

Commercial corporate governance -a legal approach in concept and foundations-

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Abstract

Through this exploration we aim to define governance and punctuate the significance of commercial governance in marketable and profitable institutions and realities, also to pressing its part in impacting institutions performance grounded on a set of principles and mechanisms. We've concluded that the operation of commercial governance will enhance the performance of executive fields and spark internal and external control by counting on the principle of exposure and translucency, which will increase the associations' performance effectiveness and enhance their competitiveness.

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1. Introduction

There is no doubt that the economy has a major role in the development and prosperity of countries, so that both developing and developed countries have been keen to diversify economic projects, by using many tools and methods, perhaps the most important of them are commercial companies, which are the mainstay of the local and international economy. The company is an idea that has automatically arisen due to the urgent need for it in the field of commercial activity.

Economic and commercial institutions and entities are considered an important entry to economic growth, as they play an important role in achieving economic and social development and represent the basic pillar of any country in the world, Given the various corruption cases it has been subjected in the past as a result of lack of confidence in its progress and its management's lack of standards of transparency, accountability and integrity. Which led to the necessity of applying corporate governance standards It is considered one of the modern concepts of the knowledge economy that has proven its effectiveness in avoiding institutions falling into financial crises, ensuring transparency in preparing financial statements, and instilling confidence in investors towards institutions, the application of governance in commercial companies is only a projection of their development and sustainability based on ensuring the interests and objectives of their clients.

Interest in governance has increased in many emerging and developed economies during the last two decades of the last century due to its linkage to many organizational, accounting, financial, economic, social and environmental dimensions, and also to its linkage to many different fields and parties, such as the management board (Directors), shareholders and stakeholders in the institution. The importance of corporate governance is evident through its objectives of achieving transparency and justice, granting accountability to the management board, then achieve protection for shareholders, which leads to developing investments and maximizing profitability.

Accordingly, we aim, through this research, to define the governance and the importance of commercial corporate governance in commercial and economic institutions and entities, also to highlighting its role in influencing institutions performance based on a set of principles and mechanisms.

Based on what we said, what is the role of Commercial governance in activating Commercial and economic enterprises in light of the challenges they face?

In an attempt to answer the problem we relied on the descriptive approach by introducing and defining Commercial corporate governance, and its various principles.

In order to reach the research objectives and answer the previous problem, we have divided the search to:

First: the concept of commercial corporate governance.

Second: the foundations and rules of commercial corporate governance.

➤ **First: the concept of commercial corporate governance.**

The term governance is rooted in an ancient Greek word that expresses the ship's captain ability and skills to lead the ship amid waves, hurricanes and storm, if he gets the ship to safety, returns and accomplishes his mission peacefully, mariners experts called him the well-controlled captain.

The term "governance" has two aspects: the macro-aspect of the economy, this means what is known as good governance at the level of state structures, which is concerned with the political, economic and social fields, and the other aspect micro-levels of the economy, which is called corporate governance, which is concerned with the management of companies and their relationship with stakeholders, and that is the subject of our research.

It is important to note that there is no specific definition of corporate governance. Due to the novelty of the subject, case law and research vary significantly in the definition of the term. Many international organizations and institutions, such as the Organization for Economic Cooperation and Development (OECD), have conducted in-depth analysis and research on this term.

Many definitions of corporate governance range from narrow definitions of laws, accounting standards, disclosure requirements, internal control arrangements and broad definitions that make governance the fundamental component of institutional culture and the way in which targets are defined and implemented in institutions, so the requirement is divided into two sections, we address in (1) the definition of commercial corporate governance, while in (2) we address the rules of commercial corporate governance.

I. Definition of corporate governance

The definitions provided for corporate governance are multiple in relation to their overlap with many economic, administrative, legal and social aspects.

The International Finance Corporation IFC defines it as: "The system by which an enterprise manages and controls its operations", while the OECD defines it as: "The structure that determines the objectives of the enterprise The methods that determine how those objectives are to be achieved The objectives to be achieved and how performance is to be monitored. The corporate governance system determines the distribution of power between the various actors in the organization such as the board of directors, directors (managers), shareholders and other stakeholders, and establishes the rules and procedures for decision-making.

The **IIA** Institute of Internal Auditors defined governance as "processes conducted through procedures used by stakeholder representatives to provide oversight of risk management and control of the enterprise and to emphasize the adequacy of controls to accomplish objectives and preserve the values of the enterprise during the enterprise's corporate governance performance".¹

The World Bank and the International Monetary Fund (IMF) also define corporate governance as rational management, whether of a particular company or of the economy as a whole. In other words, it is a set of laws, rules, regulations, decisions and procedures designed to regulate the nature, quality and form of relations between management and owners in order to ensure quality and excellence

by choosing appropriate and effective means to achieve the company's goals and plans.²

From a legal perspective, corporate governance can be defined as the legislative framework and legal rules that protect the interests of the parties involved in the enterprise or company, and the law treats them as an integrated framework of legal rules governing the management of enterprises and organizations against the beneficiaries, while the accounting concept of governance refers to protecting investors' funds and obtaining appropriate returns and ensuring that their funds are not used in unsafe areas and investments and are not exploited by management or managers for special benefits through a set of procedures, controls and accounting standards.³

Through the different definitions, corporate governance can be defined as a set of regulatory rules and laws governing the internal procedures of commercial companies between the management board and Executive Management and taking into account the interests of the relevant parties, it also seeks to achieve effective internal and external oversight of the management board, aiming at transparency, disclosure, justice and combating corruption.

