

## THE FISCAL PIECE OF ADVICE AS INSTRUMENT OF PROTECTION AND GENERATION OF VALUE TO THE MINORITY SHAREHOLDERS. AN VISION OF CORPORATE GOVERNANCE

**Sergio Antonio Loureiro Escuder\*, Joao Eduardo Prudencio Tinoco\*\***

### **Abstract**

The present article inserted in the extent of the corporate governance has as objective contributes in the evaluation of the importance of the fiscal piece of advice in the structure of the organizations, with lucrative purposes, as control instrument and support to the shareholders' Assembly, to the light of the legislation of the limited companies and of the reduction entities, class organs, like IBGC, CVM, IBRACON and BOVESPA. It was observed, on the other hand, that the family company is preponderant in Brazil, and that that central aspect limits the performance of the fiscal piece of advice in the context of the corporate governance.

**Keywords:** fiscal piece of advice, corporate governance, family company

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\*Mestre em Gestão de Negócios – UniSantos/Brazil, Professor Faculdade de Administração de Empresas – Unisantia, Av. Conselheiro Nébias, 726 – cj. 111 – Santos/Brazil – CEP 11.045-002, [sescuder@vivax.com.br](mailto:sescuder@vivax.com.br)

\*\*Doutor em Contabilidade – USP, Professor do curso Mestrado da UniSantos/Brazil, Av. Carvalho de Mendonça, 244 – Santos/Brazil, [tinocojoao@uol.com.br](mailto:tinocojoao@uol.com.br)

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### **Introduction**

Academic studies on the corporate governance have treaty, in his/her majority, on the forms of the shareholders' control in Council of Administration and of the Executive Management aiming at larger transparency in the actions of the administration and consequently the safety to the shareholders, government, society and other actors. The model of corporate governance in Brazil is that that be suitable with the reality of the companies, since, 85% of them are considered family, according to studies of Neubauer and Lank (1999). The corporate governance took space in the academic literature, mainly for the activist movement of the great pension bottoms, institutional investors and minority partners. The process of governance corporate search, inside of that scenery, to study the forms and roads of developing touchstone of more harmonious coexistence among the capital, the administration, the family and the society us which it is inserted. The sense more acquaintance of the corporate governance refers to the relationship among the company. In this context, he stands out the report Cadbury, 1992 (Cadbury, 2002) when the beginnings of the corporate governance were centered in the process of generation of value for the shareholders and partners (shareholders). More recently, the corporate governance started to treat also of the relationships with other groups that suffer impact of the decisions, as employees, suppliers, customers, government and community in general, denominated social (stakeholders) partners. Servant in the USA in the decade of 80, the govern concept Servant in the

USA in the decade of 80, the concept of corporate governance arrived in Brazil there is little time and it seems still to be beginning their first steps, heading for the sedimentation and popularization of what intends, accordingly (Tinoco and Winckler, 2004). Though, it took force after the appearance of the great embezzlements in companies in the United States and, since then, mechanisms of the investors' protection were created as the Lei Sarbanes-Oxley in 2002. The main objective of that legislation is to do with that the companies, through their executives have larger controls on the financial reports published to the market, with the simple premise that to "the good corporate governance and the ethical practices of the business are not more refinements. they are laws." Like this, he/she grew up referred her Law, forcing the companies strengthen her/it their mechanisms of internal control with three practical objectives: effectiveness and efficiency of the operations, reliability of the reports finances the execution of laws and applicable regulations, turning like this the executive directors and financial directors explicitly responsible for establishing, to evaluate and to monitor the effectiveness of the internal controls about those reports and popularizations. For the family companies, the beginning of the corporate governance wins importance for the performance in the relationship among the company, the shareholders, the family and their heirs. In this pitch, the shareholders are all of the members that compose the family that, that compose the family that, at the same time, they are partners of an organization. In function of the complexity, of the overlap and of the conflicts of

interests, with the affectionate relationships and of consanguinity, the governance in the company's family raises the being one of the themes of larger relevance for several fields of the knowledge. This is due fundamentally to the following reasons:

- The scandals in companies of everyone, especially in the United States, in Japan and Italy;
- The disappearance, the bankruptcy or the sale of a high number of family companies in the transition among a generation and other; or,
- In function of collisions, of disagreements and fights among family, inside and out of the company;
- The controlling shareholders' disproportionate enrichment, as the holders of the administration power:
  - Of the minority shareholders, when holders of the administration power, or of the managers in general, when external;
  - Disregard to the minority shareholders, bearers of preferential actions and institutional investors.

