- Organising relations between family shareholders
- Building a shareholders' agreement
- Using personal mentorship

Need to be challenged in operational or strategic areas

- Have I reached the critical size in my trade?
- Why and how can I take on international markets?
- Is this the right time to raise funds?
- Should I take over the business of a competitor who wants to sell up?
- How can I innovate more efficiently, negotiate a technological partnership?
- Will digital technology revolutionise my market?
- Have I properly assessed the stakes and risks of reorganisation?

One or more directors can provide concrete support and information to the leader

The board (or other equivalent body) helps:

- formulate strategy,
- make sure that the effects on human resource management of changes in tools and methods are properly assessed,
- appreciate if the resources (human, financial, subcontracting etc.) are correctly sized,
- provide support when faced with the experts (digital tech, Internet, ERP or CRM or cloud technology etc.).

Why have a board of directors?

(or a supervisory board or a strategic committee or a committee of “elders” etc.)

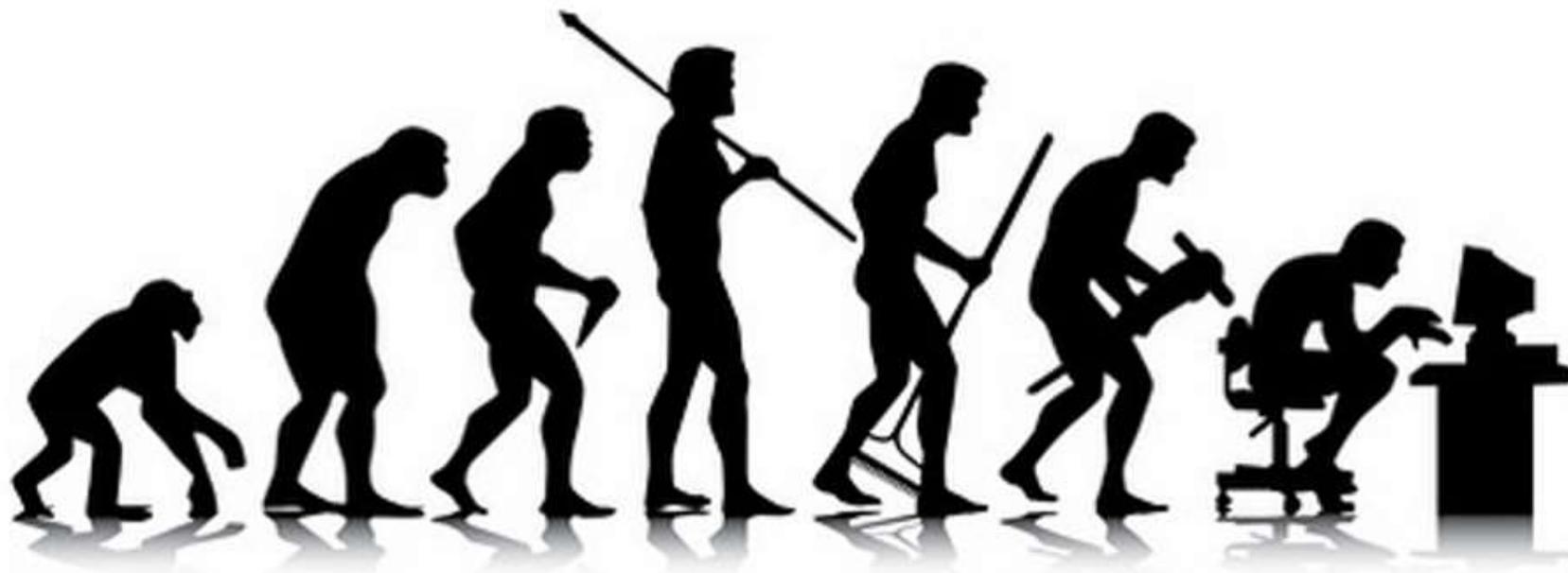
A regular place of discussions for the leader to:

- **break their solitude** and have someone to talk to,
- **be challenged on strategy** and encouraged to boost growth,
- **be supported** in the management and development of the company, particularly in the event of difficulty,
- **share** views about the position of the company (accounts, product development, position etc.) with experienced third parties.

