CORPORATE GOVERNANCE IN THE MIDDLE EAST – WHICH WAY TO GO?

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Abstract

The Interest in corporate governance is not a new phenomenon in the transition economies of the Middle East, but corporate governance is especially important in these economies since these countries do not have the long-established (financial) institutional infrastructure to deal with corporate governance issues. This article focusses on a cross-country analysis of the most important topics in corporate codes – shareholder rights, board systems and executive remuneration. By analysing three representative MENA countries, we discuss if codes based on directives or standards are better for these economies. The introduction of corporate governance codes for these economies seems useful but should not rely on broad standards but on legally enforced binding rules accounting for the discussion of directives versus standards. The paper argues against the blindfold implementation of corporate governance codes and argues for country specific solutions**.

Keywords: Corporate Governance, Transition Economy, Shareholder Rights, Board Systems, Executive Remuneration

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1 Introduction

The Interest in corporate governance is not a new phenomenon in the transition economies of the Middle East. When referring to the Middle East, we follow the international definition of the MENA (= Middle East North Africa) region, which consists of 18 to 24 countries. Corporate governance issues are especially important in these economies since these countries do not have the long-established (financial) institutional infrastructure to deal with corporate governance issues [3].

Corporate Governance issues were not discussed before a series of emerging market crisis in 1997 [28]. All this has changed and corporate governance codes as a measure of dealing with each country's specific governance problems have been adopted by most of the MENA counties. In the framework of various public and private initiatives where the codes were discussed, this has resulted in improvements of formal legal rules as well as in the drafting of soft-law recommendations.

Especially the financial scandals at the beginning of the 21st century led to a huge number of corporate governance codes all over the world [12]. As a common denominator they want to shape comprehensive standards of good governance. These are the avoidance of conflicts of interests and the request for disclosure and transparency [2], the constitution of the board of directors of independent directors, managerial compensation, as well as the claim for shareholder rights [1].

In this contribution the development of Corporate Governance Codes in three chosen countries, which represent the different systems in the MENA region, will be described (section 2.). These are Egypt (EG), Saudi Arabia (SA), and the United Arab Emirates (UAE). A cross-country analysis of the major corporate governance topics (such as Shareholder Rights, Board Systems and Managerial Compensation) will highlight the general and specific corporate governance performance of these countries (sections 3-5). In section 6 we ask if directives would be more appropriate than standards in addressing these corporate governance issues. Section 7 presents the implications.

2 Development of Codes

2.1 The MENA Region

The MENA region consists of countries with significant distinctions in levels of per capita income [6]. This is a fundamental fact regarding the aims and their implementation of Corporate Governance Codes in such countries.

According to Piesse et al (2011) countries of the MENA region can economically be divided into three groups. The countries of the Gulf Cooperation Council (GCC) are forming one group. Because of their crude oil resources and the steady increase in oil prices "[t]hese countries are generally in surplus and are net capital exporters." [22] The GCC is a trading bloc involving the six Arabian Gulf states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates [16]. Representative for the Gulf States within this study are the corporate governance regulations of Saudi Arabia and the United Arab Emirates are highlighted. "Saudi Arabia is best identified by its religious status as the spiritual destination for Muslims all over the world […]" and its "oil revenues presented Saudis with an abundance of entrepreneurial opportunities." [24] Equipped with these specific features, Saudi Arabia is a highly interesting country in the manner of this paper. The UAE is the most developed GCC country and a hub for financial services.

Saudi Arabia published its Corporate Governance code as well in 2006, the United Arab Emirates in 2007 for joint-stock companies and in 2011 for small and medium enterprises, being a leader in this area.

Furthermore, the corporate governance regulations in the Arab Republic of Egypt are part of the analysis. The stock markets of the Arab Republic of Egypt are amongst the most active in the MENA region [22]. According to the Egyptian Exchange Monthly Statistical Report by the end of August, 2012 the total market capitalization of shares in the main market reached US$ 60.54 billion with 212 listed companies on the main market. According to OECD's report on the Role of Stock Exchanges in Corporate Governance issued in 2009 "[t]he primary direct contribution of exchanges to corporate governance has been the issuance of listing and disclosure standards, and the monitoring of compliance." Additional contributions to enhancing corporate governance have taken two forms. First, stock exchanges contribute to an effective corporate governance framework by collaborating with, or acting as an agent of, other supervisory, regulatory and enforcement agencies. Secondly, stock exchanges have established themselves as promoters of corporate governance recommendations for listed companies." [19] Hence, with regard to the market capitalization of EGX and its non membership in GCC, it seems reasonable that a country like Egypt should be established within a cross national analysis of corporate governance models in the MENA region.