In Brazil, one of the control mechanisms and defense of the interests of the shareholders is fiscal piece attorney whose paper is foreseen in the article 161 of the Law 6.404 of 1976, modified by the Law 10.303 of 2001, denominated Law of the Limited companies.

The importance of that organ appears with a norm emitted by SEC Securities and Exchange Commission equivalent CVM in Brazil, that when regulating the relative norms to the constitution of the auditing Committee for the American law Sarbanes-Oxley, applicable to the Brazilians companies that possess ADRs (American Depositary Receipts, striped in the levels 2 and 3 of the Bag of New York, they will be able to, at first, to use the permanent fiscal piece of advice in substitution to the auditing committee, for her demanded to leave jully,25.

For the definitive acceptance of the fiscal piece of advice in substitution to the auditing committee, it would be necessary to promote some adaptations in the form of performance, in the composition and also in the culture of the fiscal piece of advice, in way to assist the demands requested by SEC.

The fiscal piece of advice in that structure of corporate governance has a fundamental paper exercising a control about the administrators' actions, as much of the administration piece of advice as of the executive management, since it is chosen directly by the shareholders and he/she has his/her independent performance of the managers of the company. In the family companies, the administrators stop not only the control, but mainly the power, that translates her naturally in conflict with those that it doesn't stop the control and they are far away from the power. With the existence of the conflict of interests, they are surrogating the rights of those that are not in the control of the company, hindering his/her access to the information. The

fiscal piece of advice, elect in shareholders' assembly, it can collaborate with those that are far away from the control and power (minority shareholders) acting from form inspectorate to the administration of the businesses.

That important paper is translated in the attendance of the internal controls, of the strategic and budget planning, in the recruiting of the independent auditing and improving the transparency of information and the other actors' actions, facilitating the decision in the sphere of the shareholders' assembly. It happens that the legislation in spite of mentioning the existence of that piece of advice, didn't make him/it in a clear way as for the action limit, as well as, being observed that his/her installation is not obligatory, unless shareholders holders of at least 10% of participation request his/her installation in shareholders' assembly.

A lot although the culture of the society understands that the paper of the fiscal piece of advice is complementally to the of the independent auditing, there are a basic difference and logic of those organs:

1. The auditing expresses if it worries with the formality and the legality of the accounting records, serving, besides, as support instrument and of safety to the administration piece of advice, because it is hired exclusively by that organ.

2. The fiscal piece of advice, elect organ for the shareholders, independently of the administration he/she has for objective to accompany and to verify the actions of the administration piece of advice, with participation in the investment decisions, strategic planning, internal controls, and, mainly if the shareholders' interests are being preserved in the search of the perennial of the businesses.

In that sense the present article seeks to expose in conceptual lines the meaning of the corporate governance; of the corporate governance in the family company; of the fiscal piece of advice. legal and practical aspects, propitiating a wide vision of the practical benefits of the existence of that organ in the structure of the corporate governance.

## Objective of the Study

The study of the corporate governance in Brazil advances overweight to the aspects related to the minority shareholders' safety for the reason of the capital structure in the Brazilian companies.

The safety's subject is very close to the aspects related to the fiscalization since difficultly the minority shareholders get access to the information besides those foreseen in the Law.

This way, the present study seeks to characterize the instruments of the corporate governance in the structure of power relating them with the importance of those elements in the family companies as control form and generation of wealth to the shareholders.

## Methodology

The present work uses as methodological instrument for elaboration of the article the theoretical research, according to the deductive and deductive-hypothetical methods, for the reading of goods and texts developed by other researchers, class entities and that presented effective contributions to the study of the corporate governance in Brazil. He understands each other as method or deductive reasoning that that comes from the general for the matter, of the beginning for the consequence, traveling levels of abstraction of an observation of a general phenomenon, looking for to particularize him/it (Discards, 1969).

