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Corporate governance in Morocco: a literature review

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Abstract

Gaps in governance mechanisms or an inadequate capital structure are likely to lead to substantial problems, such as conflicts of interest, inefficient resource allocation and financial instability. This article is of major importance to various stakeholders, including investors, regulators, and economic decision-makers in Morocco. It provides fundamental insights for improving the financial performance of listed companies, with an emphasis on establishing good governance and capital management practices. In short, this study takes a holistic approach, aiming to enrich our understanding of the factors influencing the financial health of listed Moroccan companies. It makes a significant contribution by informing stakeholders about governance and capital management practices conducive to sustainable financial performance.

Keywords: Corporate governance, financial performance, board of directors, capital structure.

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Introduction:

The sudden and unexpected collapse in the early 2000s of major international groups such as Enron, Vivendi, Worldcom and Andersen highlighted the ineffectiveness of some organizations' governance mechanisms. Since these financial scandals, many governments have taken the initiative to adopt new measures aimed at improving corporate governance systems. Examples of these initiatives include the Sarbanes-Oxley Act in the USA, the Financial Security Act in France, BillMog in Germany and Cadbury in England. However, despite the implementation of these corporate governance oversight tools, new scandals have emerged, such as the "Subprime" crisis in the USA in 2008. Against this backdrop, it has become crucial to measure the impact of corporate governance on financial and stock market performance, both for management and shareholders. According to Chatelin and Trébucq (2003), corporate governance arrangements, risky management and the implementation of value-destroying strategies are the main factors in company failure. The separation of powers between management and shareholders, theorized by Berle and Means in (1932), suggests a dispersion of shareholder power due to the development of joint-stock companies. This separation leads to a divergence of objectives between management and shareholders, necessitating reforms in governance arrangements. Morocco, aspiring to become an African financial hub with initiatives such as Casablanca Finance City, is attracting major foreign investors. The privatization of Moroccan state-owned companies, such as Marsa Maroc, and the country's economic development are prompting an examination of the relationship between governance and corporate performance. A study carried out by the Moroccan employers' association with the support of the Center for International Private Enterprise (2011) emphasizes that investment decisions, especially for foreign investors, are highly dependent on the quality of economic governance. In this context, corporate governance plays a fundamental role in contributing positively to the country's economic efficiency and competitiveness.

In summary, this study aims to enlighten investors, whether local or foreign, on governance practices in Morocco and their impact on organizational performance.

Governance and ownership structure worldwide:

The term "Corporate Governance" emerged at the beginning of the last century in the Anglo-Saxon world, in parallel with the development of capitalism. As a concept, corporate governance encompasses all the stakeholders in an organization, such as capital providers, managers and the board of directors. Its evolution is closely linked to that of the economy.

The evolution of governance over the last century has been structured around key moments, such as the emergence of the individual shareholder in the 40s and the institutionalization of the concept with the arrival of institutional investors in the 60s and 80s. Active institutional capitalism, which emerged in the United States, profoundly altered corporate governance through legislation framing the rights and duties of key economic players.

In the early 2000s, new financial disasters such as Enron prompted US legislators to intervene, introducing regulations such as the Sarbanes-Oxley Act. In the UK, the privatization drive of the 1980s led to accelerated corporate governance reforms in the wake of financial scandals. In France, the Financial Security Act in 2003 and the AFEP-MEDEF corporate governance code since 1995 are responses to national and international financial scandals.

In Morocco, corporate governance emerged in the economic debate in the early 90s, with increased awareness in the early 2000s following scandals in the banking sector. Legislative reforms were undertaken, with investigations carried out by national and international institutions such as the World Bank and the AMMC.

Ownership structure and control, analyzed by Berle & Means in 1932, revealed a decomposition of capital between several shareholders, creating a separation of power between capital providers and actual managers. This separation led to potential conflicts, as the objectives of managers could diverge from those of shareholders, resulting in a deterioration in company performance. Recent studies call this analysis into question, demonstrating that the concentration of capital among a few investors persists in certain American companies.

Studies of other countries reveal greater concentration of ownership in Germany, Japan, Italy and several developing economies. Successful corporate governance, such as that in the USA, Germany and Japan, combines significant legal protection for investors, distinguishing itself from the less protective governance systems of other countries.

In addition, researchers such as Morck and Steier (2005) highlight the influence of cultural and legal parameters on corporate governance, demonstrating that the management of large companies remains concentrated in the hands of founders in some developed economies, while others rely on external managers. Corporate governance, functioning as a response to agency issues, involves control mechanisms such as boards of directors.

This analysis highlights the evolution of corporate governance over time and in different national contexts, underlining the importance of legal protection for investors and cultural influences on corporate management.

Governance and regulation:

Effective governance arrangements are crucial to ensuring the transparency, accountability and reliability of corporate financial information. In the USA, the Sarbanes-Oxley Act (SOX) was enacted in 2002 in response to major financial scandals that shook investor confidence. The authors of this legislation, Senator Paul Sarbanes and Representative Michael Oxley, developed SOX with key objectives:

- Close gaps in accounting practices.
- Strengthen corporate governance rules.
- Increase corporate accountability and disclosure requirements, particularly for corporate officers, CPAs and auditors.
- Require greater transparency in shareholder reports and descriptions of financial transactions.
- Strengthen whistleblower protection and compliance monitoring.
- Increase penalties for corporate and executive malfeasance.
- Authorize the creation of the Public Company Accounting Oversight Board (PCAOB) for enhanced oversight of corporate accounting.