And also, more occasionally:

- **defuse potential conflicts** between some family shareholders and senior managers,
- help **resolve divergences** between majority and minority shareholders (funds etc.),
- **prepare the succession** of the director (or address their disappearance).

A deep and permanent change in the person
produces an equally deep and permanent change in
the company



These changes make it necessary to reconcile the short and long term

Short-term effects (particularly those of digital technology)

- Productivity gains: internally, and also that of competitors...
- Changing customer expectations: lead times, flexibility etc.
- Image, e-reputation, new levers for marketing etc.

Long -term effects (particularly those of globalisation)

- Emergence of new business models, step changes, reversal of value chains, new opportunities, etc.
- Drying up of conventional businesses, newcomers, new players, changes in rules etc.
- Widening/confusion of scope of activity: geographical, industries etc.

The strategic stakes are high

- Uncertainty and lack of visibility... but investment decisions that must be made!
- Need for an overview of business processes!
- Challenges to the historic value creation chain
- Major human and organisational impacts
- And for every individual, accepting new decision-making processes, acquiring new skills, taking on changing roles, new personal outlooks etc.

The director of an SME can soon feel overwhelmed by precise questions

- Which areas are the most critical, and the most promising for the business?
- What are the skills required in these areas? How can they be mobilised?
- What is the right speed? The right level of investment? Acceptable financial risk?
- How can the whole company and all employees be brought into the project?

An external director can offer valuable insights

- Internal/external review of the tools and processes concerned, threats and opportunities
- Evaluation of potential medium or long term impacts on customer relations, distribution channels, direct access to the end customer, new forms of competition etc.
- Alignment of the innovations of the company with new requirements
- Compatibility of the current strategy with perceived changes in the internal and external environment.

How do directors work within a board?

Trust is the cornerstone of good governance.

It is indispensable for smooth working, and must bring shareholders and shareholding executives in line regarding the values and plan, and how they are to be translated into strategy.

Constructive and formal discussions within the board are evidence of the proper working of governance, and they make for progress on the main subjects of company development and high-quality dialogue all around

When should a board of directors be set up?

- it is required by law in an SA (or a supervisory board).
- in SARL and SAS forms, there is no legal obligation.

It is never too late to secure support from external experts who have been brought into the company.

Even start-up companies set up ad hoc committees very soon, often when their capital is first made public.



The four tasks of the board of directors set by the Commercial Code in France

Power of guidance:

“The board of directors offers guidance to the company and ensures that it is implemented”.

Power of evocation:

“The board addresses any issue relating to the proper working of the company and resolves its affairs through its proceedings”

Power of supervision:

“The board of directors carries out the inspections and verifications it finds fit”

Power of appointment:

Appointment and revocation of the chairman of the board of directors, managing director, deputy general managers and setting their remuneration

The four main tasks

Strategy

- preliminary: are the expectations of shareholders clear?
- formalised strategic process
- vision/mission/objectives
- internal and external analysis
- SWOT (strengths, weakness, opportunities, threats)
- risk mapping
- questions for appreciating effects or proposed options
- tracking of implementation

The four main tasks

Supervision

- Establishment of accounts and true and fair management reports (exclusive competence of the board of directors)
- Providing high quality information
- Risk of liability
- Certain formal requirements -> vigilance for good understanding, identifying alert signals

The four main tasks

Appointment of senior managers

- specific risks
- balance of the team and the organisation
 - evaluation
- remunerations
- succession
- solitude: relationship of trust, outside the board, with someone who is undoubtedly independent and competent

The four main tasks

Power of evocation

“The board of directors addresses any issue relating to the proper working of the company”

To that end, it must analyse weak signals, that is to say information relating to routine operations, harmless in appearance and of low intensity, which announces the future -> identifying meaningful weak signals that announce what is to come, difficulties and threats -> believing that a threat can be turned into an opportunity, for example

- forecasts that are never met
- denial of reality
- unbending optimism
- complex decision-making process
- high personnel turnover
- unbalanced age pyramid

High-quality governance

A few simple criteria for assessing good governance

The points to watch restated by the Middle Next code for medium and small values.