As for the deductive-hypothetical method, Viegas (1999) establishes that the science is not a system of concepts, but, to the opposite, a system of statements, taken to the falseabilidade criterion. In that method, a statement as controlling "shareholder expropriates the minority shareholder", for instance, he is unreliable because, although she cannot demonstrate that all of the family companies or controlled by families possible, last, presents and future, existent or to exist, anywhere in the world, practice through their controllers actions expropriate. However, to find a single controlling family of company that uses of methods to expropriate the minority ones so that the affirmation becomes false. Tends in view that the corporate governance denotes the need of wide academic discussion, the bibliographical research is constituted in a resource that puts the authors in contact with what was produced already and it registered regarding the theme, validating their efforts.

## Theoretical Fundamentals

### Family Company of the Origin a Present Time

The origin of the family company is in the origins of Brazil. The hereditary captaincies were the first modalities of private (Martins, Menezes and Bernhoeft, 1999) enterprises, when, starting from a concession of the King of Portugal, the deprived initiative exercised almost feudal rights on the granted earth, collecting imposed and enforcing the law, tends as obligation, just the loyalty to the King as well as to pay their taxes in day. The wave of European immigration of the end of the century XIX and beginning of the century XX was responsible for the next important economical cycle for Brazil, that was the industry, and for the I begin of a new phase of the family company. Behind a Brazilian economical cycle, there was always a category of involved entrepreneurs, that you/they abandoned their lands, even with their origin problems, as in the typical Italian case, for us to enter in ignored lands and with incipient markets and without any

protection type and regulation. Different from the American companies that were formed and they grew for mechanisms of financings for the stock exchange, as it puts Amendolara (1997), whose result was the pulverization of the property. In Brazil, in reason of the Portuguese and Italian culture of origins, the attachment to the property did of the companies here constituted if they develop through own capital and or with onerous financings, concentrating the capital. Like this, the growth and development of the Brazilian economy felt stepped on in the family companies that they are today, or they were even little time, in the most several sections of the economy. Being small, averages or great companies were and they are of vital importance for the economy and development of Brazil since they represent an universe high overweight in the generation of income and job. That situation is raising a curiosity of the researchers and linked professionals to the life of the family companies. In spite of numerous and old businesses in the modern society, it is verified that only three decades ago, that theme started to wake up researches in the academic world. The processes of succession of family companies and his/her survival are among the main precautions of any family involved with businesses. Handler (1994) affirmed that researchers in the field of the family company agree that the succession is the most important subject than most of the companies should face. Studies of the development of the family company in their several dimensions. property. family and company. they suggest that the involvement of the family with the daily of the company, with the relative subjects his/her property and to the application of their resources it is the spring propulsive of the conflicts for being able to, money, attention and recognition. Still according to Donelley mentioned by Bernhoeft (1991), it is possible to end that in the family company the interaction of this with the family results in it influences reverse in the general politics of the firm and in the interests and objectives of the family. This way, the control of the property of the business, as well as the outstanding presence in yours day by day forms the appropriate atmosphere for a family to develop the characteristic dynamics of the family companies. Like this, for the end the one that this work, a family company is destined will be that that to possess the characteristics below:

- 1) A family possesses majority participation in the capital of the company, controlling the process decision;
- 2) Members of the family holder of the majority capital of the companies are present in the direct administration of the businesses;
- 3) There is a clear desire to transfer the property to future generations, maintaining like this the perpetuity of the business inside of the family structure.

## Aspects of Corporate Governance

Andrade and Rosseti (2004) comment on that in spite of the diversity of concepts on the corporate governance, a very defined group of key expressions exists, linked to the beginnings, models, practices, regulation mechanisms and to the purposes of the corporate governance. The main ones are: the shareholders' (shareholders) rights; right of other interested (stakeholders) parts; conflicts of it negotiates; system of relationships; system of values; government's system; structure of power; regulation structure; patterns of behavior. For OCDE (2001), the corporate governance is the second system which the business corporations are driven and controlled, aiming at and specifying the distribution of the rights and responsibilities to the different participants of the company, as the administration piece of advice, the executive directors, the shareholders and too much interested parties. Blair (1999) defines the corporate governance for the means of the which the corporations are used to establish processes that adjust the interests in conflict between the shareholders of the companies and their leaders of high level. For a very generic way, the corporate governance can be described as the mechanisms or their beginnings that govern the process decision of a company, in other words, it is the group of rules that you/they seek to minimize the problems of it negotiates. It is a movement that seeks to democratize the relationship among: shareholders, independent and executive auditors of the company, motivating the invigoration of the power Council of Administration in the socket of decision. According to Shleifer and Vishny (1997), the corporate governance is the field of the administration that treats of the group of relationships among the direction of the companies, their administration pieces of advice, their shareholders and other interested parts. She establishes the roads for which the SUPPLY VESSEL of capital of the corporations is insured of the return of their investments. At the present time, the governance is being more and more emphatically discussed in association with events and as different as the coalition movements business transformations and acquisition of companies, the succession processes in family, the high capital cost, the low professionalization of the companies. The several concepts of corporate governance are associated, or even a direct derivation of the differences of the models practiced at different countries, tends his/her linked nature to the own cultures and needs demonstrated along the history. Babic (2003) and Oliveira (2000) developed competent and explanatory rehearsals on that aspect, according to the ones which, several governance models are current of conditions historical, cultural and institutional of the countries in that each one of them prevails as well as it is due to the economical formation, highlighting, in this case, the maturity of

