



Research Article

From Corporate Governance to Social and Environmental Responsibility: Which impacts on the decisional process? Case of the Limited Company in Morocco

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Abstract

Today, if many admit the convergence of the two notions that are Corporate Governance and CSR, one can still wonder if CSR is a matter of governance and question the exact role that administrators play in this context. We tried to answer these questions in this modest work, relying on the analysis of the impacts that these two notions have on the decisional process. The result of the analysis CSR is a matter of governance and has to be considered as a strategic organizational question that requires a close surveillance from the board of directors. From this starting point, the administrators tasks keep on becoming more demanding; our two notions call for more vigilance and responsibility from the administrators.

Keywords: Corporate Governance; CSR; Limited Company; Board of Directors.

Introduction

There have been many attempts to define the expression « Corporate Governance ».

For instance, for Hyafil, Corporate Governance covers a set of disposals that allow making sure that the objectives to be achieved by the leaders are legitimate, and that the means implemented to carry this out are adapted. (Hyafil, 1997)

For Baudry, Corporate Governance is « the set of means that allows capital providers

to ensure that their company remains profitable ». (Baudry, 2003)

Regarding Charreaux, he defines Corporate Governance as « the set of mechanisms delimiting the powers of leaders and influencing their decisions. In other words, these mechanisms are those that govern leaders' behavior and delimit their discretionary power. (Charreaux, 1997)

Corporate Governance is a concept that was born after the governance scandals in the 1990's and 2000's. The collapse of Enron, or that of Worldcom, for

instance, has revealed the kind of damage an abusive exercise of power within a company can cause (Tunc, 1991).

So, in reaction to the situation, Corporate Governance has become the concept that protects shareholders' interests while minimizing and controlling interests' conflicts that the power delegation from shareholders to managers (Board of Directors and executive management) can enhance.

However, for the same goal, it has been necessary to reconcile stakeholders' (employees, suppliers, subcontractors, consumers, citizens) requirements and shareholders' financial requirements.

This is where CSR comes in. CSR is a concept that integrates social, environmental and economic concerns to businesses' activities and to their interactions with stakeholders. CSR is the contribution of companies to issues that are related to sustainable development.

From this starting point, both of our concepts (Corporate Governance and Corporate Social Responsibility) maintain close relations. Several studies have confirmed this relationship. However, the question that arises is related to the real incidents these two notions have on the decisional process. This is all the more pertinent when one takes into account the fact that Corporate Governance makes reference to hard law to a high degree. Actually Corporate Governance is regulated by juridical rules and their violation can entail a sanction. But questions related to CSR are subject to soft law and make reference to voluntary commitments.

In other words, our problem which is related to Moroccan limited liability companies can be split into two questions:

- What is the position of the Board of Directors regarding Corporate Governance?

- What is the role that administrators play when it comes to CSR? Is their post more demanding? Are we not going to end up making CSR a legal constraint?

Our analysis proceeds from our observations that the impact of Corporate Governance and CSR is poorly understood, and sometimes even ignored by companies both in terms of risks and potential creation of value. So, through this modest article, we will try to gather scattered elements that are related to Corporate Governance and CSR requirements.

In a first section, we will present the new architecture of the Board of Directors dealing with the notion of Corporate Governance, and the different missions and responsibilities that are implied.

In a second section, we will emphasize additional requirements deriving from CSR that are imposed by stakeholders' pressure, and the increasing intervention of the legislator.

First section: the Board of directors dealing with the notion of Corporate Governance

Limited liability companies in Morocco have long been regulated by the 1922 dahir that made the French law of 1867 applicable in Morocco. But, this law had become archaic, anachronistic and completely out of sync with the political, economic and social realities in Morocco. So a change had been carried out on August 30th 1996 by the 17-95 Act that had been completed and modified in 2008 by the 20-05 Act (5). This regulation is completed by the Moroccan Code of Corporate Governance good practices made by the CGEM (General Confederation of Moroccan Companies).

Several innovations related to the concept of Corporate Governance have been implemented to the Board of Directors. Actually, along with a new determination of the functions and missions that the governance body has to deal with, the law has added the ability to dissociate the functions of the Council President and those of the Director-General.

First Paragraph: Clarification of the governance body's functions and missions

Today, the board of directors has wide powers. It imposes the independence of the governance body from both the company's management and its shareholders.

