

## Determinants of Corporate Governance in the Algerian Legal System

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Received: 13/05/2026

Accepted: 06/06/2026

Published: 11/06/2026

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### Abstract:

This study seeks to establish a theoretical framework for defining the concept of corporate governance, a term that has been widely circulated for more than half a century. Indeed, the fundamental principles underpinning corporate governance can be traced back several centuries. The concept has acquired increasing significance, particularly within emerging democracies, where weak legal systems often hinder the effective enforcement of contracts and the efficient settlement of disputes, thereby limiting supervision and regulatory oversight while fostering corruption and undermining public trust.

The adoption of sound corporate governance principles contributes to the establishment of effective mechanisms aimed at preventing corruption and administrative mismanagement, while simultaneously enhancing transparency in economic life. Consequently, corporate governance is closely associated with the broader concept of good governance, which seeks not only to ensure profitability, but also to strengthen the competitiveness, integrity, and transparency of commercial companies.

**Keywords:** Governance, Good Governance, Commercial Companies, Transparency.

## 1. INTRODUCTION

The “Watergate” scandal in the United States during the 1970s is considered the foundation and starting point for the widespread use of the term *corporate governance*. This concept has gained significant importance for emerging economies, where commercial companies constitute a cornerstone of economic development. Consequently, such economies continuously seek to adapt to evolving economic

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conditions in order to limit various irregularities that often negatively affect these companies.

This is particularly due to the weakness of legal systems, where contracts cannot be effectively enforced and disputes cannot be efficiently resolved. Furthermore, the poor quality of information hinders supervision and oversight, thereby contributing to the spread of corruption and the erosion of trust. Adherence to sound principles of corporate governance therefore establishes the necessary safeguards against corruption and administrative mismanagement, while simultaneously promoting transparency in economic life.

Accordingly, governance and good management can be applied within commercial companies, considering that they represent institutions and productive units through which the factors of production are combined to generate goods and services aimed at achieving commercial profitability through the market, which in turn reflects the company's competitiveness. In the era of sustainable development and the philosophy of sustainable management, achieving commercial profitability alone is no longer a sufficient condition for market competitiveness. Sustainable management can only be achieved through the realization of both social and environmental profitability, alongside balanced and equitable participation between the state, its government and institutions, and the various components of civil society, under a dual system of public oversight founded upon integrity and transparency.

Based on the foregoing, the main research problem of this paper may be formulated as follows:

**To what extent do the determinants of governance influence commercial companies under Algerian legislation?**

On this basis, the present paper will address the following main points:

- The concept and nature of governance;
- The objectives and manifestations of the implementation of corporate governance in Algeria.

## **Section I:**

### **1 First Axis – The Theoretical Framework of Governance**

The terms *governance*, *good governance*, and several other related expressions all, in one way or another, reflect the flexibility, richness, and diversity of the Arabic language in translating terminology. However, and unfortunately, in order to clarify the

intended meaning of the translated term, most writers tend to include the original term in the source language, namely *Governance*. This indicates that the unification of terminology among Arabic language academies, extending from the Atlantic Ocean to the Arabian Gulf, has not yet fully achieved the intended objective of standardizing concepts and terms.

Just as the term *globalization* emerged and occupied a broad space in academic studies and research across various fields, the concept of *governance* has also appeared prominently over the last few decades. It is expected that this concept will gain even wider use and circulation in many countries, whether developing, developed, or undergoing economic transition. Similar to globalization, governance has acquired multiple dimensions, including political governance (good governance), environmental governance, social governance, corporate governance, institutional governance, and banking governance. Moreover, governance has become closely associated in most studies with the concept of transparency, to the extent that both are often regarded as two sides of the same coin.

### **First: The Concept of Governance**

Governance refers to a set of laws, regulations, and decisions aimed at achieving quality and excellence in performance through the adoption of appropriate and effective methods for realizing a company's plans and objectives. In other words, governance signifies the existence of a system that regulates the relationships among the principal parties influencing performance. It also encompasses the mechanisms required to strengthen the institution over the long term and to define responsibility and accountability.