the financial system, the development of the market of capitals.

Andrade and Rosseti (2004) to explain that those different models can be gathered in two great groups:

1. Defined for the typology of property of the companies and for the preponderant form of financing of the corporations, being the focus the shareholder (shareholder) in the aspect of their interests and rights. Property-administration-return..

2. Defined for the posture of the corporate world as for his/her involvement and to his/her commitment with objectives of larger width, no limited to the of economical-financial nature. They are models to be going besides the return of the investment and of the generation of wealth for the shareholders, assuming commitments with other interested (stakeholders) parts, in the development of the company and in the impacts of their actions.

Besides, the quality of the governance has been focus in serious discussions on the great business crises of the last two decades. A lot of the literature on the corporate governance bases on the beginning that the companies belong to the shareholders and that, therefore, his/her administration should be made in benefit of these. However, a new series of studies, of this done, by La Carries et al. (1997) it has been demonstrating that the paradigm of Berle & Means (1932) is a restricted exception just to the United States and England, whose property is dissolved in the hands of thousands of shareholders. In most of the countries, the model prevails it is of a majority shareholder that stops the control of the company and it points their administrators. In such situation, there is change in the paradigm of the corporate governance, whose paper doesn't limit in protecting the shareholders' interest, but in avoiding that the controlling shareholders expropriate the minority ones. Like this, the subject of the corporate governance in Brazil involves, mainly, a relationship of power between the majority shareholders and minority shareholders. In Brazil, the structure of the predominant stock property is concentrated. The great transformations that happened in the economy of the country and, for extension, in the corporate atmosphere, they implicated more changes in the controllers' identity than in the concentration (Okimura, 2003) degrees. In agreement with the research of Okimura (2003) the results of rising of data of the beginning of the nineties and of the turning of the century they are not significantly different as for the majority controllers' presence: the larger three have been maintaining a superior participation to 80% of the capital voter in most of the great companies. At the same time, Okimura (2003) concludes that it is usually low the relationship between the property of control actions and the total of emitted actions, as historical result of the legal permission of release of the two classes of actions, ordinary and preferential. In that pitch, the

problems of structure of power that you/they happen in Brazil they are much more linked to conflicts of shareholders' interests property and power that for stakeholders problems.

### **Systems of Government and Structure of Power**

The corporate governance treats of government's system, of the majority shareholders' relationship and minority, of the administration piece of advice with the shareholders and executive management, of the stakeholders with the administration piece of advice, in other words, it navigates in the structure of power of an organization. According to Cadbury (1992), the corporate governance is the system and the structure of power that govern the mechanisms through which the companies are governed and driven.

Already Babic, (2003) affirmed that the field in that the corporate governance gravitates is defined by a given structure of power, that involves subjects related to the process of socket of strategic decisions, to the exercise of the leadership, to the methods with that is assisted to the established interests and the emerging cases. In synthesis, he is related the sociology of the elites and for that reason it is influenced strongly by the legal institutes and for the marks regulations of each Country.

However, Hitt, Ireland and Hoskisson (2001) said that, as the corporate governance he/she was born of the divorce between the property and the administration of the companies, his/her focus is the definition of a governance structure that maximizes the relationship between the shareholders' return and the benefits gained by the executives. In this sense, it involves the strategy of the corporations, the operations, the generation of value and the destination of results.

