XVIII century: Evidences of Corporate Governance in a Brazilian Joint Stock Company

1. Introduction

The reign of Joseph I of Portugal (D. José I), under the management of Sebastião José de Carvalho e Melo, Count of Oeiras and future Marquis of Pombal, known as the pombaline period, was noted for its efforts towards administrative reorganization, economical restoration and political dignification, aiming at aligning Portugal’s economy with then current European economic ideals. Notable amongst the initiatives taken was the rational exploitation of colonies, through trading companies constituted with significant amounts of capital (Basbaum, 1957; Chaunu, 1978; Mauro, 1980, 1960).

Along much of the XVII century multiple initiatives towards the implementation of privileged trade companies were taken throughout the Portuguese empire. Concerning Brazil, in an attempt to revert the chaotic economical scenario, Pombal effectively organized two companies, actuating at Brazilian north and northeast regions – the Grão-Pará and Maranhão General Company (Companhia Geral do Grão-Pará e Maranhão) in 1755; and the Pernambuco and Paraíba General Company (Companhia Geral de Pernambuco e Paraíba) in 1759 (Holanda, 2003; Carreira, 1983).

Conditions prevailing in this region, particularly in the province of Grão-Pará and Maranhão, were precarious. Up to 1749, in this province, for instance, cotton cloth and cocoa nuts were the monetary medium of exchange, given the shortage of metallic coin. Starting in 1751, however, Francisco Xavier de Mendonça Furtado, the newly appointed provincial captain-general (capitão-geral), in successive report-letters sent to the Marquis of Pombal, demanded immediate actions to alter the situation of latent crisis (Dias, 1970; Holanda, 2003; Salazar, 1991).

In one of these letters Furtado postulates the creation of a company and appends a draft proposing a 27 article statute for it. Subsequently, in answer to the requests and with the intention of satisfying the collective economical aspirations, a law valued June, 7, 1755, royal permit, dated of the previous day, approves the statutes of the Grão-Pará and Maranhão General Company (from
now on PMGC), with 55 paragraphs. The permit granted PMGC the monopoly on provisioning, trade and navigation for the area during twenty years, a period that could be extended for another ten years. The adopted structure is not much different from that of other companies, contemplating shareholders and an administrative body.

Careful reading of the draft and of the finally approved statutes allows the identification of vestiges of what is known in the literature as practices of corporate governance (CG). Although the involved agents had no idea of the modern approach on the theme, they did have an intuitive grasp and used practices currently recognized by the specific literature as CG.

The present work studies the problems associated with verification of the existence of mechanisms assuring that corporate decisions are taken aiming at enhancing the probabilities of investors obtaining adequate return on their investments, based on our present views and theoretical referential about CG. Our central hypothesis is that both draft and final statutes present evidences supporting the existence of intuitive CG practices. Thus, our research studies whether there were indications of CG practices in the draft and final statutes of PMGC, considering the literature on the subject as represented by Shleifer & Vishny (1997); La Porta et al. (1999, 2000); Jensen & Meckling (1976).

The proposed research question is justified by the contribution it can give to the existing body of knowledge on the theme, through a differentiated analysis. According to Zubiri (1963, p. 406), it is possible to say that “what we are today is the ensemble of possibilities engendered by what we were yesterday”. History making is not just the substitution of one reality for another. The present is not just what is done by man, but also what he is able to do.

Thus, man launches himself on the capture of new things, with the support offered by the past. Nonetheless, reality imposes resistances that force man to modify, with variable degrees of effectiveness, his possibilities, altering his conceptions. Any decisions in the present trade off certain possibilities for others better adapted to the reality at hand. The past is plentiful of what we could have been, but were not, due to removal or inadequate reclamation of its dimensions (Zubiri, 1963). The role of a researcher/historian is not attained by loving or getting rid of the past but by “dominating and understanding it, as a key to comprehension of the present” (Carr, 1961, p. 25)
At last, Shikida (2007) and Carlos & Nicholas (1990) point the need for more historical and economical research on the portuguese-brazilian trading companies, in view of the vast literature available about comparable British companies.