A- The board of directors has wide powers

Before the implementation of the 20-05 Act, the distinction between the LLC managers' and the Board of Directors' missions and powers was blurred. The duplication of the powers definition was the result of the articles 69 and 74 wording. The article 69 defined the limits of the Board of Directors' powers, and the article 74 defined the limits of those of the Council President. Actually, both of the Board of Directors and the Council President have the most important powers that enable them to act no matter what the circumstances are on the behalf of the company.

Today, the Board's tasks are clearer. Indeed, the article 69 of the 17-95 Act as amended by the 20-05 Act states

"The Board of Directors determines the Company's business orientations, and ensures their implementation. Subject to the powers expressly granted to shareholders' assemblies and within the limits of the corporate purpose, the Board considers all matters concerning the smooth running of the company and sets through its deliberations the matters that are related to it. The Board of Directors carries out the controls and verifications it deems appropriate."

Based on this article, the law requires three missions from the Board of Directors:

-It sets guidelines for the company's activities and oversees their implementation. It must therefore recognize the right to participate in the development of the company's strategy, action plans, risk policy, annual budgets and work programs, and ensure that they are followed by senior management.

-It considers all matters concerning the smooth running of the company and sets through its deliberations the matters concerning it. The Board has the duty of dealing with the company's day-to-day activities.

In this axis, the governance body is described as responsible for recruiting key leaders, determining their compensation, ensuring that they are appropriate and transparent in order to be eligible and accepted by the shareholders, monitoring their activities and their performance and, if necessary, replacing them and preparing succession plans.

The governance body is also responsible for monitoring and managing interests' conflicts between management, Board members and shareholders, including misuse of corporate assets and abuse committed in the context of regulated agreements.

-It performs the controls and verifications it deems appropriate. In this context, the Board is required to verify the management transparency, business performance, integrity of its accounting systems and financial or non-financial disclosure.

Simultaneously, the Board is responsible for checking whether the accounting policies are respected, and if the existing internal control and risks management systems are adequate. The governance body is also responsible for the external audit planning and for the relations with external auditors.

The Board also monitors the information and business communication diffusion process, especially regarding the legal and regulatory obligations in terms of information; strategic directions; social policy; debt and dividend policy; regulated agreements including key executives and holding companies, and executive compensation.

To accomplish its tasks, the Board of Directors has the right to inform itself and can ask at any time for additional

information if deemed necessary even if this is not in the context of assemblies or meetings. This right to information of the Board covers not only the items on the agenda but also all information necessary to assess the company's situation.

B- The Board of Directors independence:

As mentioned before, the principal task of the governance body is to evaluate managers' performance and prevent interests' conflicts. But, this goal requires from the company's management to have an independent governance body.

This independence is to be assessed when examining the Board of Directors' composition. Indeed, non-executive administrators and specialized committees must be given a place within the board.

A non-executive administrator is the one who holds no executive or management functions within the company. He is considered to be independent; that is to say, he is an interest free member who contributes to the Board's ability to perform its duties through his competence and freedom of judgment. In other words, in order to be considered independent, the Board member should not be in a situation that is likely to affect his independence of judgment or make him face a real or potential interests' conflict.

This notion is the transposition of the Anglo-Saxon model of the independent non-executive director. It appeared with the criticism of the control the Board performs. It is the mark of distrust towards executive administrators that easily move away from the idea of democratization in favor of shareholders.

From this starting point, non-executive administrators have a mandate, which is to ensure that management complies with certain conduct standards, and that accounting is regularly held. They must take an unbiased look at the company and contribute to enriching the thinking and the decision process thanks to their attendance, profession and independence. For these reasons, the company must provide them with the training,

information and resources they need to perform effectively their duties.

These non-executive administrators can create among themselves specialized committees. On this point, the good governance code recommends creating at least two different committees, namely Audit committee and a directors' nomination and compensation committee. The governance body can decide whether it wants to add some other committees (risks, investment...). Experience shows that the role these committees play is essential since they deal with some points regarding the company's management such as the directors' compensation, audit realization, directors' and officers' appointment, independently from the Board.

Moreover, in order to ensure such independence, the code of good governance discourages reciprocal mandates, which constitute a practice that makes a company's managers, members of the governance body of another company and conversely. This practice discourages administrators from performing a real control on the company, since they do not want to be symmetrically controlled in the company they manage.