Their concepts, leaving of an administration model that defines his/her inclusion, the corporate governance are a group of purposes that governs the system of power and their mechanisms of administration of the companies, including: 1. The enterprising shareholders' purpose. 2. System of relationships shareholder-piece of advice-direction. 3. Maximization of the shareholders' wealth, minimizing conflicting opportunisms with this end. 4. Regulation structure and of fiscalization of the corporate actions. 5. He/she structures advisory, deliberative & of command. 6. Formulation process and execution of the strategy. 7. Administration system, of control and of gauging of results. 9. System of relevant information to the interested parts. 10. Service patterns.

### **Corporate Governance as System of Relationships**

The promises and the power in the governed companies are clear and they develop processes

more vigorous and adaptable decision. The new ideas are more frequent and the administration is less personalized, therefore he is not in the main executive's hands, but, yes, in the effectiveness of the organization. The risk of the isolation, of the inertia and of the false consensus it is almost null, as well as in the long period, the open and flexible systems that they foment the counselors' involvement and shareholders, they increase the stability and they reduce the probability of traumatic and contentious changes. Independent of the values in that it is found, of the practiced model, of his/her apprenticeship and of the actors indeed involved, the corporate governance settles down for the proprietors' interaction, administration piece of advice and executive direction, three anchor ace which you/they add other interested parts. The relationships that settle down among the involved actors are that will define the effectiveness of the governance process. As Montgomery and Kaufman (2003), the balance of the corporate power prevail is delicate. It depends on three anchors crucial: shareholders, administration piece of advice and executive direction. Although each one has his/her important responsibility, his interaction is fundamental for effective governance. When they operate committees as a system, he/she becomes strong mechanism of brakes and against-weights. Of this point of view, the governance gathers the administration practices, exercised inside of a structure of power, involving a group constituted for at least three subsets: property, piece of advice and direction. Each one of these subsets has, on one side, own demands and on the other hand responsibilities for tasks and deliveries. For the effective performance of this triangle of power, besides shareholders with aligned purposes, it is demanded that, inside of the administration piece of advice it is practiced among their members a strong constructive interaction that, on a side, care for for the proprietors' interests and, of other, monitor the administration and copper the results that have been awake. The break of this system of relationships, wherever happen, be inside of each sphere of power, be in the demand lines and deliveries that relate them, certainly it reduces the effectiveness of the governance and harmonization of the corporate interests. Those relationships in the structure of power among shareholders, administration piece of advice; piece of advice of executive administration-management should involve criteria and mechanisms of controls and monitoring. The own American legislation, Lei Sarbanes-Oxley (2002) looked for and to impose instruments of responsibility to the involved actors aiming at larger transparency and safety in the information transmitted to the market.

The relationship between the administration piece of advice and the executive management is at first having protected for a third actor's action: the independent auditing. This is contracted under responsibility of the administration piece of advice,

whose paper is to analyze the reports and financial demonstrations emitted by the executive management, validating and attesting that the information and constant registrations in the financial demonstrations are in accordance with the legal foundations and they represent a reality. The executive management, for his/her time, has at your disposal with objective of to attest and to accompany the internal controls and global actions, the auditing interns whose paper is, among other, to verify the internal controls used by the management are skilled and reliable. Tinoco and Winckler (2004) expose in his/her research that the paper of the accounting had increased his/her criteriosidade level in the sense of turning more independent of the executives than compose the high direction of the companies, as well as the independent auditors started to be more demanded and controlled, looking for to turn them immune to the improper pressures of the directing body, with objective of making up the information to obtain dubious benefits and to the costs of the investors' damage and shareholders. The shareholders, as much controllers as minority, he has at your disposal, in the form foreseen in Law, the fiscal piece of advice, as independent organ of the administration and with exclusive performance for the shareholders' interests.

### **The Fiscal Piece of Advice**

In Brazil, as mentioned, the model of adopted governance is in relation to the property form, whose capital is concentrated strongly and in hands of families, holder of more than 75% of the capital of those companies. Being concentrated, the administration piece of advice is chosen by the controlling shareholders, whose effects relapse in the executives' choice. It happens that the executives, in these cases, act under command of the administration piece of advice, whose control comes from the controlling shareholders, doing with that the other parts interested parties are distant not only of the power and of the box, but, mainly of the control of the social businesses. In that pitch, it hinders the controls of the company for the other shareholders and stakeholders, since the property and the direction (cash flow) stay in the same people's hands. With objective of neutralizing that posture, other organ appears in the structure of Corporate Governança: fiscal Council.

