



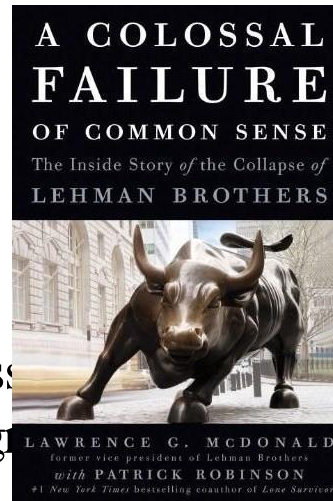
Role des administrateurs dans la bonne gouvernance des entreprises

**Good corporate governance and the
role of the Director**



Why is the World Talking About Corporate Governance?

- Corporate failures
- Executive greed
- Economic stagnation
- Globalization
- Privatization
- Internal awareness of business case, i.e. creating long-term growth & shareholder value
- Global Financial Crisis





The state owned enterprises are not an exception with regard to good governance

- State Owned Enterprises (SOE) are vital and play an important role in many economies including in liberal and market driven economies
- Regardless of the SOE organization model (centralized or decentralized), The SOE are established as Independent legal entities pursuing double mandate: **(i) Achieve national economic development objectives and (ii) stay profitable**
- SOE roles : (i) Contribution in the national economy, (ii) Defend General interest, (iii) citizen protection and social justice
- Critical role in managing strategic resources of the country, preventing the creation of private monopolies damaging the citizen and the user interest.. It can also be an effective sustainable instrument



The state owned enterprises are not an exception with regard to good governance

- Their economic weight is growing over years: 282 out of 2000 big global corporates are SOE according to Forbes Global Index 2000, in 2017, a leap growing number
- The director plays a major in the governing body of SOE i.e The board of governance.
- The good governance of a corporate applies regardless of the nature of the ownership.
- How should a director within his role in a board of an SOE, perform his role effectively
- What are the best practices, lessons learned globally and regionally?
- What are the attributes that a Director should have to perform his role effectively?



Board's Role

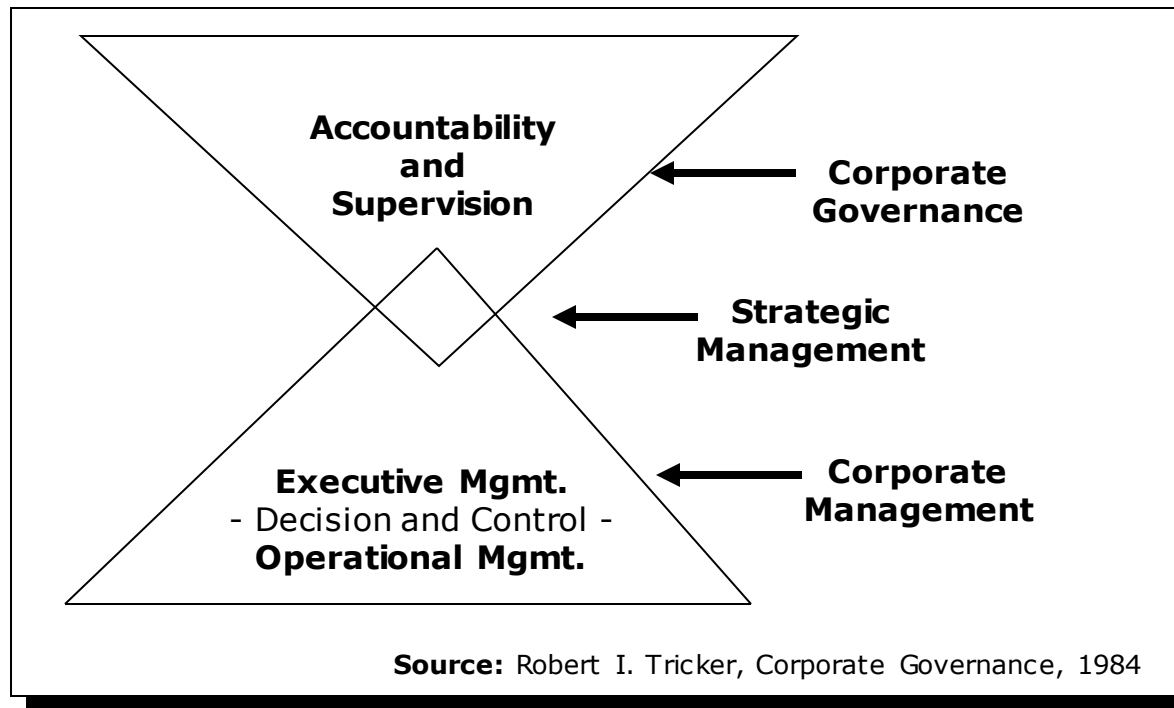
“The board’s role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls....”