This work is organized as follows: section 2 is dedicated to description of methodological procedures used; section 3 presents a discussion on theoretical references and bibliographical review; section 4 presents the data gathered for the work and its analysis; section 5 is dedicated to conclusions and propositions for future research.

2. Methodology

In order to answer the above mentioned research question, this paper aims specifically at: (1) analyzing both the final statute of June, 6, 1755, ratified by the royal permit of June, 7, and the draft proposed by then governor of Maranhão province, Francisco Xavier de Mendonça Furtado, in February, 15, 1754; (2) verifying whether there are differences between the final statute and the draft concerning the application of currently recommended practices of corporate governance.

According its objectives the research can be referred as descriptive, because the facts that are object of study are analyzed, categorized and interpreted without interference of the researcher on the variables (Andrade & Rossetti, 2004, p. 124).

Regarding the study object and researcher role, according to Godoy (1995, p. 62-63), this work can be considered as qualitative, due to the following characteristics: (a) it has the natural environment as a direct source of data and the researcher as a fundamental tool; (b) qualitative research is descriptive; (c) the researchers use an inductive view in data analysis.

For technical procedures, the research can be framed as historical. Such a research, according to Helmstadter (1970), has two main objectives: produce an accurate report about the past and contribute to solve present problems. Concerning the first objective, this author claims that the researcher can handle the historical problem in two ways: (1) gather the information and depict the problem in a given moment (cross section study); (2) depict the evolution of an
event along time (longitudinal study). Concerning the second objective, it is the intention of the researcher to contribute with the solution of present day problems through examination of the past. Thus, based on the distinctions pointed out by Helmstadter, this study can be characterized as a cross section study.

In harmony with what is said above, Carr (1961, p. 14) adds a particularity about the performance of a researcher in this kind of investigation. According to this author basic historical facts are the same for any investigator; nonetheless it is the latter “who decides which facts to bring upstage and in what order or context”.

Due mainly to specific aspects involved in the proceedings of a historiographical research, not only an ample literature about privileged trading companies – especially that involving the Grão-Pará and Maranhão General Company – and corporate governance was consulted, but also some documents of the very period. In other words, primary and secondary sources were used, primary sources comprising original texts that in turn subsidized later works (secondary sources), encompassing a great body of information on the subject (Andrade & Rossetti, 2004).

The use of primary sources constitutes a significant and requisite documental support in research with historical approach, because it represents the best testimonial available about the past, a direct link to basic information (Acioli, 2003). The presentation of “new” visions and approaches to the historical study of Accounting is made possible only through the use of these manuscripts. The primary sources used, by the way, contribute a great deal to the exclusiveness of this work. In corroboration of this view Ricardino Filho & Martins (2003) profess that in historical writings one can identify precious information, so important to studies of economical history.

In the realm of historical research an often appraised line of study is that of economical history, encompassing the study about the operation and administration of businesses in past epochs. The so called business history, widely developed in Harvard’s Business School, pays attention to any kind of business and believes that understanding how people and firms work and develop is a key factor in far reaching studies of certain economic systems (Rodrigues, 1978).
In business history studies, accounting records are a privileged source shining light on past economic events. According to Mauro (1973, p. 29):

difficult as it may be, efforts towards reconstruction of accounting records are legitimate. It will allow better evidentiation of differences between corporate structures adopted in the past and our own, between calculations used by past entrepreneurs and our own calculations. It will show whether the enterprise was economically sound or lived on for other reasons, whether it was economic or antieconomic. It will show who reaps the profits of an economical activity and who breeds it, thus allowing a better definition of the exact structure of the economy.

Regarding research limitations Castro (1978, p. 24) says that “it is necessary to know the limits of science and try not to reach beyond its available resources”. Richardson (1999, p. 258), with the particular case of historiographical research in mind, refers to the lack of strict control in relations established between past and present facts. Nonetheless this author regards such situation not as a methodological weakness, but just poses a warning against generalizing beyond stipulated limits.