### **Birth of the Fiscal Piece of Advice**

The conception of an organism supervisory of the social businesses, or the need of fiscalization of the businesses of the societies for actions, already existed since those first moments of the creation of the Dutch companies, as he/she writes down Valverde (1959, p. 33): *"If, in the privileged Company of western India, the one that, for special*

*reasons, we already referred so many times, (ns 2;4 and 599) he/she still doesn't appear, perfectly characterized, those control organ or fiscalization, though, in the agreement done between directors and main copartners of the Company, with the approval of the Noblemen and High Potencies you General States, in 1623, it appears, clear, that control organ or fiscalization: all the bills mentioned in the air. XVI of the I privilege should be done Those commissaries should communicate a summary of those bills to the other main copartners and they will be forced by oath the no more to discover and to maintain secret everything on that the directors should keep secret. It is them extensive the prohibition that art. XXXI of the Privilege, makes to the directors, relatively to you buy and sales. Those representatives should have and to exercise, on behalf of the main ones and copartners, the given right and granted to the agents by the art. XXVII and besides they can consult Already other current is unanimous in recognizing that Napoleon's Code, dated of 1807 it constitutes a true divisor of waters in it recounts them of the societies for actions. It was with the French code that you/they settled down the general lines of the mercantile society, putting an end to the privilege that assisted to the interests of the state, feeling access to the men of I trade in the formation of the limited companies. (Valverde, 1959). That code, however, that he/she didn't take care of Fiscal Council of the companies; it inspired all the subsequent legislation that regulates the societies. He/she points out Valverde (1959), that the first law to turn obligatory audit committee attorney was the French law of 1867, although the use of fiscal organisms in the companies already acted to the time, a practice in consolidation. Several legislations started to conceive apparel and fiscalization forms starting from the French law of 1867, being adopted different systems, the commissaires aux comptes in France; the collegio sindacale in Italy; the fiscal piece of advice in Brazil and in Germany. Being adopted the external control by professional auditing, as well as for the creation of it negotiates state of fiscalization, the call Anglo-American system appeared, standing out on this last one, in the United States of North America, the performance of the Securities and Exchange Commission, SEC, in 1976 through the Law 6.385 grew up in Brazil the similar Brazilian, our CVM.*

### **The Juridical Nature of the Fiscal Piece of Advice**

In Brazil the fiscal piece of advice is understood in the goods 161 to 165 of the Law 6.404 of December 15, 1976, with established modifications for the Law 9.457 of 1997 and for the Law 10.303 of October 31, 2001. Although for the Law of the Limited companies the fiscal piece of advice is an organ of obligatory existence in the societies for actions, the

same law doesn't demand his permanent operation. His/her installation can be demanded by shareholders, and the organ stays until the next ordinary general assembly, when the fiscal counselors' mandates of they extinguish; their knower competences and that flow of the Law are:

- To supervise for any of their members the administrators' actions and to verify the execution of their legal and statutory duties;

- To say on the annual report of the administration and on the demonstrative ones financial;
- To say as for the administrators' actions;
- To denounce for any of their members, to the administration piece of advice and the shareholders eventual irregular actions or swindle that come to be of his/her knowledge;

- AGO to attend and he/she ACTS and to say on matters of his/her competence;

To analyze signings and demonstrative financial and to emit opinion Fiscal Council renders bills to the shareholders of his fiscalization of the actions of the executive management and of the administration piece of advice and he/she offers his/her opinion as for the demonstrative financiers examined by the external auditor. In the acting of their functions it can be been worth of the I aid of the external auditor and other specialists, that they can be requested by any counselor, the they be paid by the company. The counselor's performance is a performance at the same time college and individual. For Bulgarelli (1998), the certain functions for the law for the district attorney performance involve a wide strip of performance and subjective evaluation to be filled out by the individual initiative; for that author, the situation of the fiscal Counselors he locates in two plans: the plan of the link to his electorate and another linked plan the district attorney situation in the extent of the piece of advice, to the projections before the other organs and his/her connection the regime of responsibility. The functions of the position subject the title-holder to the duties and responsibilities preset in the law, added or not for the statute of the company. The wide strip of performance and subjective evaluation to be filled out by the counselor's individual initiative are concern of the companies and of the legislator that brought by the Law 10.303 of 2.001 in the reform of the Law 6.404 of 1976 it introduced an additional paragraph to Art. 165: Art. 165... Paragraph 1st .