One of the most important definitions of good governance is the one issued by the Organisation for Economic Co-operation and Development (OECD), which defines governance as “the set of relationships that organize the framework of interaction between a company's executive management, its board of directors, its shareholders, and other stakeholders.”<sup>1</sup>

Thus, governance may be understood as a framework of laws, systems, and decisions designed to ensure quality and excellence in institutional performance through the selection of effective and appropriate methods for achieving organizational goals and strategies. It also refers to the existence of regulatory systems governing the relationships among the key actors influencing performance, while establishing the

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<sup>1</sup> - Mohamed Eid Baligh, *Corporate Governance and Its Role in Addressing Administrative and Financial Irregularities*, PhD Thesis, Arab Administrative Development Organization, League of Arab States, 2016, p. 22.

foundations necessary for institutional sustainability and the clear allocation of duties and responsibilities.<sup>1</sup>

Corporate governance refers to the following key characteristics:

- **Discipline:** the adherence to appropriate and ethical conduct;
- **Transparency:** providing a true and accurate representation of all ongoing activities;
- **Independence:** ensuring the absence of undue influence or unnecessary pressure on the decision-making process;
- **Accountability:** enabling the evaluation and assessment of the actions of the Board of Directors and executive management;
- **Responsibility:** the existence of accountability toward all stakeholders within the institution;
- **Fairness:** respecting the rights of all stakeholder groups within the organization;
- **Social Responsibility:** viewing the institution as a responsible corporate citizen.

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<sup>1</sup> - Ammar Habib Jahloul, *The Legal System of Corporate Governance*, Zain Legal Publications, First Edition, 2011, p. 29.

<sup>2</sup> - Al-Mu'tasim Billah Al-Gharyani, *Corporate Governance of Joint-Stock Companies: A Study of Economic and Legal Foundations*, New University House, Faculty of Law, University of Alexandria, 2008, p. 17.

### **Second: The Importance of Corporate Governance in the Algerian Economy**

The Transparency International report issued on 26 September 2007 indicated a decline in Algeria's international ranking to a worse position, placing it at rank 99. The report found that, for Algeria, the first half of 2007 was "disastrous and alarming," revealing that corruption and bribery had reached critical levels. This situation was attributed to the absence of effective measures in the field of financial governance and good governance.

This was further compounded by other factors resulting from the transition from a centrally planned economy to a market economy without establishing an appropriate public, private, or mixed institutional framework for governing public and commercial enterprises. These enterprises—particularly public ones—constitute a heavy burden on the treasury due to poor performance and the widespread prevalence of financial and administrative corruption. As a result, they rely heavily on government support instead of contributing to public revenues, leading to the waste of public funds rather than their development.

Indeed, the central objective of governance lies in economic reform and the proper functioning of the economic cycle in order to achieve development and progress. Governance also involves formulating decisions and establishing systems that ensure the effective operation of successful corporate activities, evaluating company performance, and developing plans aimed at improving efficiency<sup>1</sup>.

Accordingly, governance contributes to the formulation of laws that are consistent with the requirements of business operations in both the public and private sectors, with the aim of achieving optimal performance and fulfilling the objectives for which companies and institutions are established. In light of the current state of economic disorder, the lack of clear transitional frameworks, and the widespread phenomenon of financial and administrative corruption and misappropriation of public funds within public sector companies and institutions, the need for governance becomes increasingly evident.

There is therefore a pressing necessity to transform governance from a theoretical concept discussed in conferences, seminars, and media platforms into an effective tool for economic reform. Such a transformation would place the national economy on the right path by eliminating distortions and imbalances that hinder the achievement of a

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<sup>1</sup> - Ben Ali Ba'zouz; Abdel Razzaq Habar, Governance in Financial and Banking Institutions: An Approach to Preventing Financial and Banking Crises with Reference to the Case of Algeria, paper presented at the International Scientific Conference on the International Financial and Economic Crisis and Global Governance, Ferhat Abbas University, 21–22 October 2009, pp. 3–4.

sound economy—one capable of playing an active role in promoting welfare and prosperity for individuals and society, and in achieving sustainable development.<sup>1</sup>

The growing attention given to corporate governance within Algerian economic institutions and development programs is largely attributed to a series of events that occurred over the past three decades. These events have played a decisive role in elevating corporate governance-related issues to a position of priority within both the global financial community and the business sector, at national and international levels.