2.1 Methodological Procedures adopted to analyze the Draft and Final Statutes

Both documents analyzed in this work, PMGC’s draft statute and the finally approved one, carry indications of a series of initiatives comparable to what is known in present day literature as corporate governance practices. The draft was made up of 27 articles, while in the final statute those numbered 55.

Even though not every article in the draft contains ingredients of corporate governance, those that do not fit this category are still worth of examination because they deal with interesting issues as internal controls, accounting records and even incorporation of premium paid in stock sales.

The range, extent and complexity of the final statute demanded a different methodological treatment. A partitioning in four distinct analytical groups, as proposed by Carreira (1983), was adopted: (1) Rules of the Game (board of directors and decision making process), formation of initial equity capital and bureaucratic details; (2) Infrastructure; (3) Legal and administrative autonomy; (4) Commercial (trade) rules.
In the table presented in the final section of this paper the column “Draft Statute” contains the main parts of that document, respecting the order of appearance of its articles. In a first phase the contents of articles in the final statute were compared to those of the draft. The column “Final Statute” lists the articles dealing with the same theme of the draft, subject to similarities and dissimilarities in treatment. In the column “Analysis (Draft vs. Final)” comments are advanced concerning detected practices.

In the last column, “Ref”, comparisons between articles in the draft and final statutes and corporate governance practices observed today are proposed. For this purpose the following guidance codes were used: Cadbury Report (The Financial Aspects of Corporate Governance) – identified by “A” in the column; Statement on Global Corporate Governance Principles of the International Corporate Governance Network (ICGN) – identified as “B”; Euroshareholders Corporate Governance Guidelines 2000 of the European Corporate Governance Institute (ECGI) – identified as “C”; Global Corporate Governance Principles of the California Public Employees’ Retirement System (CalPERS) – identified as “D”; and the Code for Better Corporate Governance Practices as recommended by the Brazilian Corporate Governance Institute (BCGI) – identified as “E”.

Reasons leading to the selection of these codes are founded in facts like, as noted by Lodi (2000), the Cadbury Report being considered one of the three pillars of modern governance, and the remaining codes providing a broadening scope to the subject. So, a “global institution”, an “european organization”, an “american” and, finally, a “brazilian” one were contemplated. Easy access to these codes was also a factor taken into account.

3. Theoretical Referential

The need for the creation of internal and external mechanisms capable of enhancing the probability that corporate decisions are taken so that investors can maximize the return on their investments, arises as a form to mitigate the conflict of interests derived from the separation of ownership and management. Corporate governance can be viewed as the aggregation of these mechanisms
Corporate governance is about a corporation’s major shareholders mounting control and monitoring systems capable of keeping resource allocation decisions aligned between them and the body of management (Siffert, 1998).

The relationship between better governance practices and corporate performance was studied by Nelson (1999). According to this author indications were found pointing that better corporate governance practices are of fundamental importance for investors and management alike.

Governance practices enhance the credibility of companies in the face of investors actuating in international markets. The crisis abating big transnational corporations, recent scandals in the American and British financial markets, mounting pressure from institutional investors towards greater transparency and accountability, all contributed to the creation of Better Practices codes and guidelines (Lodi, 2000).

3.1 Trading Companies

Studies about the monopolistic trading companies are presented in numberless works, comprising perspectives of multiple economic theories. One of the existing research lines can be traced from works of classical economists, like Adam Smith (1776), up to recent works, like those of Krueger (1974), Posner (1975), Murphy, Shleifer & Vishny (1993) e Ekelund & Tollison (1981, 1997).

The main objective of this theoretical line is to analyze the companies under the sieve of the rent seeking economical theory, to which the governmental concession of property rights to certain groups of interest results harmful to economical efficiency. The problem studied meddles with the actual role of these companies. This theoretical core contemplating the particular case of Portuguese companies is the research subject of Shikida (2006, 2007). It is worth of attention, in the works consulted, the uncommon use of primary sources to support the discussions.
Another problem that is investigated deals with asymmetric information in the context of the principal-agent theory, concerning difficulties encountered by the owners of equity capital to control managers, in order to assure that they will effectively work in favor of the organization’s objectives and not in their own behalf. About this issue Smith (1776) already argued that remote management constituted a hindrance to these societies, because one cannot expect that managers will take care of business with the same zeal and diligence that shareholders would. Worth mentioning in this line of research, among others, are the works of Carlos (1991; 1992); Carlos & Nicholas (1988; 1990; 1993); Coornaert (1967); Rich & Wilson (1967).