The members of the fiscal piece of advice should exercise their functions in the exclusive interest of the company; he/she will be considered abusive the exercise of the function with the end of causing damage to the company, or to their shareholders or administrators, or of obtaining, for itself or for somebody else, advantage the one that doesn't make right and that it results, or it can result, damage for the company, their shareholders or administrators. The district attorney has a duplex link: with the shareholders that indicated him/it and

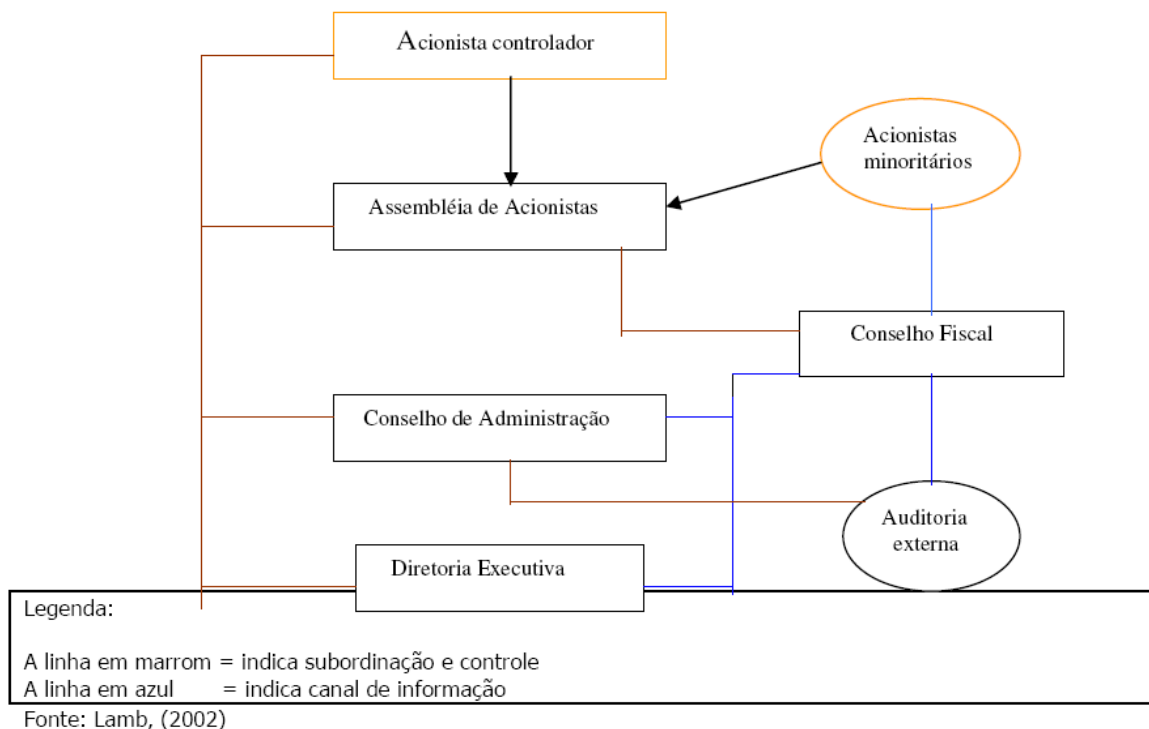
with the company; to the first ones a trust connection, of defense of interests; Monday, executing their functions the limit in the social interest. Bulgarelli (1998). The individual performance and group inside of the organ it is corroborated still by the paragraphs 2nd and 3rd of the art. 165 of the Law 6.404 and renowned for the Law 10.303 of 2001.:Art. 165... Paragraph 2nd. The member of the fiscal piece of advice is not responsible for the illicit actions of other members, except for if with them it was connive, or if it competes for the practice of the action. Paragraph 3rd. The responsibility of the members of the fiscal piece of advice for omission in the execution of their duties is solidary, but of her the dissident member is exempted that does to consign his/her divergence in record of the meeting of the organ and to communicate to the organs of the administration and General Assembly. For the Law, the power fiscalization of the fiscal piece of advice extends to the actions of the administration of the company and that includes his/her opinion about the performance of the administration piece of advice. According to Bulgarelli (1998), for the functional and systematic aspect the fiscal piece of advice appears as one in the control ways about the administration, including the bills and the administration, or only the bills.