Remarkable corporate collapses—such as the infamous scandal of the Bank of Credit and Commerce International, the Savings and Loan crisis, and major corporate failures such as Enron and WorldCom in the United States, as well as the Khalifa Bank scandal in Algeria—together with the significant disparity between executive compensation and corporate performance, have been the driving force behind demands for reform in developed countries. More recently, major financial crises and institutional failures in East Asia, Russia, and other regions have brought corporate governance issues to the forefront in developing countries, particularly in Algeria.

These events have illustrated that weak corporate governance enables insiders—such as managers, board members, or public officials—to exploit companies, banks, or public funds at the expense of shareholders, creditors, and other stakeholders (including employees, suppliers, and the general public). In today's Algerian economic context, firms and states with weak governance systems are more likely to suffer severe consequences, in addition to financial scandals and crises. More importantly, it has become increasingly evident that the way companies are governed determines, to a large extent, not only the future of each individual enterprise but also the future of entire economies in the current era of globalization.

Globalization and financial market liberalization have opened new international markets, offering significant profit opportunities. However, they have also exposed companies to intense competition and high levels of capital volatility. The inability to attract sufficient capital now threatens the very continuity and survival of firms, with potentially severe consequences for entire economies. Insufficient capital reduces corporate competitiveness, leads to job losses, and undermines hard-won socio-economic gains, thereby exacerbating poverty.

Companies unable to attract capital risk being reduced to subcontractors for multinational corporations or, even worse, being excluded entirely from international markets, while national economies lose the opportunity to benefit from globalization. Recent financial crises triggered by corruption and mismanagement have made the task

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<sup>1</sup> - Fadul Blas Moschet, *Principles of Sustainable Development*, trans. Bahaa Shaheen, First Edition, International House for Cultural Investments, Cairo, 2005, p. 55.

of attracting adequate capital even more challenging. These crises have cost investors billions of dollars and undermined the financial viability of economic institutions.

At the same time, they have increased shareholder activism and intensified competition for investment. Investors—particularly institutional investors—are now explicitly stating that they are unwilling to tolerate the consequences of corruption and poor management. Before committing funds, they increasingly demand evidence that companies are managed according to sound business practices that minimize the risks of corruption and mismanagement.<sup>1</sup>

In reality, the establishment of credible commercial companies capable of withstanding rigorous scrutiny by international investors has become more than a matter of global marketing. It has become an essential requirement for domestic firms seeking to attract capital, expand, and enter foreign financial markets, as well as for economies as a whole to achieve growth and prosperity.

### **Section II: Objectives of Governance and Its Manifestations in Algeria**

The implementation of sound corporate governance in commercial companies plays a positive role in protecting all parties affiliated with the company, as well as safeguarding the rights of shareholders or partners and ensuring equal treatment among them. This is due to the significant position that the shareholder or partner occupies within the commercial company. The Algerian legislator has affirmed this principle by protecting the rights of shareholders or partners through various provisions of the Commercial Code.

In addition, the Algerian legal framework has reinforced the principle of transparency and disclosure, which is no less important than the first principle. The Algerian legislator has stipulated in several provisions of the Commercial Code the necessity of informing shareholders or partners and granting them access to various documents that enable them to understand the true financial and legal situation of the company to which they belong.<sup>2</sup>

#### **First: Objectives of Corporate Governance**

Corporate governance rules and principles aim to achieve transparency, fairness, and the right to hold corporate management accountable. This, in turn, ensures protection for shareholders and all stakeholders, while taking into consideration the interests of the business and its workforce. It also seeks to limit the misuse of power contrary to the public interest, thereby contributing to investment development,

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<sup>1</sup> - <sup>1</sup>Charreaux G. et Desbrières Ph., « Gouvernance des entreprises : valeur partenariale contre valeur actionnariale », *Finance Contrôle Stratégie*, vol. 1, n° 2, 1998, p p. 57-88.