United Kingdom Code of Corporate Governance (2010)



Corporate Governance and Corporate Management

Corporate governance & corporate/financial management interest





Differences Between Directing, Managing

Directing	Managing
Collective decision-making	Individual decision-making
Duties and responsibilities to shareowners, company	Specific to department
Directors report regularly to shareowners	Report to board
Leadership vision, strategy	Implement vision, strategy
Approve, abide by ethics code	Abide by ethics code
Signoff of financial statements, etc.	Preparation of financial statements, etc.
Combined and individual liability	Individual liabilities



Board of Directors – activities and role

Exercising accountability and responsibility	Foresight
Delegation to Management	Strategy and Structure



Director Responsibilities

- Duty of Loyalty
- Duty of Care
- Responsibilities to Shareholders
 - Activities as Directors (Duties)
 - Conflicts of Interest
 - Adequacy of Control Environment
 - Adequacy of Disclosure



Board tasks: the right balance between foresight tasks and accountability tasks

- A survey of Gulf companies identified that directors are currently spending 15% of the board's time on determining purpose, vision and values and setting strategy.
- 72% of the respondents felt that they needed to spend significantly more time on determining purpose, vision and values and setting strategy issues.
- Directors spend 22% of the board's time on exercising accountability and 25% of the respondents felt that they needed to spend significantly more time on this activity.
- It is important that the director balances the tasks between prospective/strategic activities and those related to control/accountability



Types Of Boards

Includes:

- Passive
- Certifying
- Engaging
- Intervening
- Operating
- Paper



Board Size Criteria

Companies should choose a board size that will enable them to:

- Hold productive, constructive discussions
- Make prompt, rational decisions
- Efficiently organize the work of its committees, if these are established



Examples

Saudi – 2008 – 8.4 (range 2 – 12)

33% of listed companies had 2 directors
from same family

Qatar – 2008 – 8.5 (range 4 – 12)

76% of listed companies had 2 directors
from same family



Board of Directors – Composition, best practices

- Seven to Eleven Members/Strong Independent Component
- Separate Chairman and CEO Roles
- Regular Calendar/Agenda of Meetings (~6-8 per Annum)
- Independent Directors
 - No Connection with Management / Controllers
 - “Independent – Minded”
 - Minimum Requirements (local standards) *plus* Company’s Own Definition



Types Of Directors

- Chairman
- CEO
- Executive
- Non-executive
- Independent
- Nominee
- Alternate
- Shadow



Executive/Non-Executive Directors

Executive Directors

- Hold an operational position
- Typically the CEO, the chief operating officer (COO), and/or the chief financial officer (CFO)
- Best informed about the company's business and its challenges since they make decisions daily about the company's operations.
- Ultimately responsible, too, for the company's operating results.

Non-executive Directors

- Non-executive directors do not hold an executive position and they may or may not be independent



Independent Director Qualifications

- Not a recent employee
- No recent material business relationship with the company
- No recent or current remuneration from the company, except for:
 - Director's fee
 - Share options
 - Performance-related pay
 - Pension



Independent Director Qualifications (Cont.)