It is also recommended to avoid an accumulation of mandates that can affect the function exercise of the governance body member in its best conditions.

Second paragraph: Choice to maintain the functions accumulation of President and Director-General or to dissociate them

The 20-05 Act introduced the choice between two options: whether to dissociate the functions of the Board of Directors President and Director-General, or the accumulation of both of them under the title of Chief Executive Officer.

The choice of the Board is to be reported to the shareholders during the next general meeting and has to fill some deposit, publicity and registration to the trade register formalities.

A-Dissociation of functions

The separation of the functions of the Board President and Director-General is undoubtedly one of the major aspects of the reform undertaken by the Moroccan legislature. It reflects the great influence of the Anglo-American thesis on Corporate Governance aiming at a greater accountability of LLC leaders, and a better balance of powers between the Board of Directors that has a President and a Director-General.

According to the 20-05 Act, the Board of Directors' President represents the Board. He organizes and leads its works, and gives the general assembly a report on that. He ensures the proper functioning of the company's organs, and ensures in particular that administrators are able to fulfill their mission.

Regarding the Director-General, he has the most important powers to act in all circumstances on behalf of the company. He represents the company in its relations with third parties. He is the one who runs the company operationally, is responsible in return in front of the Board and assumes the civil liability of the business manager. He must ensure in particular that the President receives all information that he considers useful for the Board to be properly informed. Within the limits of the company's purpose and with the authorization of the Board, the Director-General can grant deposits, endorsements and guarantees. He can also ask the President to convene a general meeting and can be assisted by one or more deputy managing directors.

As we can see, there is a kind of subordination of the Director-General to shareholders' representatives. The aim of the legislator is to enable the Board of Directors' President to counterbalance the Director-General and avoid any omnipotence. This is why many authors agreed on such a separation of functions (R.Kosnic (1987)).

B- The accumulation of the functions

The decision of the Board to entrust the President with the company's general management concentrates in the hands of this latter two kinds of power, one that is specific to the Board Chairman and one that is assigned to the Director-General.

This approach has drawbacks as the leader combines the role of Chairman and Director-General, which makes him stand as a major player through his role in setting the Board agenda (J.Harrison, D. Torres and S.Kukalis (1988)), in the job of various specialized committees and in the meeting and conduct of general assemblies. So, the leader can reduce the effectiveness of the control that the Board performs. (R.Beatty, E.Zajac (1994))

So, one can wonder if the Moroccan legislator offers this choice just to not rush habits with the intention of keeping the separation of functions subsequently. This would make him follow the same path as the French legislator.

It is therefore concluded that Corporate Governance has introduced several requirements for administrators while taking into account the interests of shareholders who bring, as market operators, their capital and expect specific results. These results require from leaders a behavior that enables them to ensure a good management of the company. What about CSR? Does the function of leadership risk becoming more demanding?

Second part: CSR and supplementary requirements

As we have already said, a socially responsible company is the one that gets committed, beyond its legal obligations, to systematically considering the different interests that are affected by its functioning in order to get the best impact of its activities on its employees, partners and sustainable development in general.

So, this is a voluntary process involving free commitments from managers. In the light of this, one can legitimately think that CSR does not entail additional

requirements regarding the function of the administrator.

But, when one considers the very purpose of CSR, which is taking into account stakeholders' interests, one automatically thinks to the pressure that these latter can exert on businesses by reducing the voluntary aspect of CSR. The legal framework for CSR accentuates this observation even more.

As a consequence, the question to be raised is related to the role that administrators play in this context? Should management methods closely link CSR to strategic management? And what are the real implications of CSR on corporate decision process?

First paragraph: Stakeholders' influence on the decisional process

With the concept of CSR, administrators operate on a larger area of governance that not only shareholders occupy but all stakeholders. (Freedman and Market, 1984)

Stakeholders include all of the people that are involved in the economic life (employees, customers, suppliers...), and range from those who observe the company (trade unions, NGOs) to those that affect more or less directly the company (civil society, local community). In other words, stakeholders are all the people that have an interest in the company's activities (A.Mullenbach, 2007)

These stakeholders exercise a social, environmental and economic pressure on the company. They make the company incorporate CSR principles to its management strategy. Media coverage of some trials and the strategic nature of the brand in a market that is increasingly competitive encourage this.