Egypt, one of the "early birds" in corporate governance, embarked its economic reform programs since mid-1980s to attract foreign investments and liberalize trade [6]. Egypt announced its first code for State Owned Enterprises (SOEs) in July 2006, shortly after the relevant OECD guidelines have been published in September 2005, whereas the codes for the private sector were introduced in October of the same year. Interestingly is the fact, that codes for listed companies have been just recently announced (February 2011) – the opposite way we have seen in the Western hemisphere, where codes for SOEs are currently "in discussion", but by far neither announced nor adopted.

Based on the different corporate governance codes, the following sections will analyse the differences of the most important issues in these codes.

2.2 The MENA Region compared to global corporate Governance standards

Ever since the OECD published its Principles of Corporate Governance in 1998, most codes developed over the years follow these principles, which are mainly based on

- Ensuring the protection of shareholder rights, including the rights of minority and foreign shareholders, and ensuring the enforceability of contracts with resource providers (Fairness);
- Requiring timely disclosure of adequate, clear, and comparable information concerning corporate financial performance, corporate governance, and corporate ownership (Transparency);
- Clarifying governance roles and responsibilities and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests, as monitored by boards of directors (Accountability) and last but not least
- Ensuring corporate compliance with the other laws and regulations that reflect the respective society's values (Responsibility).

These principles are non-binding and do not aim at detailed prescriptions for national legislation. Rather, they seek to identify objectives and suggest various means for achieving them. Their purpose is to serve as a reference point [20].

In 2005 the MENA-OECD Working Group on Corporate Governance comprised of MENA and OECD officials as well as other public and private sector actors was established. It represents a network of exchange for corporate governance priorities, a sharing of best practices and enables to evaluate the implementation of the principles in the region. The intention of the working group is to raise awareness of government structures and processes in this region, to improve the policies and environment for investments in this region.

3 Shareholder Rights

One of those aspects is the right for shareholders, regardless of their holdings, to participate and vote in general meetings. Three of the four investigated countries grant such right as a statutory law to shareholders; Saudi Arabia is the exception [21]. The local company law allows only shareholders holding at least 20 shares to attend a General Meeting and vote unless otherwise defined in the companies' constitution.

Another interesting variable in the environment of shareholders is the threshold of ownership necessary to convene an extraordinary general assembly. This values starts at 5% in Saudi Arabia and ends 30% in the United Arab Emirates, which shows how minority rights for shareholders are being treated. These figures stand in comparison to the threshold necessary to place items onto the agenda of a general meeting – 5-10% of the capital depending on the country.

Egypt and Saudi Arabia follow a one share/one vote principle, whereas multiple share classes (e.g. preferred shares) are available in Egypt and the UAE.

One share – one vote is in the meantime without reflection incorporated in most Corporate Governance Codes all over the world. But Khatchaturyan points out that one share – one vote is a sub-optimal voting mechanism in a world of specific investments [14]. As different modes of finance have different costs, the level of asset specificity determines the mode of finance. Ownership and ex-post residual decision making should be allocated to the party making the most specific investment. The latter would economize on the information asymmetries and high agency cost of monitoring on the one hand and extend them adequate incentives to perform on the other hand.

One share – one vote, however, implies that high and low agency cost factors get equal ex-post voting rights. This in turn increases information asymmetries and agency costs of monitoring, while reducing the incentives of high agency cost factors, thus including further costs to the firm and affecting its value [27].

If it comes to proxy voting – which is essential especially in the financial service sector [15] – certain countries in the region are far ahead to the Western world. Voting via proxy is a well-known approach in all of the three countries, but voting via e-mail or other electronic means [21] is an obligation in Egypt and allowed on a voluntary basis in Saudi Arabia. Such modern style in voting will not be on the surface in other countries for a very long period. Worth to mention is the fact that voting via normal mail is not allowed in any of the researched countries – an interesting paradox.

In terms of the financial sector proxy voting requires that banks vote in the best interest of the shareholders [26]. But as banks maximize their own interests which may not align with those of the shareholders, the sense of proxy voting is questionable [21].

