

Investor Protection and Legal Framework in Business Organizations

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ABSTRACT

It is obvious that the role to be played by the governing bodies of companies, especially the Board of Directors, in the fight against fraud is probably more decisive. The quality of mechanisms (internal and external) established and the means deployed determine the success of any policy against fraud. Through this workpaper, we have highlighted the possibilities of action offered to the Board. The latter considers all matters concerning the smooth running of the company and, through its decisions matters that concern it. It performs the controls and verifications it deems necessary and participates in the development of standards and norms for greater transparency and good governance in the business.

Introduction

In recent decades, corporate governance has been the subject of increasing attention from regulators and researchers from different disciplines (economics, finance, law ...). The emergence of this theme is generally attributed to the debate opened by Berle and Means (1932) and taken up later by Jensen and Meckling (1976). For these authors, the separation of ownership and decision-making within a company gives rise to an agency relationship between a principal (shareholder) and agent (manager). This relationship raises the potential for abuse and fraud because of the divergence of interests between shareholders and managers. These are in a privileged position giving them a degree of control over the company, and may adopt opportunistic strategies to maximize their utility function at the expense of others. To mitigate these conflicts of interest and the risks of potential fraud, the shareholders put in place various mechanisms of corporate governance (internal and external) to reduce managerial discretion and the likelihood of deviant behavior. Among the variety of means of control, the agency theory propose the board of directors as the most appropriate mechanism to discipline management and compel them to act in the interests of shareholders. In this paper, we will focus primarily on the powers of the board in the fight against fraud, as well as opportunities that are offered to moralize corporate life

Mechanisms of Internal Control

In recent years, the functioning of the Board of Directors was the subject of much debate, and proposals for reform in its structure have been established by several

regulators. This special attention paid to this internal control mechanism has also stimulated the interest of several researchers. The board of directors represents the interests of shareholders and appears as the supreme authority of control inside the company. It has the power to hire, fire and remunerate the CEO, and to ratify and monitor important decisions. To carry out its primary mission of growing shareholder wealth and to guard against the risk of fraud and leakage of funds, and thus loss of the corporate value, the Board resorted to different structures that it creates within organizations in order to establish a system of integrated control able to prevent, detect and punish any fraudulent act. The most notable is the audit committee.

The Audit Committee

The audit committee is a main structure which is of major importance in the internal control system of any organization. This instance is part of the permanent committees established by the Board to assist it in its functions and aims to:

- Check the reliability and quality of information provided in the financial statements of the company (which will be provided to shareholders and financial markets) and make an assessment of the relevance and consistency of the accounting policies adopted for the preparation of consolidated financial statements;
- Make an assessment of the quality of internal control, including the consistency of the systems for measuring, monitoring and controlling risks and propose further actions in this respect;
- Follow the interventions of Internal Audit and Statutory Auditors in order to ensure the implementation of audit recommendations due to their work.

The Audit Committee follows more closely the work of the internal control and audit units as functions of support and assistance to the control units within organizations. The focus is particularly on the quality and compliance of work procedures and control measures adopted. Indeed, any failure in the system of internal control may be an imminent opportunity to fraud, particularly in the presence of two other explanatory factors of any breach of trust that are the difficulty to live and/or admit financial pressure by the agent, and a process of psychological rationalization to justify the fraudulent act as acceptable, legitimate and not criminal. In practice, the audit committee is required to validate at the beginning of each year the annual audit plan prepared by the internal auditors. This program is developed on the basis of past experience and with reference to a map of operational and functional risks. Each audit mission is subject of a summary report which points malfunctions and faults detected and appropriate recommendations to overcome them, but also highlights the strengths and best management practices. In this context, the Audit Committee is required to monitor the implementation of recommendations made by the auditors and accompanies the teams involved in the process of readjustment.

Table 1: Levels of Defence against Fraud

Level 1	Prevention	Stop fraud before it happens: - Internal control - Policy, ethics - Training, communication, human resources
level 2	deterrence	Prevent fraud from occurring by showing that controls are in place: - audit - communication
level 3	Detection	Recognize whether a fraud has occurred: - Indicators, reporting - Warning devices

According to Olivier Gallet [2005] in "Stop the fraud: prevention and detection of fraud in business" Dunod Edition, 199 pages. On the other hand, professionals now have a repository internal control framework on which they can rely. We mention particularly the COSO. Appeared in 1992, this standard established by the Committee of Sponsoring Organizations of the Treadway Commission has the advantage of an enlarged internal control vision. Applied to fight against fraud, COSO device fits perfectly into the reality of today's businesses.