That is why some practices known as CSR have been developed. Some companies have decided to equip their products or services with a social labeling. Other companies have made public commitments

or have funded charitable initiatives that have led them to communicate.

International examples that embody stakeholders' pressure are numerous. One can take the example of Nike INC.

In the 1996's/1997's, Nike had its reputation marred because it had recourse to foreign subcontracting with an unethical legislation. In 1997, a photograph of a Pakistani child sewing a Nike ball appears to the public. The media, NGOs, lobby groups, trade unions, consumers... attacked the brand and many actions were carried out against the brand. In 1998, Nike faced a considerable drop in its results.

In response, Nike had to react and adopt a new sub-contracting organization model. In this context, leaders have made a number of commitments related to CSR. Indeed, they have decided to pay workers above the country average where their factories are based. They also have enacted a code of conduct and have entrusted the firm Price Waterhouse Cooper (PWC) with auditing each year its subcontractors to verify the application of the code of conduct. Similarly, Nike has appointed seven universities with the preparation of a report on the working conditions in the firm's factories. Finally, Nike has been involved in an environmental policy. For example, the company has been recovering and recycling old shoes.

The case of Nike, studied by Gasmi and Grolleau (2005) shows the evolution of the strategies adopted by multinational companies after the emergence and development of their subcontractors' criticism.

To avoid stories like Nike and the pressure from stakeholders, which may be negative, to anticipate constraints, and to prevent risks, several Moroccan companies have integrated a CSR approach to their management strategy.

These Moroccan companies have realized that the implementation of CSR enhances precautionary and preventive measures against industrial or economic accidents,

social and legal risks, strikes or any problems threatening the reputation and performance of the business. So, the company has to meet three challenges namely a managerial, an economic and an environmental one (Supized (2002) Igalens (2012)).

The process of integration of CSR in the company's strategy involves several steps and requires material and human investments. But in general, the Board is expected to assimilate the basic components of CSR major themes; to identify among them the ones that seem to be the most important for the company according to each activity sector by distinguishing between those carrying dangers and those representing opportunities; to proceed with the development of the operational business strategy that takes into account the expectations of stakeholders; and to account for his conduct in this regard as stakeholders to the public.

Every business therefore includes a general CSR approach while emphasizing at the same time the most important activity areas and integrates them in its decisional strategy. This is what several Moroccan companies apply.

One can rely on two examples of companies that operate in different sectors: Managem case (Sustainability Report 2014) and Jet Sakane case.

Managem is a limited liability company. It is a Moroccan player in the mining and hydrometallurgy fields. It has been operating for more than 85 years in the extraction, upgrading and marketing of base metals, precious metals, cobalt and other minerals in Morocco and Africa.

Managem has integrated a CSR approach that placed it in the ranking of top CSR performers in 2015. This is its reward for its performance in terms of skills development and employability, respect of social dialogue, preserving health and safety, contribution to community development and the promotion of good governance and ethics, and finally environmental preservation.

In this context (environmental preservation), Managem's ambitions are high. The group aims at reducing its carbon footprint by lowering the annual consumption of each of its sites from 5% to 10% to enhance minor resources releases.

Note that in 2013 the industrial complex Guemassa started operating its sulfuric acid plant whose industrial process adds value to the mine's releases in new products for commercialization while producing clean energy for the site.

The second case is that of Jet Sakane specialized in real estate development. This company has the ambition of developing its staff through freedom of association, gender equality, education, social dialogue, safety and health at work, prevention of work accidents and occupational diseases... Concerns for the environment and customers' wellbeing are at the heart of corporate strategy. Jet Sakane sets aside 30% of its properties for green spaces and provides social and community facilities. The condominium's ten-year management allows deploying social initiatives such as literacy and computer courses, nurseries, school support classes and many others.

The example of these two companies demonstrates their strong commitment towards their employees, customers, partners ... This commitment is directly related to governance. Actually all the solutions and actions are directly linked to the decisions that regard the struggle to find a balance between shareholders' interests and community's interests.