When we now turn our perspective from the minority shareholders to the institutional investors, the question arising is if such investors are obligated to disclose their voting policy and/or their voting record? Saudi Arabia is the country affected by such framework, based on a comply-or-explain level, which could be interpreted the stricter a country is being ruled, the more information needs to be disclosed. This circumstance can also be seen by comparing the possible restrictions regarding the number of shares and the relevant voting potential. In Saudi Arabia such voting caps can be defined in the company's constitution.

How do matters like M&A or Insider Trading are being treated in those countries? Are there any favors for minority or majority shareholders? First the thresholds for notifications need to be inspected. The United Arab Emirates start with a value of 5% and Egypt offer 10% in that deal, whereas Saudi Arabia imposes a threshold of 30-50% - by far not a percentage good for the minority and its protection [17]. But are these numbers identical for a possible mandatory offer? Yes, that is the fact in Saudi Arabia, where a 50% stake requests such offer. In Egypt the barrier is set to 30% and there no such value in place in the United Arab Emirates, which is definitely not a protection for minor investors in a country.

Beside the facts that minority shareholders are not needed to be informed at a very early stage for M&A transactions in some of those countries, it is interesting to investigate if a legal framework for crimes like insider trading does exist and/or "helping hands" like whistleblowing is supported or welcome by the authorities. Most of the countries, except Egypt, have imprisonment terms for such violations in place, which last between 3 months and 5 years. Saudi Arabia has also a law enforced that gains realized by insider trading must be paid to the authorities. Only the United Arab Emirates have legal and regulatory provisions to protect whistleblowers – a very rare case among the MENA countries [21].

4 Board System

The board system is influenced by the ownership structure of the companies, which is characterized by a majority of small to medium-sized family-owned companies in the Middle East. "Within this structure, the roles and relationship between the family, board, shareholders, and management tend to be overlapping and unclear." [10] (Global Corporate Governance Forum, 2011)

In the Middle East the one tier board structure is predominant. In non-financial companies most studies confirm the common knowledge that there is a negative correlation between board size and performance. Some reasons of this effect may be that some activities like communication, coordination and decision making are more difficult with larger boards. A very recent study, however, shows that the situation seems to be different in the banking sector. In this case board size and performance are positively correlated [5].

4.1 Board of directors – CG Code of Egypt

The following findings for Egypt are based on the Code of Corporate Governance for the Private Sector in Egypt (Egyptian Institute of Directors, 2006) The latest Code of Corporate Governance for Listed

Companies issued in February 2011 is only available in Arabic

4.1.1 Structure of the board

Egyptian companies have the single tier board system in which the board members are elected by the general assembly. Board members are jointly responsible for the management of the company and they cannot dispose accountability to third parties by assigning duties to them. It is stipulated by Egyptian laws that the board is elected to represent the shareholders and that the final result should be proportional to the capital distribution [8].

The number of board members should not be less than three and the tenure of mandates is limited to three years for listed companies only. The board should consist of a majority of non-executive directors with the necessary skills and knowledge, and it is important that they are able to assign enough time to perform their duties; other assignments that could cause conflicts of interest should be avoided. New members should be informed in a proper way, meaning that they should have access to the important facts and figures of the company to be able to perform their duties efficiently [8]. There are no rules about independent directors.

The chairman and the chief executive officer are appointed by the board. The corporate governance rules only recommend that the two functions should be separated on a voluntary basis, if the functions are combined, then reasons for it should be argued in the annual statement and the deputy chairman should be a non-executive member of the board [8].

To support the work of the board, committees could be formed. The possibility to form committees does not mean that responsibilities for certain tasks can be transferred. The committees inform the board about their proceedings, and the board supervises the committees. These committees are chaired by non-executive members. Committees for internal audits consisting of non-executive members should be formed [8].

Board meeting should regularly take place at least four times a year, and the number of the meetings as well as the names of the absent directors should be stated in the annual report. The topics of the meetings should be listed in the agenda which should be passed on before the meeting. If necessary, non-executive board members may consult directors within additional meetings. Executive members should be informed about these additional meetings, and it´s up to them to join the meetings or not [8].

A secretary appointed by the board is responsible for administrative duties such as files, reports, and the communication between board members [8].

In the study about advancing corporate governance in the Middle East and North Africa (Global Corporate Governance Forum, 2011), success stories of companies in the region are presented as well. BISCO MISR an Egyptian producer of cookies benefited from investing in corporate governance measures by restructuring the management and organization, and by increasing the shareholder value [10].