Table 2: The COSO Applied to Fight against Fraud

COMPONENTS OF THE COSO	APPLICATION TO A FRAUD
Monitoring	. Evaluate the anti-fraud program independently . Follow the warning signals
Information and communication	. Staff training . vigilance
Control activities	. Define the controls that meet the identified fraud schemes, modify and test them. . Monitor indicators . Audits and Investigations
Risk assessment	. Analyze risk factors . Identify and assess patterns of fraud
Control environment	. Create an ethics culture, exemplarity . Anti-fraud policy, code of conduct . Warning Devices

Ethics and Best Practices

Financial exchanges in the context of economic globalization reveal situations where ethics have applications. That is why the adoption of ethical charters has become a necessity nowadays more than ever. The Board must perform work on the values of the company in the direction of convergence of perceptions of partners to respect a healthy and unharmed discipline. In practice, the board should establish its policy against fraud formalized in a code of conduct more precise that seeks to explain, beyond the values of the company:

- Expected behaviors;
- Those who will be punished;
- The treatment of fraud cases (survey, etc.).

These codes are often perceived as gadgets. A survey conducted in March 2007 by Ernst & Young in 8 European countries, however, confirms that their usefulness is perceived as, for 70% of employees surveyed, a code of conduct is a useful way to prevent and detect fraud and corruption. In addition to the ethics and code of conduct charter, the governing bodies of companies must show exemplarity to be credible and enforce codes of conduct in place. This concerns both the respect of due processes (no "free pass") and obligations. This requirement must be reflected throughout the coaching, because the lack of such is often a risk factor "detonator". The exemplarity can be measured during interviews with staff or by dissemination of questionnaires.

The External Control Mechanisms

External audit

All experts agree that following recent financial scandals that marked the international scene (Enron, Parmalat, Worldcom, Madoff ...) the importance attached to the external audit has increased. Indeed, the dramatic and unexpected bankruptcies as well as frauds and misleading financial statements strongly reminiscent that leaders still have the ability and imagination to appear in the accounts a very profitable financial situation (Carassus & Cormier, 2003). With these accounting manipulations, the intervention of the external audit as independent oversight mechanism seems so helpful and knowledgeable in order to ensure the credibility of the information produced. The issue of external audit request is at the heart of the agency relationship between shareholders and managers (Jensen & Meckling, 1976; Chow, 1982 Watts & Zimmerman, 1983 and Roy, 1996). In this context, the agency theory analyzes the use of external audit as a way to limit the scope of accounting manipulation leaders, regulate conflicts and reduce the information asymmetry between principal and agent. In other words, the use of an independent external auditor can be considered as a mechanism encouraging or requiring the individual or individuals to whom responsibility has been delegated to act in the interests of the organization partners (Charreaux 1997b, P.427).

It is therefore one of the governance mechanisms to discipline managers (Jensen & Meckling, 1976) and reduce agency costs. Nevertheless, the external audit can take many forms and names, namely the external audit, legal or statutory control and

auditorship (Dumontier et al, 2006). Its quality is defined by Watts and Zimmerman (1981) and DeAngelo (1981a) as: "the joint probability that the auditor will both discover fraud or irregularities in the financial statements of the client (depends on the overall competence of the auditor: its technological capabilities, level of expertise ...), and reveal to market fraud or irregularities discovered (it depends on its level of professional ethics and independence vis-à-vis of its client)." If the auditorship takes the form of a legal and binding audit for certain business categories (in Morocco the companies listed on the Casablanca Stock Exchange are required to certify their accounts and financial statements by, at least, two statutory auditors), it remains an alternative for any firm wanting to ensure the credibility of the information provided by its leaders. However, the use of this solution is not without cost to the company.

2. The Legal System of Investors Protection

In a country, we mean by legal system of investors protection all the laws and regulations to protect the rights of investors against expropriation attempts. Have such legal arsenal has a disciplinary role on the behavior of managers by limiting their opportunistic actions that lead to the expropriation of shareholder profits. However, in the absence of reinforcement of these devices, their scope and effectiveness may be limited. The board becomes the privileged interlocutor of the government authorities in charge of economic and financial affairs, to provide enforcement and support to preserve the business climate. Thus, the rules of accounting standardization and certification of accounts issued by the accounting profession designed to meet a formalism of financial statements of companies that facilitate verification and control. The mandate of auditing and auditor independence can play a role as a governance mechanism.

The ongoing effort to moralize business relations and publication of governance codes by financial authorities, aims to sensitize companies to follow the rules that are needed to achieve better governance. The Financial Security Law in France, or the Sarbanes-Oxley Act in the United States may be in this type of mechanism. The system of legal protection of investors plays an imminent role and could have an impact on the economic development of a country. A strict system of legal protection of investors contributes to economic growth allowing companies to more easily use the financing on the capital market. It also defines the responsibilities imposed on managers to shareholders and the consequences they could face if they went against these laws. The establishment of a legal and regulatory framework applied and firmly rooted in the business community lead firms to comply in order to avoid significant coercive sanctions.

Conclusion

It is obvious that the role to be played by the governing bodies of companies, especially the Board of Directors, in the fight against fraud is probably more decisive. The quality of mechanisms (internal and external) established and the means deployed determine the success of any policy against fraud. Through this workpaper, we have highlighted the possibilities of action offered to the Board. The latter considers all matters

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