Five points to watch relating to sovereign power (shareholders and members at meetings)

- are shareholders informed of the major foreseeable risks that could threaten the future of the company?
- do the shareholders really chose the directors?
- do the shareholders take part in votes at meetings?
- is there is a risk of harming the interests of minority shareholders?
- is shareholding managed over the longer term?

Five points to watch relating to the power of supervision (board of directors or equivalent)

- does the power of supervision interfere with the executive power?
- do directors fulfil their duty of supervision?
- do directors have the resources to carry out their tasks?
- are the competencies of directors appropriate?
- can the conditions in which the directors operate affect their judgement?

Four points to watch relating to executive power (executive committee)

- are the competencies of the company leader appropriate?
- is the leader isolated?
- can the remuneration of the leader affect their judgement?
- has the succession of the leader been anticipated?

In Switzerland, the board of directors has powers and duties that are non-transferable and not alienable

- Taking charge of senior management of the company and establishing the necessary instructions
- Setting the organisation
- Setting the principles of accounting and financial control and the financial plan, if one is necessary for managing the company
- Appointing and revoking the individuals responsible for management and representation
- Supervising the individuals responsible for management, particularly to make sure that they comply with the law, articles, regulations and instructions given
- Preparing the management report, preparing shareholders' meetings and executing their decisions
- Informing the judge in the event of unaffordable debt.

Philippe Goetz
Advocate, Director
KPMG Legal Romandy

In Switzerland, the duties of the board of directors

- Main duties
 - Powers and duties that are non-transferable and not alienable
 - Duty of diligence and faithfulness
 - Equality of treatment of shareholders
 - Behaviour in the event of a loss of capital and unaffordable debt
 - Articles and organisation regulations that can clarify and sometimes supplement the list of legal provisions (SCI and risk analysis, for example).

- Others
 - Duty of participation
 - Duty of personal execution
 - Duty of loyalty
 - Professional secrecy obligation
 - Keeping of the register of shareholders
 - Keeping of the register of bearer shareholders and beneficial owners of shares
 - Restriction of the transferability of shares.

Philippe Goetz
Advocate, Director
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The calling of APIA

*Through collective work and action, promoting
and professionalising the position of an
independent director,*

*so that good governance can contribute to the
performance and development of the company*

Profile of an APIA independent director

- ***A leader or former leader of an SME*** who understands the issues facing all entrepreneurs,
- ***A peer*** who is recognised for their experience and general view of the company and their commitment to sharing and dialogue,
- ***A director who is available*** when needed and who can be a trusted confidant,
- ***An independent professional*** who is not a shareholder and is compensated for that position,
- ***An entrepreneur*** who takes on responsibility and behaves in line with strong ethics and furthers the interests of the company.

The added value of APIA

An association of company directors

- ***co-opted*** on the basis of stringent criteria,
- ***driven by shared values,***
- ***trained*** in the duties of independent directors,
- ***diversified*** because of their experience in companies of all sizes operating in all industries.

Backed by partners who are professionals of accounts and auditing (statutory auditors), law (advocates, lawyers, tax specialists, notaries), human resources, transfers, acquisitions, long-term financing, short-term items and investment capital

Testimonials from entrepreneurs

Rationale for an independent director 1

“With their outsider’s eye, they can make very constructive comments and help us identify, justify and defend our projects; the outsider’s view is valuable for the leader, the family shareholders and all other shareholders.”