### **The Fiscal Piece of Advice Under the Optics of Corporate Governance**

The separation of the property and control between shareholder and their managers through offer of actions through the stocks exchange, strong characteristics in the great companies did with that the need of the creation of mechanisms that you/they adjusted the managers' interests with the one of the shareholders so much appeared majority as minority. Based by the Law 6.404 of 1976 and modified by the Law 10.303 promulgated in October of 2001 search with the alterations to propitiate that minority shareholders reduce the risks and maximize his/her participation in the control of the company. The main inspiration was to do with that the Brazilian market of capitals reduced his/her stock concentration, turning him/it accessible to the small investor. Therefore, governance practices that provided the shareholders' equalitarian treatment were fundamental. With that I aim at, innovations are implanted as the tag-along, the new rules for seat in the piece of advice, the refinement of custody subjects, the limit of emission of preferential actions in relationship the ordinary ones, the use of the arbitration as mechanism of solution of divergences between the controllers and the minority shareholders, among others. However, Kozlowski (2004) emphasized that the changes observed in the Law of the limited companies are still modest in the sense of providing incentives to the minority ones. That point of view is clearer still when mentioning

Salomão Filho: It "is not of frightening, therefore, that the typical profile of the minority Brazilian is it of the speculator, that enters in the society already with the perspective and expectation of the exit. Not just to the minority any is denied right to participate in the society, as it is strong the incentive so that he/she leaves." Bulgarelli (1998) mentions that the composition of the law seems to have the intention of checking mechanisms and control instruments of the administration to the minority shareholders and those without right to I vote for. The counselors' risk to disturb the administration of the company it is faced by the Law checking the controller most in the piece of advice. On the other hand, Valverde (1951) ends that when attributing independence and responsibility of personal diligence to the counselors, and when establishing the law that the counselors are the shareholders' representatives and not of the group that indicated them, it created the concrete possibility of defense of the interests not only of the excluded

shareholders of the control block, but of the shareholder in his/her totality. Also, to the power to request explanations to the independent auditor, besides you summon him/it, it creates, in a certain way, a control of the minority ones on the external auditor. Such possibilities, however, they are submitted to the preparation and diligence individual of the fiscal counselors. The corporate governance, in his/her breast, tries to establish the separation of the control and of the power in the organization, creating like this, administration organs and control in government's structure. The fiscal piece of advice, as control organ is subordinated the shareholders' assembly directly, tends the controller the domain of all of the organs of the company, which, he/she would bring a larger presence of a fiscal counselor properly qualified to the defense of the interests of the minority ones. For best to understand that operation, he/she comes an organization chart of the exposed condition below. Robert Lamb (2002):



The objective of the organization chart is to demonstrate the possibility of performance of the fiscal piece of advice in the extent of his/her it executes responsibility that is to take to the general assembly of their shareholders impressions on the administration of the company as for: 1. Strategic planning. 2. Control budget. 3. Mechanisms of internal control. The three mechanisms indicate indeed if the managers internal or contracted are collaborating with the maximization of the value of the patrimony and acting in the structure of the business for the long period. In this way, that that caused the conflict among the minority shareholders and majority as the administration of the business in

control aspects and attendance is minimized by the action of the fiscal piece of advice.

### Conclusion

The authors of this research end that, as the model of existent property in Brazil whose concentration is very big, the minority ones are without capacity of to accompany and to obtain better information regarding the company of the which you/they are shareholders. On the other hand, the legislation of the Limited companies. Law 6404/76 - he/she still didn't make clear which the true competences of the fiscal piece of advice, taking a lot of times, organs



regulators as impeding CVM of acting in benefit of the society. It was observed that the corporate governance whose paper is to facilitate the relationships of power creating control mechanisms and separation, is not, still, it forces legal to clean up the several existent divergences between the majority ones and the minority ones, in spite of the constant recommendations in his/her regulation. The structure of family property, in his/her majority composed by limited companies of closed capital, contrary to the opening of the capital, they are not reached by the regulations and controls of CVM and with that, they ignore the recommendations inserted in the beginnings of the good corporate governance. He can her, to end, this way, that the existence of an organ in Council District attorney molds, without clearer definitions on his/her performance and inclusion, becomes innocuous in the performance of the companies with characteristics of family companies, for not representing fiscalization conditions and performance appropriately.

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