4.1.2 Responsibilities of the board

The board of directors is appointed to manage the company, and the corporate governance codes make clear that irrespective of the possibility of forming committees or consulting third parties, the board members are absolutely responsible. They should supervise the company on their own and set out guidelines and instructions for the company to secure accordance with existing laws, regulations, and codes [8]. The board is accountable for an appropriate risk profile in alignment with the business area and the company structure, the risk profile must fit with the risk strategy of the company, and shareholders should be informed about the company's risk situation [8].

4.2 Board of Directors - CG Code of Saudi Arabia

The following findings for the Kingdom of Saudi Arabia are based on the Corporate Governance Regulations in the Kingdom of Saudi Arabia (Capital Market Authority, 2006).

4.2.1 Structure of the board

Similarly to the Egyptian companies, the companies in the Kingdom of Saudi Arabia have the single tier board system. Board members are appointed by the shareholders in the general assembly.

The number of board members should be between three and eleven. It is left to the companies to choose a suitable number which should be defined in the articles of association. The number of independent members of the board is defined as one third. The tenure of mandates should not exceed three years but companies may decide if re-election is possible in their by-laws. For listed companies it is mandatory that the majority of board members are non-executive directors. According to the Code, the combination of the two roles of chairman of the board and CEO is prohibited as stated in article 12 of the Code: "It is prohibited to conjoin the position of the Chairman of the Board of Directors with any other executive position in the company, such as the Chief Executive Officer (CEO) or the managing director or the general manager." [4] Nevertheless in the OECD survey mentioned above, the separation of the two roles is stated as a recommendation on the "comply or explain" basis [21].

The rules for the termination of mandates should be defined in the articles of association but the general assembly has the irrepealably right to dismiss the members of the board. This right cannot be overruled by the articles of association [4].

Companies should decide for themselves the appropriate number of committees needed to fit their structure and needs. The aim of these committees is to ensure an efficient performance by the board members. The committees are responsible to the board of directors, and the board of directors defines the tasks, tenure, and the scope of authority of each committee. In committees which are most likely concerned with topics (e.g. financial reports, nomination to membership of the board, remuneration) that may cause a conflict of interest, a sufficient number of non-executive members should be elected [4]. The corporate governance code provides detailed rules for the formation of audit committees and remuneration committees which are mandatory for listed companies [4].

The remuneration committee is also responsible for the nomination of board members, and is therefore called "Nomination and Remuneration Committee". The general rules and duties for this committee are issued by the general assembly based on a recommendation of the board members. This committee is responsible for the recommendation of possible future board members to the board of directors. Recommended candidates should fulfill the requirements of the policies and standards, and the committee has to ensure that the nominees are not convicted of any "offense affecting honor or honesty". Other duties of the committee include the determination of the required qualifications for membership on the board, review of the board structure, and the verification of the independence of the independent board members. Finally, the committee is also responsible for laying out the terms of compensation to board members and top executives. This part of the code is mandatory for listed companies.

4.2.2 Responsibilities of the board

The board bears overall responsibility for the management of the company irrespective of the fact that committees might exist or that tasks are delegated to third parties. The scope of responsibilities must be fixed in the articles of association. The board members have to act in the interest of all shareholders, and in the general interest of the company. The board of directors is responsible for the strategy and the main objectives of the company, and it must lay down rules for internal control and supervision. Other tasks include the development of both a written policy that regulates the stakeholder relationships, and of a distinct corporate governance code for the company to deepen the rules of the national corporate governance code. The board has to develop a proposal with all the necessary terms and procedures for board membership, which has to be approved by the general assembly [4].

4.3 Board of Directors - CG Code of United Arab Emirates

The following findings for the United Arab Emirates are based on the Corporate Governance Code for Joint-Stock Companies (Emirates Securities & Commodities Authority, 2007).

4.3.1 Structure of the board

In the company´s articles of association the structure of the board, as well as the number of directors and their tenure, is fixed. According to the OECD Survey the mandates are limited to three years but re-election is possible for one term only. The very first board is elected by the founders of the company, thereafter the board is elected by the shareholders. The board members are allowed to appoint a member to the board if a vacancy occurs to fill the gap until the next general meeting.

The board of directors should contain a well-balanced number of executive and non-executive board members. The majority of board members should be non-executive directors, and at least one-third of the board members must be independent directors. The code points out that it is important that non-executive directors dedicate enough time to perform their tasks. The role of chairman of the board and chief executive officer may not be officiated jointly by one person.

The board of directors should meet at least six times a year according to an agenda submitted to the board members; prior to the meeting, every director may add something on this agenda. All decisions taken or topics discussed by the board are recorded in minutes. Decisions taken on topics concerning the particular interests of a director are taken without the vote of the "interested director" [9].