Directly relating to the purpose of the present paper, which deals with the evaluation of governance practices, the pioneering work of Ricardino & Martins (2004), that analyzes PMGC’s draft statute, is worth mentioning. This paper intends to broaden the scope of the analysis by studying the final statute sanctioned by the Crown of Portugal, trying to eliminate possible divergences between the draft and the final statute.

4. Analysis of items in PMGC’s statutes

Trading companies were constituted as joint stock capital societies whose stock could itself be traded. Its genesis can be traced back to the multiple branched companies that emerged in Florence at the late XIII century (Mauro, 1980; Chaunu, 1978; Renouard, 1949). Nonetheless, there is a noticeable evolution in pombaline companies, particularly PMGC, when compared to its Italian ancestors.

The trade name of the Portuguese companies did not mention the name of its partners as did the initial enterprises of the great colonial commerce in XIII and XIV centuries. They used instead denominations strictly connected to the activities exercised by the society and its respective territorial limitation. And while the most important Italian companies assembled between ten and twenty five associates, the Portuguese ones tended to a greater dispersal of its stock. In PMGC, for example, the list of original founders shows 145 underwriters (Dias, 1970; Marcos, 1997; Renouard, 1949).
In the initial offerings of PMGC, public subscription was mandatory. Paying-in could be made not only in cash, but also by *apports en nature*, represented by movable property and realty. Different terms existed both for the underwriting and paying-in of capital (one third part to be done immediately in cash, and the remainder in eight months). A politic for the attraction of venture capital is defined in § 39 of the statute, granting that those underwriting at least 10.000\(^1\) cruzados in the company would benefit from a number of privileges, including the possible acquisition of a nobility title which liberated them from tax paying obligations.

Shareholders could be partitioned in three classes: the upper class housed holders of ten or more shares, the only ones eligible for the company’s “political body”, and whose names should remain “in the secret of Company books” (§ 48). The middle class included holders of between five and ten shares, a condition that enabled them as voters (§ 3). Last, the lower class herded holders of five or less shares, which could, nonetheless, associate to attain the necessary number of shares that enabled them one vote (§ 3). In that way, the “one share, one vote” was somehow observed.

Even though PMGC’s equity capital was private in nature, the company itself retained semi-public characteristics. Beside a capitalist profile aiming at the satisfaction of its partners profitability concerns, there also was an obligation to accept typical governmental roles in the colonial administration of the possessions, due to property allowance and monopolistic privileges bestowed by the Crown (Marcos, 1997).

The situation above is well aligned with the philosophy of an absolutist state. The pombaline company was not just another trading society, but also comprised a body of administrators closely connected to the monarch’s tutorage, though protected from interference by other judicial organisms (§ 4), given the political tasks it should satisfy, contributing greatly to the economic restoration and dignity of the Portuguese empire.

The State, sovereign and pondering, interventionist, absorbing, mapped the ways, fixed the rules and used the expertise, good will, interests and resources of the community, overbearing them all (Holanda, 2003, p. 327).

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\(^{1}\) Monetary denomination used in Portugal at the time. 1 cruzado = 1000 réis. Réis is the plural of Real, that was the lowest denomination at the time.
Two main ideas are central to the discussions: corporate governance better practices and social interest. Corporate governance postulates maximization of an entity’s and its shareholders personal wealth, and so governmental intervention antagonizes CG’s better practices (ICGN, Euroshareholders, CalPERS e IBGC).