SOX also introduced significant changes to the relationship between boards of directors and financial auditors. Companies must now provide an annual report on the internal controls in place and their effectiveness, reinforcing corporate accountability for their accounting practices. Although SOX has generally been praised for reducing corporate fraud and strengthening investor protection, it has also been criticized. Some analysts believe that Congress has weakened the law over time by withholding funds for implementation and passing contradictory bills. In addition, there has been criticism of the additional costs imposed on businesses, potentially reducing their competitiveness. The current state of SOX remains subject to divergent points of view. A 2017 study by the American Accounting Association found that SOX's financial reporting requirements have served effectively as a warning mechanism for detecting corporate fraud. However, critics persist, focusing on the costs companies incur to comply with SOX processes.

Governance regimes in other countries:

The UK has adopted a progressive approach to corporate governance. Codes such as the "Code of Best Practices" resulting from the Cadbury Report in 1990, followed by subsequent reports such as the Greenbury Report in 1995 and the Higgs Report in 2003, have shaped UK corporate governance. Key features include the separation of powers, the mandatory presence of independent directors, the creation of specialized committees, and the regular evaluation of board performance. In Germany, the dualist or co-management system prevails, characterized by the "Deutscher Corporate Governance Kodex." Although not mandatory, this code issues recommendations to listed companies, with a requirement for annual publication of a statement of compliance. The "Comply or Explain" principle applies, underlining the importance of transparency.

In Japan, the insider governance system is based on a strong presence of employees and managers. The board structure includes directors and auditors. Recently, amendments have been introduced to improve governance, requiring the presence of independent directors.

In France, corporate governance is governed by legal and regulatory sources, with successive reforms to modernize and strengthen governance. Laws such as the NRE Act in 2001, the Financial Security Act in

2003, and others have introduced measures to increase transparency, accountability and fairness.

Governance Regime in Morocco

In Morocco, financial scandals led to the adoption of Law 17-95, regulating the role of the board of directors vis-à-vis shareholders and third parties. Morocco has undertaken reforms to bring its governance system into line with international standards.

The 2015 reform aimed to improve and increase the transparency of Sociétés Anonymes (SA), particularly those making public offerings. It introduced a number of mandatory measures to achieve these objectives.

Firstly, it introduced the creation of an Audit Committee, reporting to the Board of Directors or Supervisory Board. The main role of this committee is to prepare and review accounting and financial information. It is made up of members of the Board of Directors or Supervisory Board who do not hold any position within the company.

In addition, the law has strengthened shareholders' right to information, by making it compulsory for publicly-traded companies to have a website containing all information intended for shareholders, such as reports from the Board of Directors or the Management Board, as well as notices of meetings. The 2019 reform, focused on improving Morocco's business climate and strengthening its international competitiveness, concentrated on optimizing corporate governance to attract more foreign investors.

The introduction of the independent director is one of the key measures of this reform. Listed companies are now required to have at least one independent director, representing one-third of the Board of Directors. This provision aims to restrict the decision-making power of executive directors, while clearly defining the conditions of remuneration and appointment to avoid any conflict of interest. The liability of corporate officers has also been adjusted. Solidarity between members of the management team has been abolished, exempting those who are not responsible for breaches of the Articles of Association or mismanagement, provided they report these acts to the next shareholders' meeting.

The reform also introduced significant changes concerning asset disposals. Any disposal representing more than 50% of the company's assets must now be authorized by an Extraordinary General Meeting, thereby strengthening protection against acts detrimental to the company's assets.

The law amending the Public Limited Company Act of 2020 introduced a number of important changes, including the promotion of parity between men and women on boards of directors and supervisory boards. From now on, these boards must have at least 30% of members of each sex, with the rate raised to 40% for companies going public. Another major provision concerns prior approval of regulated agreements. Managing directors are required to inform the Board of Directors of the existence of such agreements, and the statutory auditor must draw up a report, assessing the economic and financial aspects, in order to determine their compliance with market rules. In addition to the legal framework, Morocco adopted a code of good corporate governance practices in 2008. Inspired by international standards, this code focuses on five essential elements:

- The governance body's responsibilities to shareholders.
- The independence of the governance body, including the separation of the functions of Chairman and Chief Executive Officer.
- Transparency and dissemination of financial information.
- Protection of shareholders' rights and guarantee of fair treatment.
- Compliance with laws and regulations.

Although the reforms undertaken by the Moroccan legislator have clearly improved corporate governance, particularly for listed companies, certain shortcomings remain. It is suggested that measures be considered, such as limiting the number of terms of office and staggering them over time, to prevent boards of directors from becoming entrenched.

Conclusion:

A retrospective look at the evolution of governance reveals that governance concerns often emerge in response to changes in the capital or organizational structure of companies. Corporate governance challenges become more apparent when capital is distributed among several shareholders, leading to potential conflictual relationships. Corporate governance offers a framework for understanding and implementing mechanisms to mitigate these conflicts. Beyond the legal framework, codes of good governance, regulations and recommendations complete the legal landscape. Common to all of them is the importance of the effectiveness and independence of the board of directors, the creation of specialized committees, the separation of the functions of chairman and CEO, and the introduction of independent directors.

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