Jean-Jacques Hénaff, Chairman of the supervisory board of Hénaff (maker of pâtés)

“They protect you from yourself, your passions, emotions and sensations. An independent director can take a step back and ask if what you are doing is useful, necessary or positive”

Charles Marcolin, Chairman of Korus (store fitting)

Testimonials from entrepreneurs

Rationale for an independent director 2

“The selection process of APIA is a guarantee of the competency of the individual. An independent administrator reassures partners, particularly banks, thanks to their professional and organised governance, with meetings that deliver results”

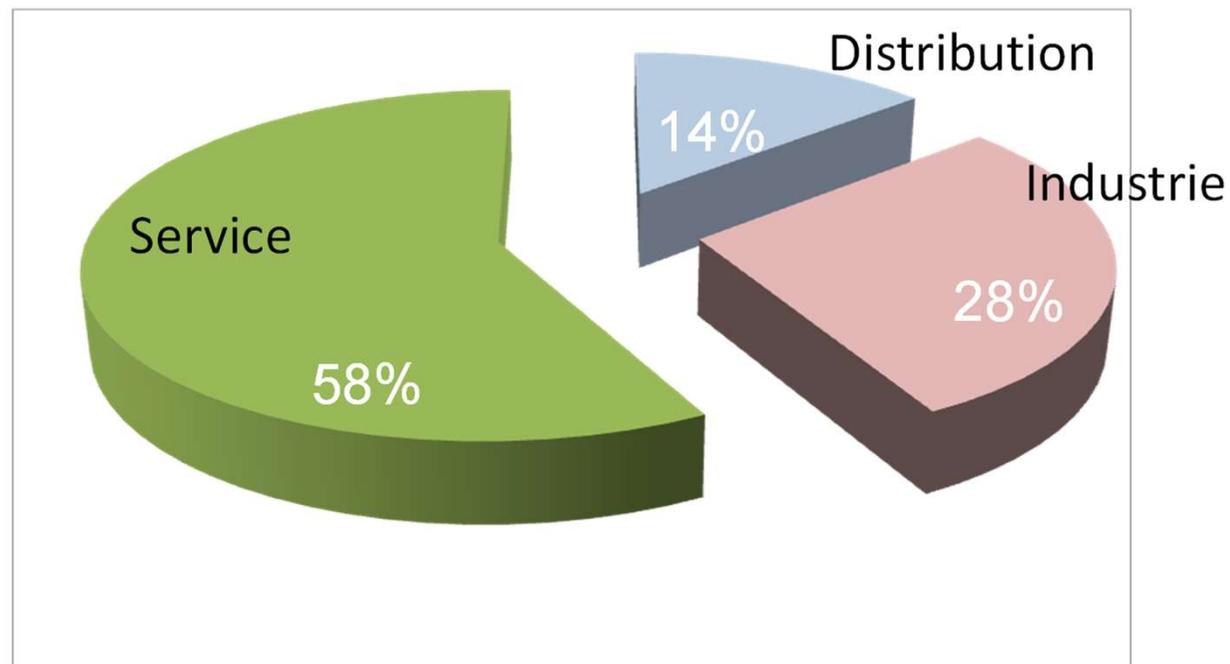
Jean-Marie Jestin, Chairman of the board of directors of Supratec (industrial solutions)

“Why should one hesitate, since there is no loss of power; on the contrary, they are a source of progress”

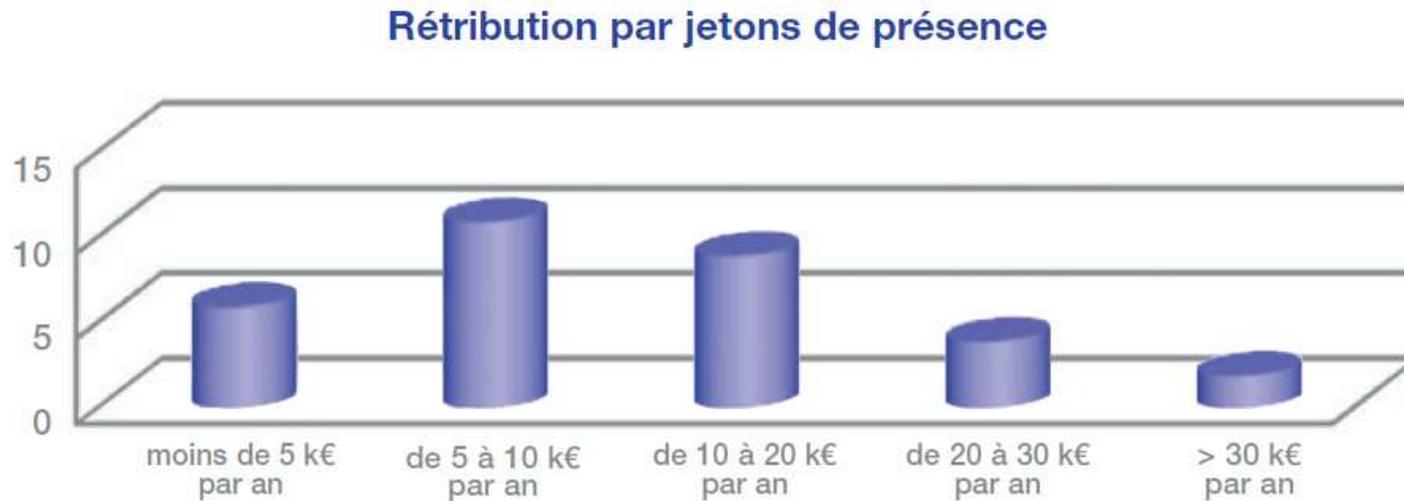
Aline Doyen, Chairwoman of Somepic (precision engineering)

