

Académie NewCode

Reference document – Short form

June 2018

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Summary

NewCode proposes a new framework for the interaction of human and financial capital within the enterprise system, with a focus on strategic and business planning, capital structuring, management and employees motivation, value sharing, and governance.

It re-prioritizes the human capital dimension, while respecting investors and making the best of the existing capital market infrastructure, in the interest of the enterprise.

NewCode is developed and maintained by Académie NewCode, a non for profit organization comprising individuals and experiences from all areas relevant to NewCode.

It is immediately implementable in modern economies.

The Vision (1)

NewCode Vision is the reversal of the relationship between the enterprise and the equity layer of its capital structure.

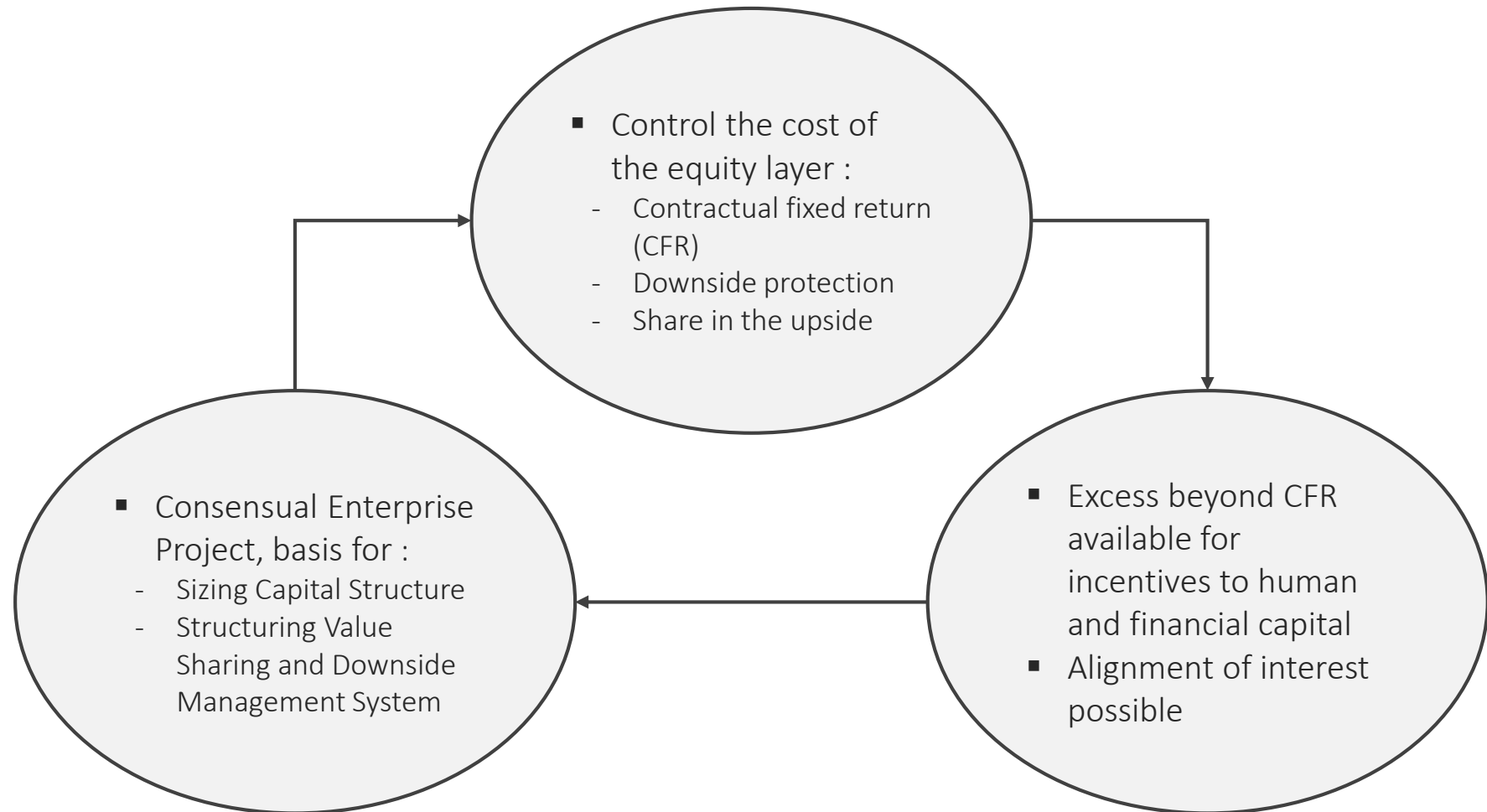
NewCode will empower the enterprise to control the cost of this layer through a contractual arrangement (fixed return + a share in the upside), as opposed to being entirely geared towards maximising that cost, as is the case in the current system.

Conversely investors will benefit from a lower risk profile than previous equity owner, thanks to a direct and credible commitment from human capital to protect the contractual return.

This will open the way for completely re-designed governance, human capital motivation and use of capital markets.

The Vision (2)

NewCode virtuous circle



The Vision (3)

Benefits

- Governance will be freed up from its objective to maximize shareholders value and can be truly dedicated to the long term interest of the enterprise.
- Interest of financial and human capital will be aligned through structured value sharing agreements whereby no party can win at the expense of the other.
- Within human capital, the interest of management and employees will be aligned through sounder incentive schemes, with operational efficiency and market success as sole drivers.
- Challenging market situations will be better and faster addressed, with better balanced and more consensual pain sharing mechanisms.

The Vision (4)

From the company's point of view, aligning interests creates the conditions for a sustainable commitment by employees, guaranteeing a potentially high increase in operational efficiency:

- The intelligence of "the doers" is mobilized because they know they will be the first to benefit from the results of their efforts and initiatives,
- This alignment leads to improved health and safety, less absenteeism and a drive towards further gains.

From a human capital standpoint, NewCode will improve motivation and well being at work, and set the grounds for the enterprise to perform better on its markets.

From a capital markets standpoint, NewCode will create a new asset class, with an intermediate and attractive risk/reward profile, and high social and political acceptance.