The board has to set up two permanent committees with an auditing and a so-called "follow up and remuneration" committee. These committees should contain at least three non-executive directors and two of them must be independent, and an independent director has to cite the committee. To avoid any conflict of interest, the chairman of the board may not be member of the committee. The non-executive members of the committees should reveal any possible conflicts of interest.

The responsibilities of the audit committee are not exclusively the revision of the financial statements, the internal control systems, financial system, and risk management [9].

The "follow up and remuneration" committee has to secure the independency of independent directors, and has to develop and review the compensation and training policy of the company. The committee also determines the needed key executive managers and employees, and defines how they are acquired [9].

Another success story in the study about advancing corporate governance in the Middle East and North Africa (Global Corporate Governance Forum, 2011) is the Abu Dhabi Commercial Bank (ADCB), the third largest commercial bank in the UAE. Internal control concerns led to a change in management and the formation of a corporate governance committee. In 2010 the ADCB was recognized for its corporate governance by the World Finance Awards [10].

4.3.2 Responsibilities of the board

The corporate governance code includes a list of the tasks and responsibilities of the chairmen of the board, but is not limited to this. The listed tasks also include administrative belongings, as well as ensure efficient communication with shareholders and among board members [9].

The board of directors is responsible for the management of the company. Therefore new directors to the board shall be introduced and informed properly. In general the executive management has to provide sufficient information to the board of directors and the committees. In this regard the board of directors may conduct additional investigations. In cases of conflicts of interest, the majority of the board directors have the right to call in an independent consultant. When the directors exercise power, they must always take into consideration the interests of the company and shareholders, and adhere to the laws, regulations, and decisions, as well as to the bylaws. The non-executive directors have to control and supervise the performance as well as participate in the audit committees. The management has to ensure that all directors have the sufficient knowledge and skills to fulfill their duties [9].

5 Executive Compensation

All corporate governance codes contain rules for executive compensation, but the shape and development differ.

Executive compensation has become a crucial issue in the financial sector. The crisis in 2008 highlighted the problem of remuneration because in a period where banks made losses, managers still got big bonuses. The European Commission published a green paper on the issue of corporate governance and executive remuneration in 2010, focusing on transparency [7].

5.1 Remuneration - CG Code of Egypt

According to the CG Code of Egypt, the remuneration of the executive directors of the board should be determined to “attract the best calibers in the market”. The executive directors of the board should be remunerated in a way which assures that excellent board members are attracted. Therefore a remuneration committee may be formed. The formation of such a committee is voluntary, and it should consist of a majority of non-executive directors. The committee negotiates with the executives and may also consult the chief executive officer, but the non-executive members should make the decision. Aim of performance payment is the motivation of executive members for long-term improvements instead of short-term decisions. For better motivation performance, the related part of the payment should dominate the remuneration package. The committee also submits proposals for the remuneration of non-executive members to the general meeting. It`s only required to disclose the names of the committee members but no further details. Questions about the compensations should be answered in the general meeting [8].

5.2 Remuneration - CG Code of Saudi Arabia

The general terms of remuneration are defined in the company´s articles of the association. Remunerations may have different forms such as “lump amount, attendance allowance, rights in rem or a certain percentage of profits.” Combinations of these payments are allowed [4].

The Nomination and Remuneration Committee frame clear rules regarding the terms of remunerations of the board members and the top executives. This rule is mandatory for listed companies [4].

The Corporate Governance Code provides a very detailed disclosure rule on disaggregated manner which is mandatory for listed companies, as the annual financial report should include: “Details of compensation and remuneration paid to each of the following:

- Chairman and members of the Board of Directors.
- The Top Five Executives who have received the highest compensation and remuneration from the company. The CEO and the chief finance officer shall be included if they are not within the top five.” [4]

The Code further makes clear that any kind of remuneration is covered by this rule, irrespective of name the remuneration may carry.

5.3 Remuneration - CG Code of United Arab Emirats for joint stock companies

It should be defined in the articles of association in which way the directors are remunerated. The remuneration may have several forms, such as fixed and variable payments. If profit participation is granted, this participation may not exceed 10% of the net profit of the company [9].