Second paragraph: CSR legal framework

The CSR approach that was voluntary at the beginning has resulted in legal requirements gradually that have been adopted by the legislature

Indeed, today there is a great debate on the issue of CSR institutionalization, on the moving from voluntarism to coercion, and CSR justiciability (I. Desbarats 2008) ... For us, the question is tremendous. We have already determined how the stakeholders' pressure has brought out CSR from its

voluntary framework. If we add to this aspect the one that is purely legal, coercion could further shake voluntarism.

In Morocco, the legal framework has gradually changed to reflect adherence to CSR values.

Thus, in terms of labor legislation, there is the entry into force of the Labor Code in 2004 which states the basic principles to follow: health-related measures and safety at work, dismissal, working hours, child labor, minimum wages, days off ... Moreover, this code provides instruments for the adaptation of certain measures to sectorial and organizational characteristics: internal regulations, company's council, health and safety committee, collective agreement...

Other aspects previously left to the discretion of the company have been regulated. Thus, as part of its commitment to the principles of sustainable development and CSR, Morocco has a relatively complete legal framework for environmental protection and natural resources' management.

We can mention in this context the 11-03 Act on the protection and enhancement of the environment. It aims at laying down the basic rules and general principles of the national policy regarding the field of environment preservation and enhancement.

This Act contains several provisions on the environment protection and human settlements, nature and natural resources protection, pollution and nuisances, management and environment protection instruments, offences procedures and prosecution... These provisions are compulsory and companies have to comply with them in their conduct, and to integrate them in their environmental management policy.

This legislation finds its extension in the 13-03 Act on air pollution, as well as the 12-03 Act on studies related to the impact on the environment, and the 28-00 Act on waste management and disposal. These three Acts have the same purpose. A spirit

of participation and openness to best environmental practices animates all of these acts.

Furthermore, Morocco has adopted the 99-12 framework-Act that constitutes the National Charter for Environment and Sustainable Development. This Act establishes the fundamental objectives of state action on environmental protection. It includes provisions for private and public companies engaged in business and industrial activities. These must adopt operating, production and supply measures responding to sustainable development requirements. They also must periodically assess the impact of their activities on the environment and commit themselves to reducing negative effects.

Other very important measures are contained in the Act:

- The establishment of a strategic environmental evaluation system to assess the compliance of policies, strategies, development programs and plans with the requirements of environmental protection.

- The application of environmental taxes and royalties to activities characterized by a high level of pollution and natural resources consumption, thus causing harm to the environment.

- The institution of an ecolabel system to promote products or services having a reduced impact on the environment and those that comply with the requirements of sustainable development.

As can be seen, CSR loses its voluntary aspect to gradually enter the legal regulation imposing itself, in a stronger way, to administrators, who are therefore compelled to include it in the business's strategic organization.

Therefore past the hype, CSR becomes a lever of competitiveness for businesses, and as such it has every reason to be at the forefront of the concerns of directors.

The General Confederation of Enterprises of Morocco has recognized the role CSR

plays and has established the CGEM label for CSR as a solemn recognition of Moroccan companies' commitment to observe, uphold and promote CSR universal principles. It is also a recognition of and SD in their economic activities, social relationships and more generally in their contribution to value creation.

This initiative is meant to encourage companies to respect their commitment structured around 9 axes:

Respect human rights; continuously improving the conditions of employment and occupation; protecting the environment; preventing corruption; respecting the rules of fair competition; increasing transparency of Corporate Governance; respecting the interests of customers and consumers; promoting social responsibility of suppliers and subcontractors; developing community involvement.

Several partners have joined the confederation to promote the CGEM label. These partners (the Customs and Excise, the NSSF, agricultural credit, Banques Populaires group, BMCI and the General Tax Directorate) grant labeled companies for specific benefits and salaries (preferential rates, simplification of procedures, relaxation of controls, custom management, rapid processing of files ...).

Conclusion

From this study, we can conclude that today the tasks of administrators keep on becoming more demanding. If there is a convergence between the two concepts (Corporate Governance and CSR), each one of them wants administrators to be more vigilant and more accountable.

CSR adds itself to the concept of Corporate Governance as one of its essential components: a good Corporate Governance requires the integration of CSR. It is therefore a strategic organizational issue that requires close monitoring by the Board.

But until today, if most administrators know the concept of CSR, many people want to know what their role in this context is.

Today, it becomes urgent to mobilize administrators around questions related to CSR and to ensure they are integrated in the Boards of Directors' major strategic guidelines.

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