Ethics

NewCode is a civilized and consensus driven initiative to transform and improve the way financial and human capital interact within the enterprise system, and how the enterprise in turn interacts with the capital markets.

Key benefit expected from NewCode is that businesses operating under this system will be more efficient, and therefore for a given set of human and financial capital, value generation will increase, to the benefit of all stakeholders.

NewCode ambition is to overtime significantly impact the economy, and positively contribute to important matters such as employment, well-being at work, operational efficiency, and purchasing power. Any person involved in the implementation of a NewCode transformation should have in mind the collective interest of having these transformation take place in a consensual and civilized way.

NewCode Enterprise System



NewCode Enterprise System

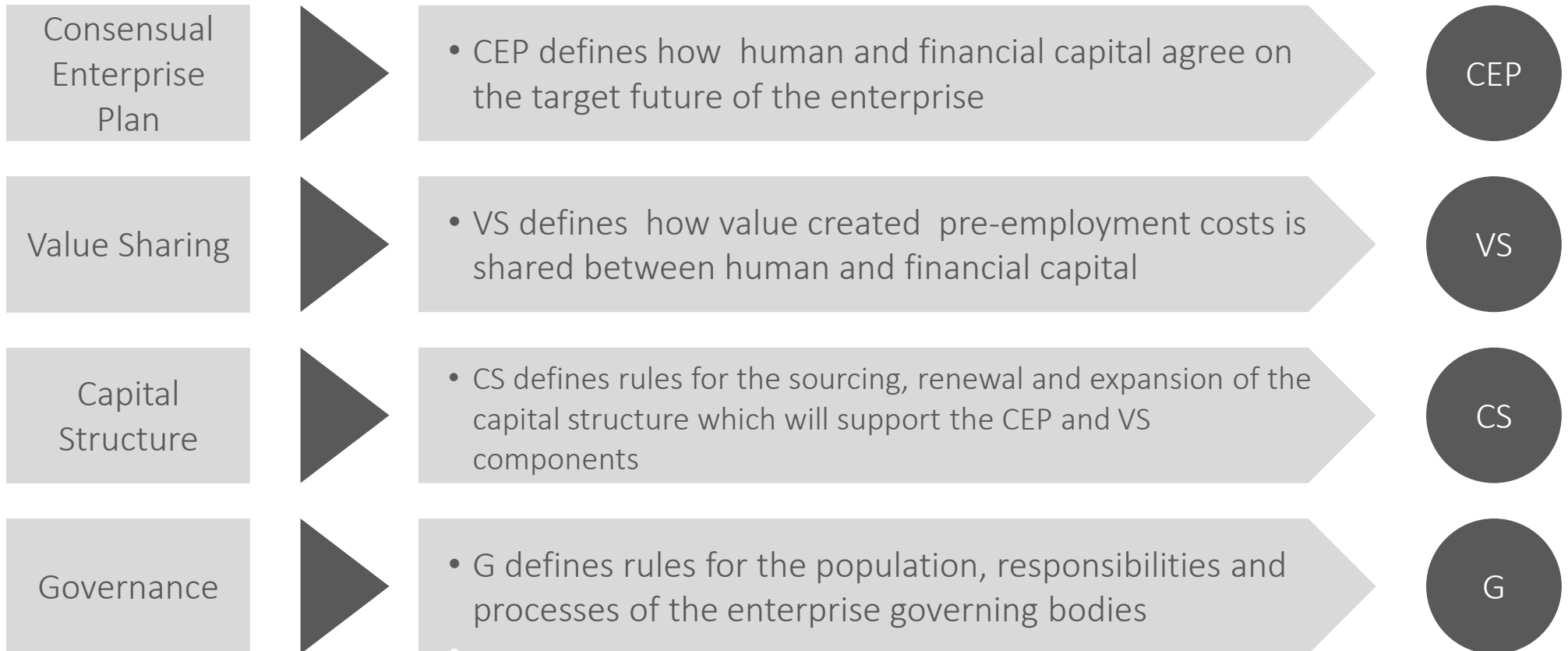
NewCode Enterprise System (NES) includes four components which, taken together, make up the framework for interactions between the company, human capital and financial capital.

It is enshrined in an Enterprise Agreement which commits the stakeholders:

- The business
- Investor(s)
- Staff representatives
- Management team

NewCode Enterprise System

4 components

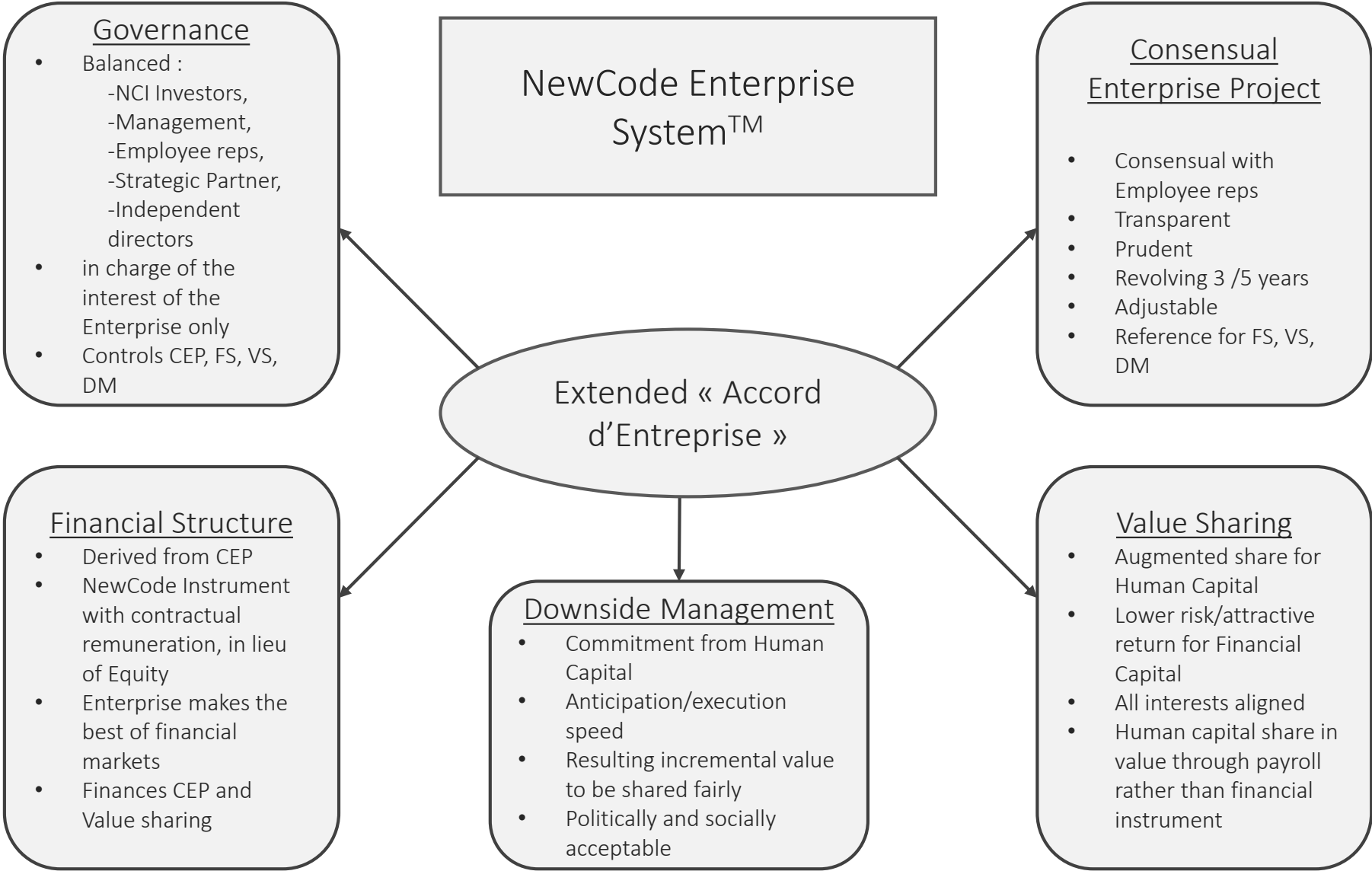


NewCode Enterprise System

Function	Responsibility
Appointment/removal of management	Governance
Framework for CEP consensus	Governance
CEP design	Management
CEP negotiation	Management, Employee representatives and, whenever necessary, investor(s).
Consensus on a bankable CEP and on CEP	Governance, by making the most of the capital available on the financial markets
Sizing, structuring and sourcing of Capital Structure	Governance, investors
CEP execution	Management
Supervision of CEP execution	Governance

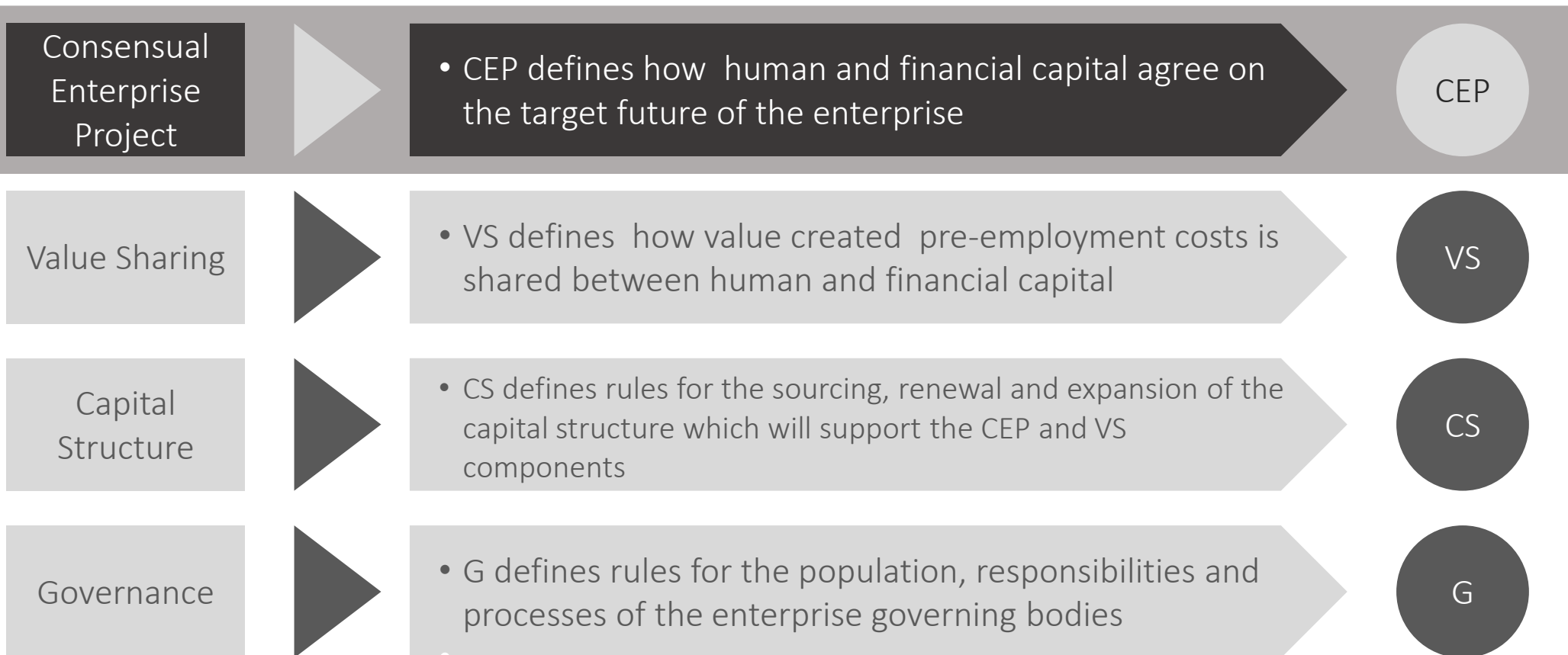
Note: if NewCode is being set up for the first time, the terms Governance, Management, etc. refer to the "incoming" entities

NewCode Enterprise System



NewCode Enterprise System

Consensual Enterprise Project (CEP)



Consensual Enterprise Project

The basis for any NewCode transformation is the establishment of a Consensual Enterprise Project (CEP), where human and financial Capital agree on the target future of the enterprise and commit themselves accordingly.