The social interest theme raises the possibility of studying pombaline companies through the use of the principal-agent theory advanced by Jensen & Meckling (1976). This is not the approach adopted in the present paper, but it would be certainly interesting to have other works investigating whether pombaline companies actually accomplished their social objectives, as foreseen in their statutes, and how much this interfered with the shareholders’ well-being. Another item worthy of verification would be the trading activities performance, because in the literature the issue of separation between property and administration, together with remote management, is regarded as a major contribution to the failure of British companies, due mainly to the opportunistic behavior of its executive officers. To this end, § 19 of PMGC’s statutes rules against the use of company properties for activities not pertaining company’s objectives, signaling an attempt at protection of company assets against moral hazard issues\(^2\). More on this theme can be found in Smith (1776); Carlos (1991; 1992); Carlos & Nicholas (1988; 1990; 1993); Coornaert (1967); Rich & Wilson (1967).

Another item that stands out in the statute relates to the existence of a “private conservative judge” (§ 7), responsible for solving every dispute where any members of the company figured as authors or defendants. This reminds of present day arbitrage committees as set forth in ICGN, CalPERS and IBGC codes.

The analysis of the draft and final statutes can be found in Table 1 below.

5. Conclusions

Our findings agree with the conclusions of Ricardino & Martins (2004) that CG mechanisms already flourished in the XVIII century. This study, though,

\(^2\) About moral hazard see Arkelof et al. (1970).
found that practices contemplated by the statute address a scenario more concurrent to what is called today corporate governance better practices. Nevertheless, regarding ideas of internal controls, “supervisory board” and auditing, the draft is more explicit than the final statute, though Dias (1970) mentions the existence of other documents detailing operational minutiae.

The complexities and needs of colonial organizations were different from those of contemporary entities, requiring distinct levels of legal protection. Thus, not all of the practices recommended in the better practices codes used in this paper can be applied to the draft and the final statutes.

Aiming at surpassing research limitations respecting possible generalizations about adoption of “standard” CG practices in the Portuguese privileged trade companies of the 1600’s and 1700’s, a comparative study involving the other pombaline companies would be necessary.

Referências


no Brasil. Recife: Editora Universitária.