<sup>2</sup> - Darbal Saham; Abou Fatima Sara, "The Necessity of Adopting the Principles of Good Governance in Commercial Companies in Algeria," *Journal of Knowledge Issues*, Vol. 02, No. 03, September 2022, pp. 210–211.

encouraging capital inflows, mobilizing savings, maximizing profitability, and creating new employment opportunities.

These principles also emphasize compliance with legal provisions and the necessity of ensuring financial performance auditing, as well as the establishment of governance structures that allow management accountability before shareholders. This includes the creation of an audit committee composed of non-executive board members, endowed with various tasks, functions, and powers to ensure independent oversight of executive actions.

Corporate governance is implemented according to several principles established by the Organisation for Economic Co-operation and Development in 1999, which include<sup>1</sup>:

1. **Protection of shareholders' rights:** including the transfer of ownership of shares, selection of the board of directors, entitlement to profit distribution, review of financial statements, participation in general assembly meetings, voting rights, and entitlement to dividends.
2. **Equal treatment of all shareholders:** ensuring equality among shareholders within the same category, their right to defend their legal interests, vote on fundamental resolutions in general assemblies, and access all transactions involving board members or executive managers.
3. **Role of stakeholders:** including respect for their legal rights, compensation for any violation of such rights, and mechanisms for their effective participation in corporate oversight. Stakeholders include banks, employees, bondholders, suppliers, and customers.
4. **Disclosure and transparency:** covering the disclosure of essential information, the role of auditors, disclosure of major share ownership, and information related to board members and executive managers. All information must be disclosed fairly, transparently, and in a timely manner to all shareholders and stakeholders<sup>2</sup>.
5. **Responsibilities of the Board of Directors:** including board structure, legal duties, selection procedures, main functions, supervisory role over executive management, and the work of committees such as the audit committee.

In conclusion, investors are attracted to companies that possess sound governance structures. Corporate governance can be understood as a set of “rules of the game”

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<sup>1</sup> - Abdullah Jawhar, *Management in Companies and Institutions*, University Youth Foundation, Alexandria, Egypt, 2014, pp. 218–219.

<sup>2</sup> - Ahmed Ali Khadr, *Disclosure and Transparency as One of the Principles of Corporate Governance in Company Law*, University Thought House, Egypt, First Edition, 2012, p. 52.

through which a company is internally managed and overseen by its board of directors, with the aim of protecting the interests and financial investments of shareholders who may be located far away from the company and distant from its day-to-day management.

Just as good governance requires transparency so that citizens can effectively assess the extent to which the government serves their interests, companies must also operate in a transparent and fair manner so that investors can make informed decisions regarding their investments. These principles of fairness and transparency constitute the core essence of corporate governance. Efforts to embed governance within economic institutions have recently gained increasing attention from the Algerian government.

### **Second: Manifestations of the Implementation of Corporate Governance Principles in Commercial Companies**

In July 2007, the first international conference on “Good Governance of Enterprises” was held in Algeria. This conference represented an important opportunity for bringing together all stakeholders in the corporate environment. Its main objective was to promote a unified and precise understanding of the concept and issues of good corporate governance, from both practical and operational perspectives, and to enhance performance through raising awareness of the importance of governance in strengthening the competitiveness of Algerian enterprises, as well as benefiting from international experiences.