The CEP contains all components usually associated with strategic and business planning in terms of perimeter, capex, sales and non personal costs projections. It also includes projections for the compensation of both financial and human capital, e.g. the way added value will be shared between human and financial capital should the Enterprise perform according to the CEP.

The CEP provides the base case for the design of the Value Sharing Mechanism, and also for the Downside Management Mechanism which will come into play should the enterprise perform significantly below the base case.

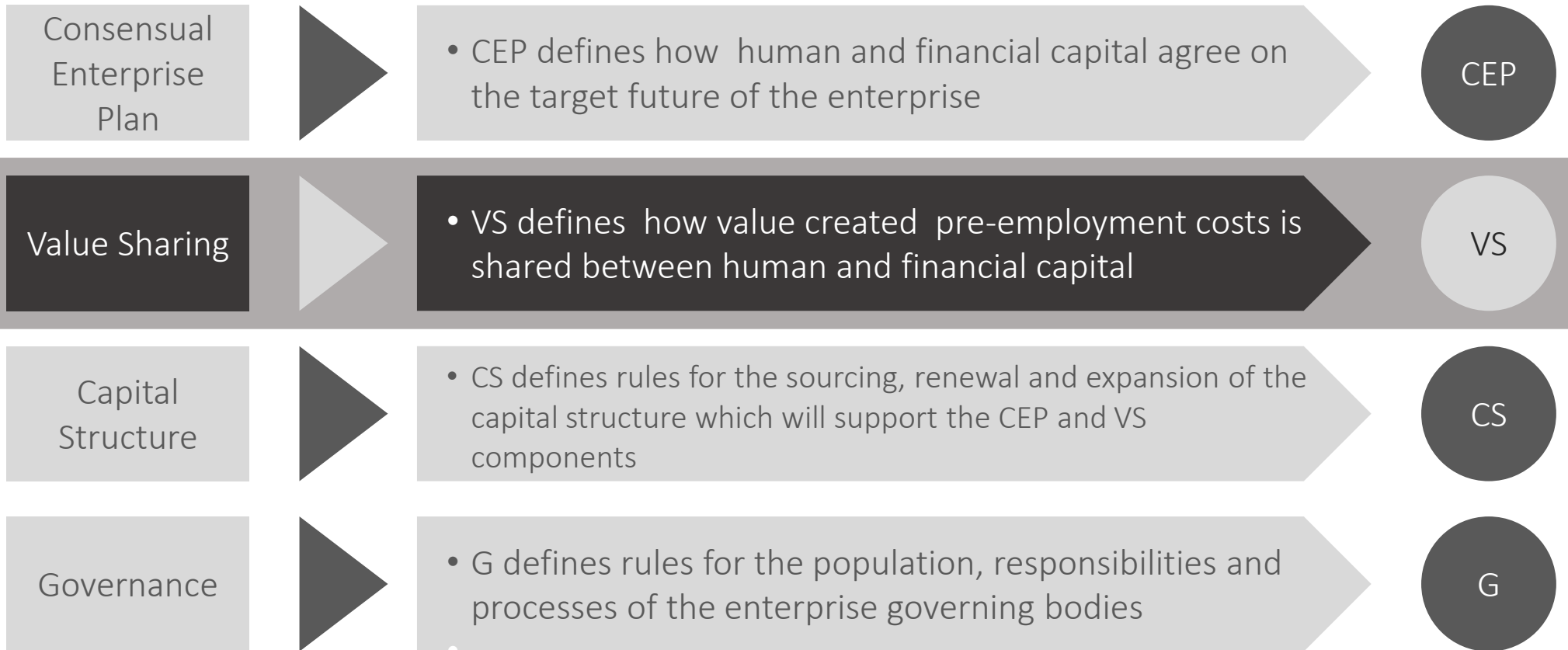
Consensual Enterprise Project (2)

The CEP is also a major input for the sizing and design of the Capital Structure, e.g. the Capital Structure has to provide the capital resources needed by the CEP, and conversely CEP metrics have to allow the service of the Capital Structure and its refinancing at maturity.

The management team is in charge of drafting the CEP. Governance is in charge of achieving a consensus on the CEP, between management, employee representatives and investors.

NewCode Enterprise System

Value Sharing (VS)



Value Sharing and Downside Management System

The VS component defines how added value is shared between the enterprise, financial and human capital:

- When the enterprise performs at or above the CEP, added value is first distributed as per the CEP, and any excess is allocated to human capital, financial capital and reserves in pre-agreed proportions.
- If the Enterprise performs below plan, however without reaching a pre-defined Alert level, Management is in charge of implementing relevant improvement measures.
- Should the Enterprise break the Alert level, Governance takes charge for a revision of the CEP, and as the case maybe the implementation of measures provided for in a pre-agreed Downside Management Mechanism.

Value Sharing and Downside Management System (2)