APIA members in 2015

- 170 members in France, 10 in Switzerland, BCTE in Belgium
- All have actual experience as leaders of SMEs
- Co-opted after a stringent selection process
- Holding over 230 positions



What is the cost of an independent director?



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The fees are approved at members in a general meeting upon a recommendation from the board
Distribution between directors decided by the board

The fees of the independent director are not necessarily identical to those of the other members of the board, who are often shareholders.

In Europe

- APIA France
- APIA Switzerland
- BCTE Belgium

More information ...



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APIA booklets

- 1. Advice relating to insurance to cover the liability of senior management and officials**
- 2. Role of directors in the field of internal control and risk management**
- 3. Independent directors in simplified joint stock companies (SAS).**
- 4. Independent directors: the key to successful transmission of businesses**
- 5. Independent director and entrepreneur, a winning combination**
- 6. Look ahead! Going beyond the conventional approach**
- 7. Independent administrators in sole proprietorships**
- 8. Independent administrators in sole proprietorships - transfer and transmission**
- 9. Governance of growing young companies**
- 10 Independent?**
- 11 Human resources: a strategic factor for success**
- 12. Guidance for the compensation of independent directors**
- 13. Logistics and directors**
- 14. Delegation of power**
- 15. Amicable proceedings**

APIA booklets

16. Challenging strategy or why and how a director must continually foster the development of strategy

17. The risk of fraud in companies: the role of directors in prevention

18. The role of the independent director in the outsourcing process

19. The value for an SME of a director from an intermediate-sized company or large corporation

20. Independent directors and corporate social responsibility (CSR)

21. Unavailability of the shareholding leader: new tools to prepare for such an event.

22. Developing or transmitting with a financial investor, good practices for entrepreneurs and directors

23. The risk of sanctions for entrepreneurs and directors in the event of liquidation under court supervision

24. Bringing an independent director onto the board

25. Making innovation part of the DNA of the company

26. Governance and the digital revolution

27. The role of the independent director in risk management

28. Self assessment of boards of directors

APIA blue booklet: For selective company governance, the APIA response: an independent director

Latest booklets from APIA

Booklet no 29: Development in International Markets in collaboration with ORFIS BAKER TILLY.

Two booklets are being prepared: Good Governance Practices in Voluntary Organisations and Weak Signals

Main partners of APIA

ARKEA CAPITAL INVESTISSEMENT

BARTHELEMY et Associés

BDO Atlantique

COTTY VIVANT MARCHISIO & LAUZERAL

DELOITTE & Associés

EY (Ernst & Young)

EUROSEARCH & ASSOCIES

EX'PAIRS FORMATION

FIDAL

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KPMG Audit

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MAZARS

MILESTONE CAPITAL

Groupe NOVANCES

ORFIS BAKER TILLY

PATRICIA LE MARCHAND

PWC Audit

SIACI SAINT HONORE

SATEC Groupe

TCR CAPITAL

Some twenty regional partners

etc.

Partners who are natural persons