During this conference, the idea of drafting an Algerian Charter for Corporate Governance emerged as a first practical recommendation. The charter consists of two main parts and appendices:

- **The first part** explains the reasons why corporate governance has become necessary in Algeria today, linking it to the challenges faced by Algerian enterprises, particularly small and medium-sized private enterprises.
- **The second part** addresses the fundamental standards upon which corporate governance is based. On one hand, it outlines the relationships between the internal governing bodies of the company (the general assembly, the board of directors, and executive management). On the other hand, it defines the company's relationships with external stakeholders such as banks, financial institutions, suppliers, and public administrations.

This charter is situated within the framework of existing laws and regulations; it is therefore consistent with them, although it is not exhaustive, given the abundance of legal texts in this field. It does not constitute a comprehensive legal code but rather a reference document. Adherence to the corporate governance charter is voluntary and based on free commitment.

Accordingly, the determinants of governance consolidation in Algeria can be divided into two main categories:

1. **External determinants:** These refer to the general investment climate in the country, including laws regulating economic activity (such as securities laws, company laws, competition laws, anti-monopoly regulations, and bankruptcy laws), the efficiency of the financial sector (banks and capital markets) in providing financing, the competitiveness of goods and factor markets, and the effectiveness of regulatory bodies (such as stock market authorities). They also include self-regulatory institutions that ensure market efficiency, such as professional associations issuing ethical codes for auditors, accountants, lawyers, and financial market participants, as well as private professional firms (law, auditing, credit rating, and financial consulting firms). The importance of external determinants lies in their role in ensuring the enforcement of rules that promote sound corporate management and reduce conflicts between social and private returns<sup>1</sup>.
2. **Internal determinants:** These refer to the rules and foundations that determine decision-making processes and the distribution of authority within the company between the general assembly, the board of directors, and executive managers. Their existence and proper implementation help reduce conflicts of interest among these three parties.

Given the increasing interest in the concept of governance, several international institutions have studied and analyzed it, including the International Monetary Fund, the World Bank, and the Organisation for Economic Co-operation and Development.

Ultimately, governance leads to increased confidence in the national economy, a deeper role for capital markets, greater capacity to mobilize savings, higher investment rates, and stronger protection of minority shareholders and small investors. It also promotes the growth of the private sector, enhances competitiveness, facilitates access to financing, increases profitability, and ultimately contributes to job creation.

## **Conclusion**

In conclusion, and in light of the evolving business environment and the emergence of the knowledge economy, governance has become one of the new concepts in modern management that is experiencing widespread diffusion, particularly in the field of commercial enterprise management. Commercial companies, in an increasingly competitive global environment characterized by ambitious projects, are now required

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<sup>1</sup> - Ali Abdel Samad Omar, The Institutional Governance Framework in Algeria: A Comparative Study with Egypt, Faculty of Economic, Commercial and Management Sciences, University of Médéa, Algeria, Al-Baheth Journal, Issue 12, 2013, p. 17.

to extend their objectives beyond narrow internal boundaries in order to ensure survival, achieve excellence, and foster growth within the framework of market globalization. Accordingly, new concepts have emerged such as globalization, total quality management, supply chain management, and the use of technology to automate commercial transactions, making them faster, more efficient, and more cost-effective, while meeting the needs of institutions and consumers alike.

Ultimately, it is worth noting that Algeria has begun implementing a set of administrative reforms aimed at achieving more comprehensive governance.

From this modest study, a set of conclusions and recommendations can be drawn as follows:

1. The adoption of an information system that enables commercial companies to formulate and implement innovative global operational strategies by providing accurate data and information on the company's operations, activities, clients, suppliers, competitors, and other related stakeholders, while continuously updating this data in line with developments in the competitive environment.
2. The necessity of keeping pace with recent developments in modern management practices.
3. Supporting and promoting governance systems, particularly for advanced technological companies in the field of management, and translating this governmental support into specific financial and institutional measures.
4. Governance should be adopted as a fundamental approach to achieving the sustainability of economic activities, with a focus on its requirements in terms of control, accountability, and auditing to ensure effectiveness.
5. Combating administrative corruption and taking serious steps toward building sustainable institutions, as this represents the proper path toward achieving political, social, and economic stability.

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