<p>| Draft Statute                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Final Statute                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Analysis (Draft vs. Final)                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Ref.                                                                                                                                                                                                                         |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| § 1. That this company will be established with one thousand shares of one hundred thousand réis each, being free each person free to enter with one or more shares (...)                                                                                                                                                                                                                                    | § 48. The funding and sunk capital of the Company will be of one million and two hundred thousand cruzados distributed in one thousand and two hundred shares of four hundred thousand réis each; the same person being able to have different shares (...)                                                                                                                                                                                                 | There was an increase in the equity capital of the company. In the draft no indication as to different types of shares is given, unlike in the final statute.                                                                                                                                                                                                 |                                                                                                                                                                                                                             |
| § 2. After contemplating the said thousand shares, the company will be allowed to receive other thousand shares again, being the price of this second allotment of one hundred and fifty thousand réis.                                                                                                                                                                                                                       | § 49. (...) [after the paying-in mentioned in the previous paragraph] of the said capital of one million and two hundred thousand cruzados, the participation in the Company will be closed, no other person being allowed to enter (...)                                                                                                                                                                                                 | The draft contemplates a price premium to be paid in the purchase of shares of a second emission. The final statute does not foresee such second emission.                                                                                                                                                                                                         |                                                                                                                                                                                                                             |
| § 3. That (...), after completing the shares in the second allotment, (...), will the Directors [Executive Officers] be able to receive another one thousand shares; being however these third allotment shares at 200$ each, and both second and third allotment shares will only be considered at a value of 100$ per share, as the ones in the first allotment, being the additional amount entered [the difference between acquisition value and face value] incorporated to the company funds. | Due to dispositions of the above paragraph, the situation is not applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | As said before, the final statute does not regard additional public offerings. But, if the mechanism, as described in the draft, had been contemplated in the final statute, it would represent “an advanced concept for the epoch” (Ricardino &amp; Martins, 2004).                                                                                                                                                                                               |                                                                                                                                                                                                                             |
| § 4. That, as it is not possible for the Company to have a solid subsistence if each one of the shareholders is allowed to withdraw, at will, the amount with which the shareholder entered, (...); it will not be allowed, to any person, (...) to withdraw the money paid-in, being he only freely allowed to sell, to whoever seems befit to him, the rights upon the shares                                                                                                                                                               | § 50. The people that enter with the above mentioned shares (...) will be allowed to price them according to the nature and destination that seems better to them; even if primogeniture, capela, timely or perpetual trust, <em>inter vivos or causa mortis</em> donation, and others similar: making the vocations and using the dispositions and clauses that better suit With this initiative, the Company tries to protect its continuity. In spite of advocating the continuity of the Company, the draft is inconclusive about the matter. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                             |</p>
<table>
<thead>
<tr>
<th>§ 51. The moneys paid-into this Company will not be withdrawn during its time of duration, that will be of twenty years, counted of the day the first fleet is dispatched on its behalf; which years can however be extended for ten more, seeming fit for the Company to so beg and for His Majesty to so grant (...)</th>
</tr>
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<tbody>
<tr>
<td>§ 5. That this Company will be directed in Pará as well as in Lisbon by four Administrators [Managers], which will act as Cashiers of the business, and to them will compete the entire administration of all Company interests.</td>
</tr>
<tr>
<td>§ 1. The said Company will mount a political body composed of a Provider, of eight Deputies, and of a Secretary: namely, eight businessmen from Lisbon, and an artificer of the House of the Twenty-Four, being all qualified in the way declared below. Additionally to the referred Deputies there will be three Counselors of the same body of trade (...)</td>
</tr>
<tr>
<td>§ 6. To choose the said Administrators, all interested parties wishing to vote will be summoned, and these will freely choose people of the same society, so that they elect the four Administrators.</td>
</tr>
<tr>
<td>§ 3. The elections of the above cited Provider, Deputies, and Counselors, will always be made at the ruling House of the Company, by the plurality of votes of the interested parties that possess five thousand cruzados or more in shares. Those that have fewer, will be able however to unite amongst themselves, so as, making up to the said amount, to constitute on behalf of all, only one vote (...). At the same time will be chosen in the same form among the said deputies a Vice-Provider, and a substitute, for them to gradually occupy the Provider’s place, in cases of death or impediment.</td>
</tr>
<tr>
<td>The draft foresees two offices for the administration of the Company, while the final statute foresees just one, in Lisbon. § 9 of the final statute corroborates the already mentioned indications in § 1. The administrative structure of the draft foresees the presence of four managers; in the final statute the administrative body is formed by ten people. The final statute also postulates criteria for the possible participants of the administrative body.</td>
</tr>
<tr>
<td>Here one can notice a basic principle of CG: “one share, one vote”. The draft does not postulate any rule for a member to become a voter or elections for substitutes. The final statute, on the other hand, postulates a number of restrictions, as mentioned before in item 3.2 of the present paper.</td>
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<td>B, C, D, E</td>
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<td>§ 7. As soon as the said 13 persons are chosen (...) they will elect the four Administrators, among those that are so interested choosing the ones that to them seem more capable, always keeping in mind that from the good or bad choice of managers depends the stability and growth of the Company or its total ruin.</td>
</tr>
<tr>
<td>§ 8. These Cashiers and Administrators, as soon as elected, will order the manufacture of a safe box with four keys, for each one to have his own key, in which safe box will rest the running currency [transacted cash] and never will only one of them, by himself, receive any amount belonging to the common of the Company, no matter how moderate it can be, nor to do purchase, sale or payment (...) because for any of the above acts, the four afore mentioned Administrators must all concur together (...)</td>
</tr>
<tr>
<td>§ 9. To ensure proper development of business concerning the said Company, Administrators will reunite at least three days a week (...) in that house agreed upon by said Administrators, in which company books will be preserved in good order.</td>
</tr>
<tr>
<td>§ 10. Administrators will, in common accord, elect the most dependable location where to place the Company safe box (...)</td>
</tr>
<tr>
<td>§ 11. The same Administrators will be compelled, as soon as any company ship arrives at this harbor, (...) to publish certain public reports to those concerned [shareholders], of the expenses made in Lisbon [contents acquired and boarded in Lisbon]; the navigation of the ships and which ports they have called; the acquisitions and expenses done there; the affects [merchandises] brought; and after sales are accomplished, other reports will be made about importance of said affects [value obtained in sales], the cargo transported to the kingdom by the ships, so that those concerned are thoroughly informed about how the business is handled, the good faith of the trade, and of the profits that can be expected, these reports being also forwarded to the Administrators, so that those people in the kingdom with an interest in the company can be as well informed.</td>
</tr>
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<td>A, B, C, D, E</td>
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| § 12. The Cashiers and Administrators in Lisbon will be compelled to produce similar reports (...) | Nothing in the final statute evidences such practices. |
| § 13. The Cashiers and Administrators will perform the same checks as those of Pará (...) | Same as above. |
| § 14. Regarding the safe in Lisbon, the same dispositions about the administration in Pará | Same as above. |
§ 15. As Administrators will incur labor with this administration, (...) will be rewarded, from Company gains, 100$ a year, and what falls under his charge to write and collect to Company books [trade engendered by them with returns to the company], will be given them 60$ more, on the same gains (...)