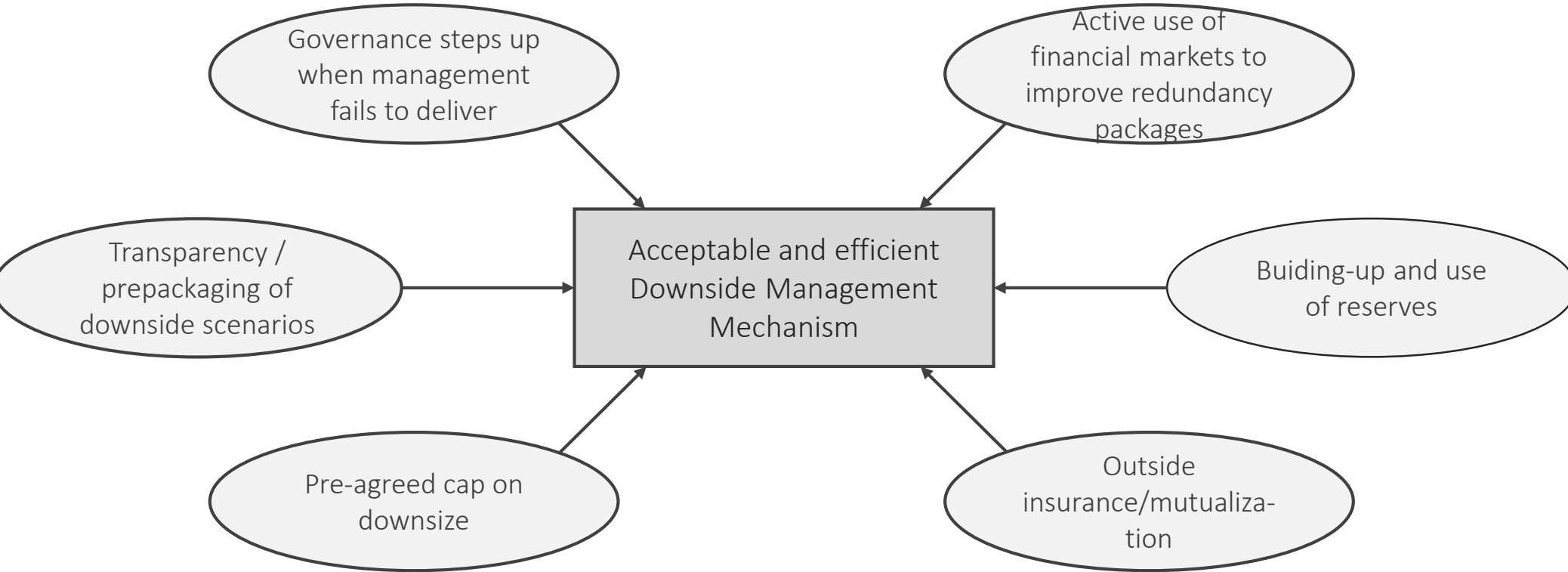
In certain circumstances, Value Sharing and Downside Management Mechanisms are funded through a regeneration of the Capital Structure, rather than solely from the use of the Enterprise own generated resources. In such a case the associated net capital inflow is used to distribute part of the Enterprise Value created to human and Financial Capital. In a turnaround situation, it is used to fund the turnaround plan. See Capital Structure tab.

Value Sharing and Downside Management System (3)

As per enterprise performance vs. CEP

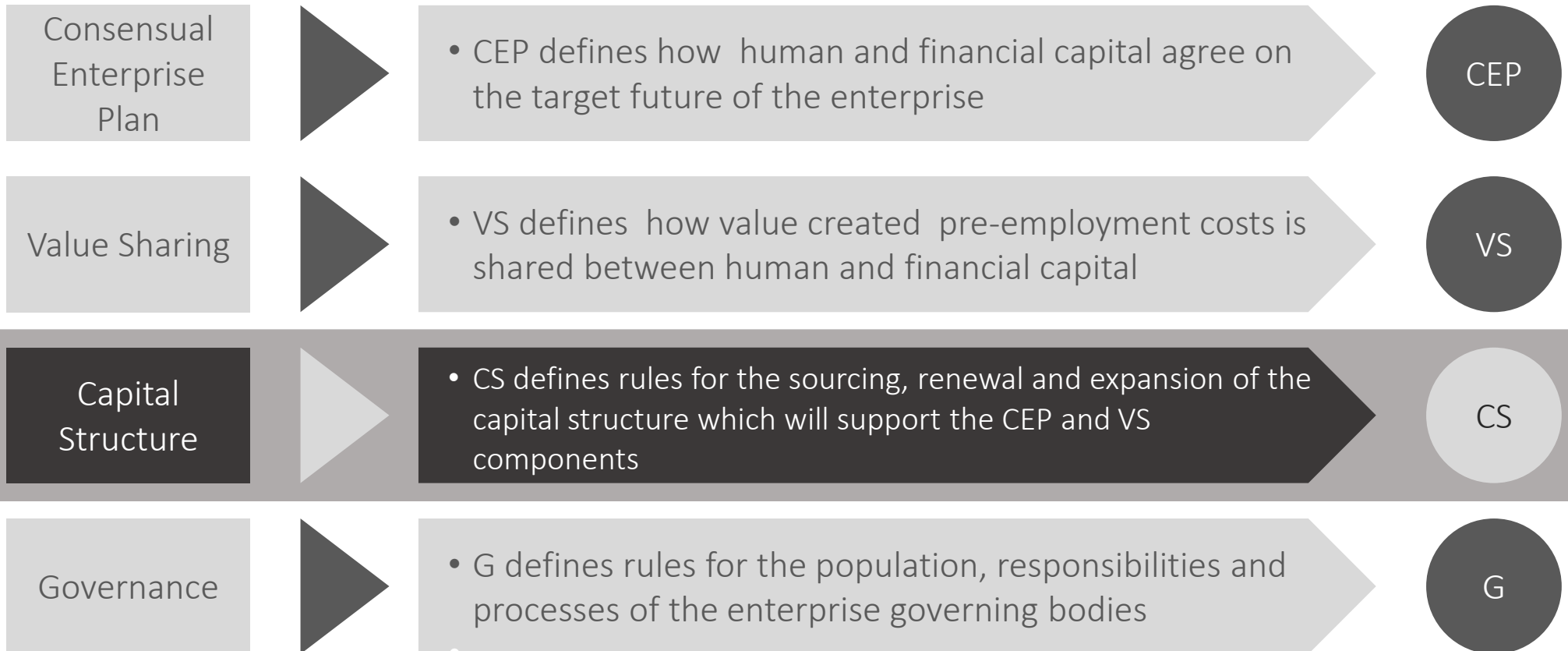
Performance Source	Added Value below CEP Downside Management Mechanism	Added value at or above CEP
Allocation of the enterprise own resources	<p>Use of reserves</p> <p>Measures affecting the variable remuneration (bonuses, incentives, etc.) of managers and employees</p> <p>Measures affecting labour productivity (see competitiveness agreements)</p> <p>Measures affecting employment</p>	<p>Allocation to reserves, distribution to human and financial capital as per CEP and upside sharing mechanism</p> <p>Any productivity improvement vs CEP goes to human capital</p>
Regeneration of capital structure and allocation of resulting net capital inflow	<p>Funding of operational turnaround, including improved redundancy packages</p> <p>Dilutes share of upside for existing stakeholders (Human and financial)</p>	<p>Refinancing of Capital structure at or ahead of maturity</p> <p>Crystallisation of value created over the period, allocation to reserves and distribution to human and financial capital.</p>