6 Directives versus Standards for the Middle East

Directives are legal commands which differentiate wished from unwished behaviour in a simple and clear way. Standards, however, are general legal criteria which are unclear and fuzzy and therefore require judiciary decision making and classification [13]. In the most uncomplicated sense, directives and standards can be differentiated by the level of complexity. Directives are inherently simple, clear and based on a command-like system of "tell and do". An incomplete corporate governance report leading to a liability for the management is a directive whereas a norm for the management body to "disclose investor relevant data" without defining relevance is a standard. Such principles leave open what exactly the right level of disclosure is and how a violation of this standard is evaluated by a judge. A standard is therefore less straightforward in a basic sense of the word, only creating a point of reference.

There are systematic factors affecting the relative costs of directives and standards. A standard may have lower initial specification costs, but higher enforcement and compliance costs than a directive [25]. For instance, promulgating the standard "to take responsibility for all stakeholders" is easy and does not generate any cost at all. However, applying this standard in practice would generate significant costs for both judges who have to determine whether the accused company has complied with the standard and for the defendants who have to determine the relevant stakeholders and the level of responsibility ex ante in order to escape liability. Directives, however, are more expensive to implement due to higher negotiation costs in the legislative process (because of active lobbying on behalf of different interest groups, for example). But clear rules have lower enforcement and compliance costs than standards. Table 1 illustrates the respective (dis)advantages of directives and standards.

Table 1. Comparison of the benefits and challenges of directives and standards

	Directives	Standards
Benefits	• clear • simple • reduce monitoring and enforcement costs	• low initial costs • decrease central authority • adoption easily possible
Challenges	• high initial costs • possible contradictions within complicated laws • over- or undercomplexity	• unclear, interpretation dependent on judiciary decision • high enforcement and compliance costs • leave more room for corruption

For countries with a long established corporate governance system standards seem to be the accurate means to deal with issues. For the MENA region being relatively inexperienced with corporate governance issues directives might be better against the background of their specific corporate governance problems such as court delays, corruption and lack of investor protection. Under these circumstances directives seem to be a better means to attract investors and guarantee good corporate governance.

7 Implications

Despite major differences in the transitional process some MENA countries undergo, the corporate governance codes of the analyzed countries show a lot of similarities. The codes were published quite late (2006-2008) in comparison to Europe or the US. The codes build on the idea of transparency, trying to mitigate the agency problems between management and shareholders.

The corporate governance systems' institutional surrounding in MENA transition economies have been shown to be characterized by problems such as court delays, corruption and insufficient involvement and protection of institutional investors. In this section we want to analyse how these shortcomings can be at least partly reduced by using more directives rather than standards [11].

Taking court delays as a measure of enforcement [30] we see that the enforcement of contracts is generally weak in MENA countries. Such delays increase the costs of using courts for conflict resolution and therefore reduce the demand for court services. Parties then have to resort to private adjudication and alternative conflict settlement. Even worse, they might be left with uncompensated damages and have to restrict themselves to self-enforcing contracts. Clear directives can have a positive impact on the reduction of court delays as clear rules are easier to administer and reduce the complexity of cases. The reduction of complexity of judicial decisions is an important aspect [18]. The use of imprecise standards which give ample space for discretionary decisions creates additional possibilities for corrupt behavior in countries where corruption of government officials and the judiciary is a problem. Therefore directives might be more useful as they leave little room for corruption due to their tight-knit nature. Sunstein [29] contends that because authorities have little room to interpret a rule, they are perhaps better in protecting induividuals' rights. This idea can easily be transferred to shareholders' rights. If their rights are violated, these actions can be easily seen. Because decisions concerning standards are unique to each case, it would be more likely that decision makers are apt to abuse their power and act in a questionable way. Without strict guidelines, decisions can be tainted by personal preferences of the judge instead of concrete legal policies. In addition, if there is no list of strict directives, a standard may be too vague and difficult to monitor, thus encouraging corrupt behavior even more. For this reason, legal areas concerning corporate governance are particularly subject to possible corruption.

Furthermore directives make a monitoring of companies and judges easier as directives give little scope for interpretation. The companies exactly know the rules and cannot claim ex post that they misunderstood. Standards, however, leave more questions open as far as interpretation, implementation and compliance within the judiciary system are concerned [23].

Against this background of the MENA transition economies' specific challenges we propose that MENA countries don't follow the path of simply adopting corporate governance codes which are abundant in the "western world". Despite possible higher costs in the initial phase MENA countries will be better off by passing clear-cut directives on corporate governance topics in order to provide an explicit signal for investors and gain their confidence because without considerably attracting foreign investors the future development of transition economies will be markedly hampered.

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