We also conclude that this concept is essentially related to the behaviors of the parties involved in the business organization, also we noted that corporate governance relies on three pillars that can be summarized as follows:⁴

1. **Ethical behavior:** that is, ensuring behavioral commitment through rational professional behavior, balancing the interests of the parties associated with the enterprise, transparency when providing information, taking social responsibility and preserving the environment.

II. Characteristics of commercial corporate governance

Based on the proposed concept of corporate governance, we find that the concept is essentially related to the behavior of the participants in the corporate organization. Therefore, in order to achieve the purpose behind the application of this concept, this behavior must have a number of characteristics. Based on this, we summarize the characteristics of business enterprise management as follows:

1. **Discipline:** Following appropriate and correct ethical behavior, which serves as an ideal standard of professional conduct that parties have to demonstrate when doing business whether in dealing with colleagues or others.
2. **Transparency:** is one of the essential conditions and components for comprehensive and sustainable development in all development fields. It is an essential element of governance that is the way to build trust within the administration before heading outside by expanding respect, implementing systems for the laws, which enhancing trust and achieving legitimacy⁵, this requires two basic steps: the preparation of all data related to the company's material matters and the provision of communication channels for the dissemination of information.⁶
3. **Independence:** means the practicing work without the pressure and influence of any employee who is neutral and away from all side effects and enjoys intellectual

independence in all his work, has no conflicting interests and avoids any attitude of loss of objectivity and independence intended by the Management Board and its committees.

4. **Responsibility:** responsibility to all stakeholders in the enterprise. The purpose is to provide a clear organizational structure that identifies points of authority and responsibility, and to hold officials and decision makers accountable for their responsibility to the company and shareholders.⁷

5. **Justice:** Justice is intended to respect the rights of the company's stakeholders by distributing tasks, duties and responsibilities among employees of the company on the basis of justice, respecting minority shareholders in shares by those who own the majority, and by participating in public meetings, casting votes and objecting when abusing their rights and contributing to decisions-making and appointments.⁸

➤ **Second: the foundations and rules of commercial corporate governance.**

Corporate governance is based on a set of principles that represent its basic pillar. Due to their importance, many international institutions have been keen to establish standards to be adhered to. Through this, the principles of corporate governance and its pillars, as well as the parties concerned, will be recognized for their implementation.

I. Principles of commercial corporate governance.

Corporate governance principles are defined as a set of basics and practices that apply specifically to investor-owned companies and include the rights and duties of all company dealers such as management, shareholders, creditor and suppliers. **OECD**, together with **IMF**, the World Bank and other relevant professional institutions, developed a set of basic governance principles in 1999 and revised and amended in 2004,⁹ which are:

1. The Management Board Responsibility: Governance regulations and rules must include strategic direction of the company and effective control by the Management Board and the board's responsibility towards the company and shareholders through the board's dedication to work and in line with the interests of the company and shareholders.¹⁰

2. Disclosure and transparency: Disclosure and transparency means the company's obligation to provide data and information and to allow it to be accessed and communicated periodically to the control authorities, such as the Capital Market Authority. It is also obliged to bring it to the knowledge of shareholders and to the entire public so that it benefits even potential investors other than those that would harm the company's interests and may keep it confidential.¹¹

3. Protection of shareholders rights in the enterprise: The rights of company shareholders need to be protected so that the governance system can be applied.

4. Equal treatment of shareholders: The corporate governance framework should ensure equal treatment of all equity shareholders, including small and medium shareholders and foreign shareholders, and all shareholders should enjoy equal rights within a certain category of shareholders equity and all shareholders should receive appropriate compensation when their rights have been violated, Minority shareholders must also be protected from abuse by huge proportions.

5. The role of stakeholders in corporate governance: Stakeholders meant to have a relationship with the enterprise like suppliers, customers, workers, banks and supporting institutions. The corporate governance framework allows mechanisms for the stakeholders' participation in the enterprise, this creates value and sustainability for well-founded and strong projects.¹²

II. Parties involved in the application of corporate governance

The correct implementation of corporate governance rules affects four main aspects that determine the success or failure of rule implementation.¹³

1. Shareholders: They provide funds to the company through shareholding to maximize the company's long-term value, which determines the degree of continuity of the company in exchange for profits or investments, and have the right to select suitable board members to protect their rights.

2. Management Board: a group of people who monitor the work of executives and evaluate various strategies related to creating value in the company, their main goal is to study decisions taken related to the company.

3. Stakeholders: Including all internal stakeholders, such as customers, suppliers, unions, banks, and all parties involved in the company related to the company's activities. The concept of corporate governance is largely influenced by the relationship between these parties.

Conclusion:

Our study shows that corporate governance is only a set of principles and systems aimed at achieving transparency, quality and excellence as well as the right to accountability within clear, fair and transparent foundations and rules. Applying governance in commercial and economic enterprises will contribute to solving the problem of conflict of interest, giving a real vision of its financial situation and enhancing its competitiveness.

Through this research, we reached some results, including the following:

- The application of corporate governance principles will fight and combat administrative, financial and social corruption, the application of these principles is the way out and the solution to ensure the rights of investors in companies and other stakeholders.
- Commercial corporate governance contributes to improving the overall performance of enterprises, whether administrative, financial or functional, which

creates a competitive advantage for enterprises by activating their external and internal management and achieving the principle of disclosure and transparency in their dealings.

Given some shortcomings in the application of corporate governance, we offer some suggestions, include:

- The application of corporate governance principles should be used to establish a measure of the financial performance of enterprises as well as a standard for evaluating the performance of their employees.
- The necessity of starting to implement corporate governance and updating and developing systems and laws to keep pace with their demands.
- Increased attention to the internal audit function and activate its role as it affects risk management and enhances transparency and integrity.
- Establishing integrity and transparency committees to address abuse of power and corruption.

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