DMM Acceptability



NewCode Enterprise System

Capital Structure



Capital Structure

- Basic NewCode Capital Structure comprises Senior Debt and NewCode Instrument (NCI). NCI comes in lieu of the traditional equity layer, carries a Contractual Fixed Return, is protected by the CEP, and has a share in the Value Sharing Component.
- At inception CS is sized according to the CEP, e.g. provides the funding necessary to the CEP which in turn provides for the Contractual Fixed Return during the CEP Period and satisfactory prospect of refinancing and Value Sharing.

Capital Structure (2)

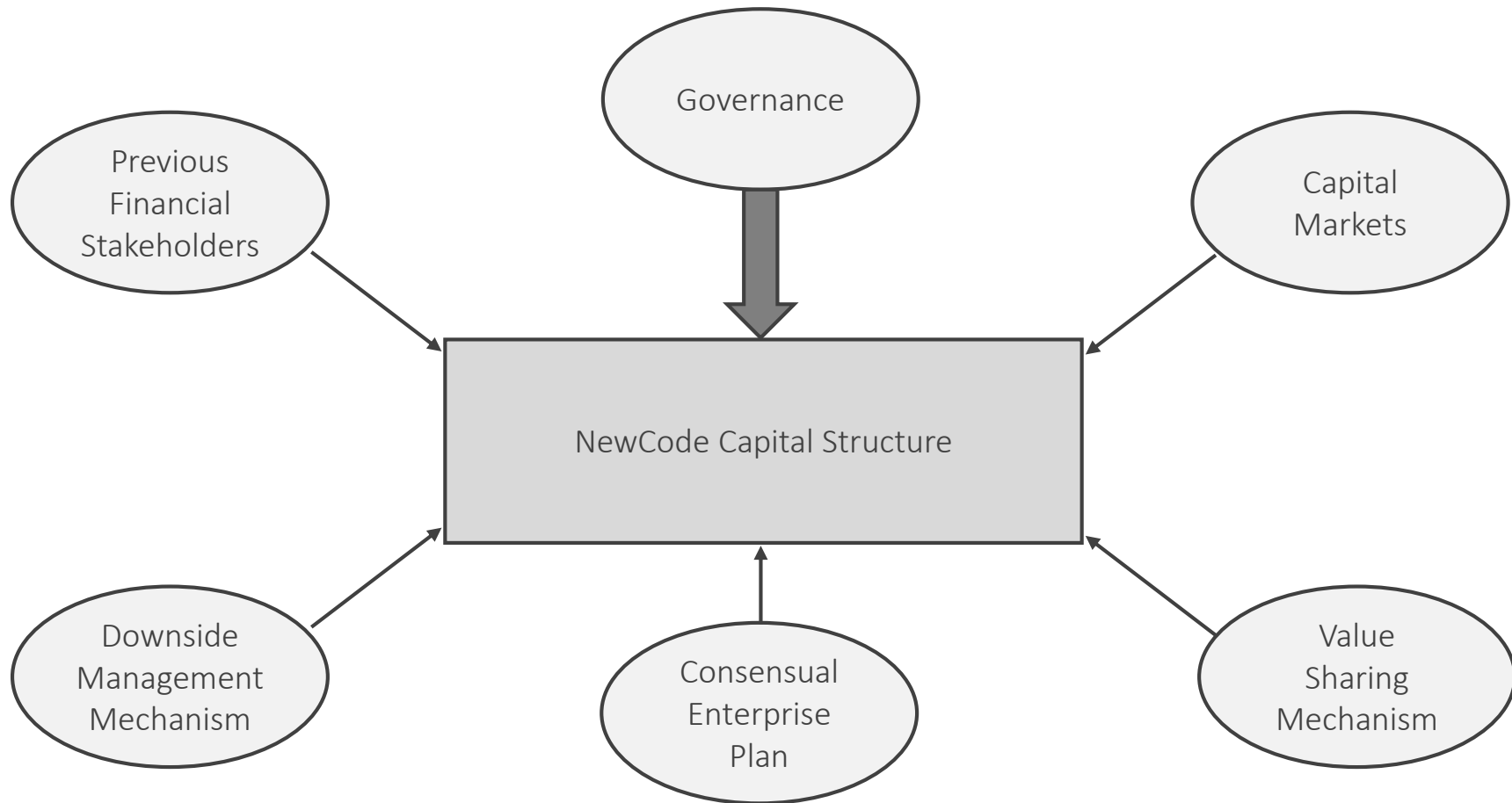
- The periodic regeneration of the Capital Structure allows the funding of the Enterprise capital needs, as well as, in case net capital inflows exceed such needs, value distribution to Human and Financial Capital. Proportions of such distribution are pre-agreed within the NewCode Enterprise System, as well as, for Human Capital, the way such value is split between Governance, Management and Employees.
- When the regeneration of the Capital Structure is carried out in an Alert situation (see Value Sharing and Downside Management Tab), net capital inflows are used to fund the adjustment measures provided for in the NES-Downside Management Mechanism.