- No close family/ ties with any of the company's advisers, directors or senior employees
- No cross-directorships or significant links with other directors through involvement in other companies or bodies
- Not a significant shareowner
- Not a long-term board member



Duty Of Good Faith Calls For Directors Not to...

- Conduct transactions in which they have a personal interest
- Accept a position in a competing company
- Enter into contractual relations with a competing company
- Use the company's assets, facilities for personal use
- Use information, business opportunities received in their official capacity for personal gain
- Accept gifts



Director Selection, Appointment

- Identification of a board capability gap
- Develop a person specification
- Develop a search plan
- Get to know the person
- Select the best-qualified candidate
- Recommend the candidate for election at the general assembly
- Election process



Directors' Leadership Attributes

Intellectual dimension (IQ)

- Critical analysis and judgment
- Vision and imagination
- Strategic perspective

Managerial dimensions (MQ)

- Resource managing
- Engaging communicator
- Empowering
- Developing
- Achieving results

Emotional and social dimensions (EQ)

- Self-awareness
- Emotional resilience
- Intuitiveness
- Interpersonal sensitivity
- Influence
- Motivation
- Conscientiousness



Board composition case 1

- Complex organisation structure
- Board members 9
- Average age of board 68
- Number of new members in last ten years 3
- Number of directors with financial literacy Minority
- Naval commander 1
- Theatre producer 1
- Number of women 2
- Chair of the Board, CEO and chair of the risk and finance committee - the same person
- 2 Members of risk and finance committee – all over 80
- Risk and finance committee meet once a year



Lehman Brothers 4th Largest Investment Bank in the US Bankrupt in 2008





Board composition case 2: State owned bank with a board controlled by minority PEP shareholders

- Complex organization: owned by the State 70%, private sector ownership 10%
- Board members 12
- Strategic investor Director 2
- Public sector Director 4
- Private sector Directors 4
- Independent Directors 2
- Chair of the Board, CEO and chair of the Executive committee same person
- Compensation committee composed of the private sector directors, owning 10%
- Informal decision making, clusters,
- CEO and deputy CEO developing relationships with the Directors. Conflicts in management reflected in the board leading to inefficient board



Agenda Items

- Agenda Items Average UK Board Meeting (% of boards)
 - 4–5 = 6%
 - 6–7 = 18%
 - 8–10 = 59%
 - 11–12 = 14%
 - Over 13 = 1%



Board Meeting Frequency

Number of board meetings

Country

• Italy	12.0
• Spain	10.9
• Sweden	9.4
• Belgium	8.9
• UK	8.7
• Portugal	8.7
• Netherlands	8.1
• France	7.4
• Switzerland	7.3
• Germany	4.4
European average	8.7



Board Meeting Duration

Duration of average board meeting (% of UK boards)

- Under 2 hours 12%
- 2 – 4 hours 62%
- 4 – 6 hours 25%
- Over 6 hours 1%



Dysfunctional Board Characteristics

- Poorly structured
- Insufficient range of expertise
- Inadequate information
- Inadequate debates and no overt disagreements or differences of opinion
- Decisions made by small inner groups outside of the board
- Poor oversight to see if the decisions were correct
- Failure to identify risks, review company finances



Director Departure

- Resigns
- Vacates office because of a board resolution passed by a specified majority of directors
- Absent from board meetings for a specified period without permission; the directors resolve that the office should be vacated
- Prohibited from holding a director's position by law (e.g., disqualified or bankrupt/insolvent)
- Reached a specified age
- Removed by a resolution of the general assembly



Board Decision Disagreement

Essential :

- Ensure full possession of facts
- Ensure the disagreement is fully discussed at a board meeting
- Ensure disagreement is included in the meeting's minutes
- Identify possible allies (e.g., company secretary, auditors, shareowners)
- Identify level of support
- Avoid making defamatory statements