§ 25. (...) it is declared that for the administration of the Provider and Deputies of this Company, and of the overseers employed in the province of Grão-Pará and Maranhão, it will beget them only a fee of six percent, accounted for in the following way: two percent on employment and expenses made in this city with the dispatch of fleets and other dispatches on behalf of the Company; two percent on sales done at the above cited province of Grão-Pará and Maranhão; and two percent on the produce of return trips and expenses in this city.

Variable compensation based on performance, aiming at aligning the concerns of the various parties. Disclosure of the remuneration basis of chief executives is an established practice in Corporate Governance. In the present case the final statute contemplates a better practice.

A, B, C, D, E

§ 16. (...) and occurring any petty expenses that do not deserve by its small value a detailed description in the same book, will these be summarized in lists that will be examined by the Administrators (...)

There is no mention in the final statute about such practice.

Control of expenses.

§ 17. The books that are to be written in the Company will be countersigned by this County’s Head Magistrate (...)

§ 1. (...) The official papers will always be issued in the name of the Provider and Deputies of the same Company, and should carry a distinctive seal, where will be engraved a North Star on a ship’s anchor and the image of Our Holy Mother of Conception in its upper side; of which seal use can be made in every document issued as seemingly fits.

Book-keeping practices for small expenses.

§ 18. Every time guilt by omission is proved against any of the Administrators (...) will the thirteen Directors assemble, and these, in the same manner provisioned in the beginnings of the company, will have the power to indicate another administrator to replace the one found guilty (...) and reserving for itself the preservation or expelling of the above mentioned Administrators, as understood to the

§ 6. (...) Upon them [the political body] will have full jurisdiction, to suspend [any member of the legal body], remove and promote inquest, provisioning others in their places (...)

Reinforcement of prerogatives of the political body.
§ 19. Administrators will be compelled, after any ship and its cargo leave here [Brazil], to render current and liquid its accounts, and the thirteen Directors will indicate two experts amongst those concerned [shareholders] to take account of the four Administrators, of which results [conclusions] will they give account to the same Directors, so that not only the later know, but also do make public, how the administration of Company's resources is being handled.

§ 20. (...) shareholders will not be allowed to ask for returns [profits] on their shares before a three years term (...) and after the mentioned three years have passed will the first profits distribution be promoted, to those that are concerned (...)

§ 21. After the first apportioning [distribution] will the four Administrators be compelled to give account every two years to the two concerned [experts that will audit the accounts], that will nominate the thirteen Directors, and existing profits will be apportioned [divided] among all of the shareholders, the same proceedings to be observed for all years in the future.

§ 22. The two concerned [experts], that will audit the accounts of the four Administrators, will be compelled to, after completion, give notice to the 13 Directors about the state in which they found them [opine on the firm's

§ 25. And to justify its sale and that it accomplishes with exactitude the above mentioned prices, will be compelled to send to its respective overseer an authenticated form signed by all deputies, and carrying the Company seal, to make clear to the people, the charges and accounts of cost of goods carried by each fleet or alert ship (...).