Capital Structure

Sizing, Structuring and Sourcing

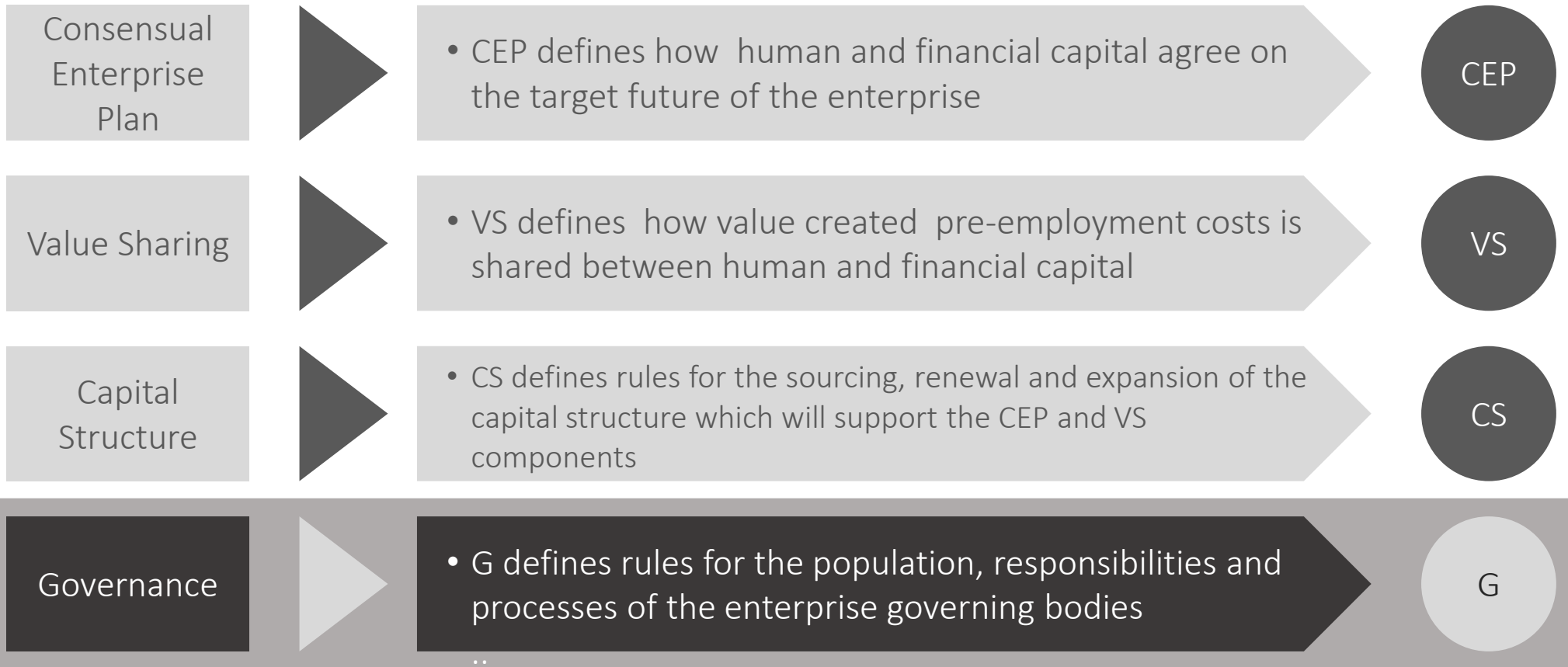
	Main Purpose	Responsibility and comments
At inception	Buyout of previous capital structure	Incumbent Governance sets the negotiation framework between previous owners, [incumbent] management, incumbent investors, and employee representatives Sizing must be consistent with CEP
Performance at or above CEP	Refinancing of capital structure at or ahead of maturity Allocation of net capital inflow to reserves, distribution to human and financial capital	Governance, under CEP guidelines Governance exercises judgment on reasonable use of bull capital markets
Performance below CEP	Regeneration of capital structure Net capital inflows allocated to funding of operational turnaround plan/improved redundancy packages	Governance, under CEP/DMM guidelines. Governance insures proper representation of turnaround plan to capital providers and proper balance between dilution of stakeholders in the Value Sharing component, and value allocation to departing employees

CS determining factors



NewCode Enterprise System

Governance



Governance

- NewCode Governance is independent from any single stakeholder and is a balanced representation of all stakeholders, in charge of and only of the long term interest of the Enterprise as governance will itself define and update it : maintain and support a NewCode Enterprise System through which the Enterprise has the best chances to successfully employ and expand its Human Capital, and efficiently source Financial Capital to do so.
- Governance comprises representatives from NewCode Instrument, management, employees, and as the case maybe strategic partners as well as external expertise.

Governance (2)

- Governance defines/adjusts strategic perimeter, appoints and replaces management team, creates and maintains consensus on the Consensual Enterprise Project, maintains alignment of interests across the enterprise system, and makes the best of the capital markets to maintain/expand Capital Structure according to the Enterprise needs.
- Governance members are compensated according to the Enterprise success, through the CEP and Value Sharing component.

Governance

Summary

Theme	Commentaire
NES/ Enterprise agreement	Governance is set up when the company enterprise agreement enshrining the implementation of a NewCode Enterprise System is concluded. It is then renewed according to the rules set out in the NES, in particular when the Capital Structure is regenerated and when the enterprise agreement is renewed.
Strategic perimeter	Governance maintains a strategic perimeter where the enterprise has the best prospects to successfully employ human and financial capital
Management team	Governance maintains and supports management team the most capable of successfully propose and execute CEP within the strategic perimeter
CEP	Ultimately, Governance main responsibility is to maintain a realistic Consensual Enterprise Plan
Capital Structure	Governance implements and renew an adequate Capital Structure to finance CEP, Value Sharing and Downside Management Mechanisms
Value Sharing	Governance carries out Value Sharing mechanisms, as defined in the CEP
Downside Management	Governance applies Downside Management Mechanisms, as defined in the CEP

Académie NewCode



Académie NewCode

Overview

The Académie NewCode is a non-for profit organisation, responsible for the accumulation, maintenance and circulation of NewCode related intellectual capital, and for providing a meeting point to business owners, employee representatives, management teams, capital providers, transformation practitioners, and any interested party, in order to promote, facilitate and support NewCode transformations.

The Académie NewCode combines a wide array of business experiences from the various viewpoints NewCode is aiming to bring together.