Options to Consider

- Accept a majority decision
- Resign
- Call for an Extraordinary General Meeting — if there is the support of a sufficient number of shareowners

Impact

- Personal reputation
- Relationship with other board members
- Company reputation and share value



Typical Evaluation Process

- Led by chairman, assisted by outside advisor
- Formulate evaluation instrument
- Presentation to board and briefing of process
- Questionnaire completed privately by directors
- All directors interviewed individually
- Collated and analyzed
- Presentation and board discussion

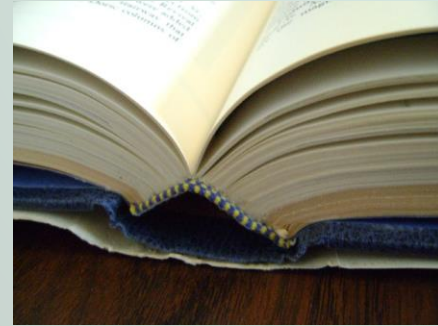


Evaluating Corporate Governance Effectiveness

Good Board Practices



Transparent Disclosure



Shareholder Rights



Control Environment





Corporate Governance: the Good, the Bad and the Ugly: examples




THE GOOD THE BAD AND THE UGLY



OLYMPUS

In late 2011 the company fired its newly appointed British president, precipitating a scandal that wiped 75% off the company's stock market valuation. The scandal culminated in admission by the company that some of its board members had engaged in one of the biggest and most durable loss-concealing scams in the history of corporate Japan.



Absence of an effective chief risk officer
Absence of an effective whistle blowing policy

Paul Moore, a former partner of KMPG and head of group regulatory risk at HBOS between 2002 and 2005, accused the bank of "a total failure of all key aspects of corporate governance" and said that he was repeatedly rebuffed and thwarted when he tried to register concern and was eventually dismissed.

Treasury Select Committee, February 2



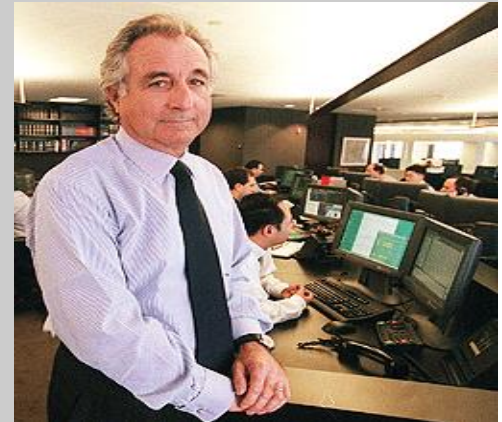


US Regulatory Failure - Madoff

In December 2008, Bernard Madoff admitted that the wealth management arm of his business was a Ponzi Scheme.

In March 2009, Madoff pleaded guilty to 11 federal crimes and admitted to operating the largest investor fraud ever committed by an individual.

In June 2009 he was sentenced to 150 years in prison.





- Citi is the first major bank and by far the largest company to have suffered a no vote by shareholders on the directors remuneration vote at the AGM. Shareholders said no to CEO Vikram Pandit's \$15 million pay package.

19th April 2012

- Barclays announced that, after considerable pressure from shareholders, it would be radically restructuring CEO Bob Diamond's pay package.



Some major takeaways

- Un administrateur « C'est un homme ou une femme libre et disponible pour son rôle ...libre dans ses convictions, jugements et positions, jusqu'à démissionner d'un mandat si cela lui paraît nécessaire....»,
- Un administrateur « Doit faire preuve de vigilance, d'exigence, d'intégrité, de responsabilité et d'implication dans la conduite de ses missions ou il a une démarche pragmatique et prospective des situations spécifiques (gestion de crise, etc.)... »
- Il faut un vrai travail d'équipe au sein du conseil d'administration: « le conseil d'administration, c'est une équipe de rugby, ça ne peut pas fonctionner en individuel. Pour créer du collectif, il faut travailler ensemble et pas en one to one » (l'IFA)



Thank you