§ 52. The returns [profits] produced by the said Company will be apportioned for the first time on the month of july of the third year after departure of the Company's first fleet. And the Company will afterwards apportion annually and in succession pro-rata in the mentioned month of july, that which belongs to each one of those concerned, except for expenses and their substance.

Preoccupation with disclosure. Shareholders have the right to clear and timely information regarding enterprises where they are investing.

The final statute anticipates the first profits distribution, when compared to the draft. The final statute postulates yearly profits distributions, always in july, while the draft is not precise about it.

The final statute omits proceedings for rendering of accounts, but profits distribution has already been mentioned in § 52.

Regarding present day practices, those postulated in the final statute can be considered as better.

There is no mention of any like practice in the final statute.

Auditing of accounts, without specifying criteria on how to go about it.
accounts], and will issue a term [instrument of closing] in the same book where audit was performed, that they will sign together with the four Administrators.

§ 23. If after approval of the accounts and issued and signed the above cited term, any legit debts of the Administrators to the company's safe remains, for which they deceitfully cover up, will all six [including the experts] come under the obligation to satisfy the Company regarding the said debts, loosing to the funds of the Company immediately and due to this fact the shares with which they entered the Society.

§ 24. The two concerned [experts] nominated to audit the accounts, will be compelled to conclude the examinations within two months, and if conclusion is not possible in this period they will ask the 13 Directors for more time, which will not be postponed beyond other two months.

§ 25. Those concerned [experts] nominated for auditing the accounts of the four Administrators, will be barred from nomination for the following years, and only after six years have passed will they be allowed to render other accounts, and each one of these two nominees will perceive the amount of fifty thousand réis, for each account rendered.

§ 26. Any of the 13 Directors dying, or moving to another land, where it turns out to be impossible the accomplishment of their obligations, soon will the shareholders elect another Director, and if missing due to the said reasons any one of the Administrators, soon will the 13 Directors put another in place, and

<table>
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<th>Proposal of penalties to opportunistic behavior.</th>
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<td>Regarding this point the draft excels over the final statute, by postulating rotation of the experts responsible for auditing accounts.</td>
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<td></td>
<td>It can be reconnoitered in the final statute the right to transfer shares, but not the transfer of administrative positions. The final statute authorized also the transfer of shares to heirs of the deceased partner (impersonality rule), as well as their unhindered alienation, being merely necessary to record the transaction in a</td>
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</table>

§ 4. (...) And coming to death in America, or in any other place, the Administrators and overseers of the Company (...), of which the Administration will collect the respective books and spoils, giving account of them to the Company Table in this Court, so that separating what belongs to him in preference
accounts will be exacted from the one leaving in the above mentioned manner. over any other shares, order the delivery of the remains to the Judges, or parties, where and to whom it may belong (...), without them being able to pass along [to heirs] the right of administration, which will always be untransferable.

| § 27. The four Administrators in this city [Belém] as well as those in Lisbon, are to be always Portuguese nationals, subjects of His Majesty, no foreigner being accepted, unless unmarried and naturalized to the Kingdom. |
| § 2. The above mentioned Provider and Deputies are to be businessmen, subjects of His Majesty, Portuguese nationals or naturalized as such; and living in this Court, having an amount of ten thousand cruzados invested in the said Company, and from there upwards, with such declaration, that, occurring not to toil in any of the said professions a talented person in whom both qualities can be found, may it be supplied of another profession among the two approved. |
| § 50. The persons to enter with the above cited shares, being those Portuguese nationals, or foreigners (...) |
| § 54. Being it all extensive to foreigners [all rights applicable to shareholders of portuguese nationality], and persons living abroad this Kingdom, of any quality and condition they may be. And happening, during the twenty years period of duration of the Company or their prorogation, that this Court wages war (...) with any other power, whose subjects have sunken capitals in this Company, not even this will be considered reason to make them suffer advancements, arrest, seizure or retaliation, being these capitals so much free, exempt and secure as if held in their own home. Under the mercy His Majesty dedicates to this Company, by all the reasons declared above, and that so |
| promise to fulfill under your Royal word. |

**Source:** Self elaborated, based on Ricardino & Martins (2004) and Carreira (1983).