Académie NewCode

Membres Fondateurs

- **Denes ALMAZY** : Secrétaire Général de Groupe GO SPORT
- **Bernard ATTALI** : Ancien Président d’Air France ; Senior Advisor du fonds d’investissement TPG France
- **Stephano AVERSA** : Président EMEA du cabinet AlixPartners
- **David AZEMA** : Dirigeant de Perella Weinberg Capital Partners ; Ancien Directeur de l’APE (agence des participations de l’Etat) et ancien Président de Keolis
- **Pierre BALMER** : Président des CMN (Constructions Mécaniques de Normandie)
- **Corinne BERENGUER** : Conseil stratégie finance
- **François COCHET** : Directeur des activités Santé au travail de SECAFI
- **Hélène COMBE GUILLEMET** : Membre du Comité Exécutif de Crédit Agricole-CIB, en charge de la banque d’investissement
- **Bruno COURTINE** : Associé fondateur de Vaughan Avocats
- **Sébastien DALLE** : Associé responsable du Restructuring chez PWC
- **Emmanuel DAULL** : Analyste crédit chez Allianz Global Investors
- **Laurent FAUGEROLAS** : Avocat d’affaires
- **François FAURE** : Président de NewCode Conseil
- **Pierre FERRACCI** : Président de Groupe Alpha
- **Eric FRANCOIS** : Directeur Général de la Banque Postale Crédit Entreprises
- **Dominique GAILLARD** : Directeur Général du fonds d’investissement Ardian
- **Philippe GIRE** : Associé fondateur du fonds de capital-risque Elaia
- **Saam GOLSHANI** : Avocat Associé au sein du cabinet Orrick
- **Xavier GUIGLINI** : Secrétaire Général de Groupe Alpha
- **Olivier GUILLOU** : Directeur Général – NewCode Conseil
- **Laurent GUYONNET-DUPERAT** : Managing director de Société Générale Asset Restructuring & Recovery team
- **François HOMMERIL** : Président de la confédération CFE-CGC
- **Didier IZABEL** : Président fondateur de Axys Finance ; ancien Directeur du département Fusion et Acquisition à la Financière Edmond de Rothschild
- **Pierre JULLIEN** : Manager du changement ;
- Président de GMV2
- **Aurélien LORIC** : Avocat Associé au sein du cabinet Orrick
- **Arnaud MARION** : Manager de crises
- **Benoit PETIN** : Ancien Responsable de l’activité Restructuration de dettes chez RBS
- **Olivier PETROS** : Directeur des Nouveaux Systèmes et Activités Energétiques du Groupe EDF; Administrateur de EDF Energies Nouvelles
- **Philippe REIGNIER** : Directeur de mission SECAFI
- **Corinne SAADA** : Administrateur indépendant et Maître de Conférences à l’Institut d’Etudes Politiques de Paris ; ancien Directeur de participations
- **Guillaume TRICHARD** : Responsable de la fédération UNSA Industrie & Construction ; ancien Secrétaire du Comité de Groupe de Technicolor

Academie NewCode

Members

Any interested party can become a member of NewCode Academy :

- Representatives from human capital, trade unions, workers committees
- Investors, asset managers, banks and financial institutions
- Businesses representatives, owners, managers
- Enterprise transformation practitioners, such as transformation managers, consultants, investment banks and financial advisors
- Government agencies, Institutions, think tanks, representatives from the civil society

Members are encouraged to contribute to NewCode intellectual capital and conversely have extensive access to it.

Case Study



Case Study

Basic CEP, CS, VS and DMM functioning

- Case study 1 shows the basic functioning of CEP : CEP, CS, VS and DMM components
- Enterprise is a fast growing company , average capital intensive and low productivity improvement prospects
- Sellers circumstances such that employees interest more important than valuation, resulting in the company being available at 5x EBITDA

CEP

Business Plan and Capital Structure at inception

BP	Year 1	Year 5
Sales	100	150
External charges	40	60
Personnel costs	40	60
EBITDA	20	30
CS service	6	6
Capex + CWC	10	15
Cumulated reserves	0	10

CS	Year 1	Year 5
NCI@8%	40	60
SD@4%	60	90
Total	100	150
xEBITDA	5x	5x
Net Capital Inflow	0	50

Value Sharing

If enterprise performs at CEP

Stakeholder	Share of Upside	Value year 5	Comment
Management	25%	12,5	3 years for starting top 1/10 th of personnel costs or 15 months for starting top 1/4 th
Employees	50%	25	8 months for starting 9/10 th or 10 months for starting 3/4 th
NCI	25%	12,5	+ 5% on return (13%, instead of 20% to 23% in LBO structure)

BP execution above CEP

And resulting exit capital structure

BP	Year 1	Year 5
Sales	100	200
External charges	40	80
Personnel costs	40	80
EBITDA	20	40
CS service	6	6
Capex + CWC	10	15
Cumulated reserves	0	30

CS	Year 1	Year 5
NCI@8%	40	80
SD@4%	60	120
Total	100	200
xEBITDA	5x	5x
Net Capital Inflow	0	100

Value Sharing

If enterprise performs above CEP

	Share of Upside	Value year 5	Comment
Allocation to reserves		20	Total reserves 50 = 62% of new NCI
Management	25%	20	5 years for year 1 top 1/10 th or 2 years for year 1 top 1/4 th
Employees	50%	40	13 months for year 1 9/10 th or 16 months for year 1 3/4 th
NCI	25%	20	+ 7 % on return (15,4 %, instead of 26% to 32% % in LBO structure)

BP execution significantly below CEP

And turnaround plan in year 5

BP	Year 1	Year 5	Turnaround plan	Pro-forma post turnaround
Sales	100	120		120
External charges	40	55	-7	48
Personnel costs	40	55	-7	48
EBITDA	20	10		24
CS service	6	6		7
Capex + CWC	10	5		10
Cumulated reserves	0	5	-5	0

CS	Year 1	Year 5
NCI@8%	40	48
SD@4%	60	72
Total	100	120
xEBITDA	5x	5x
Net Capital Inflow	0	20

Downside Management Mechanism

Implementation

Stakeholder	Share of net capital inflow	Value year 5	Comment
Reserves	50%	10	2,6 years of interest on new NCI
Management	0%	0	Replaced ?
Departing Employees	50%	10	18 months on top of turnaround plan package of 9 months.
Old NCI	0%	0	Repaid no loss