AN OVERVIEW OF THE CORPORATE GOVERNANCE FRAMEWORK IN LIBYA

Ali A. Zagoub *

* Department of Accounting, University of Benghazi
Contact details: University of Benghazi, P.O. Box 1308, Benghazi, Libya

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Abstract

This paper provides an overview of the corporate governance framework in Libya, and the effort establishing corporate governance in the Libyan banks and companies. For this, this article depends on a review and analysis of the available literature on corporate governance in Libya conducted during the period from 2010 to 2017 such as laws, regulations, academic and professional research. The paper concluded that the concept of governance is still very limited in the Libyan Business environment, corporate governance adoption in Libya is still in its early stages due to the political and security situation in Libya. There is a need to adopt a strategy for the implementation of governance in Libya, based on raising awareness at all levels, and training leaders in various institutions on them, while developing the legislative tool to comply with the requirements of governance.

Keywords: Corporate Governance, Legal Framework, Board of Directors, Libya

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1. INTRODUCTION

The failures and collapses of a number of prominent companies have brought corporate governance issues to attention. These issues highlighted how poor systems and practices of corporate governance can lead to serious financial crises with long-term consequences to countries' national economies and to the global economy (Reaz & Arun, 2006; Becht et al., 2002; Monks & Minow, 2008). Thus, since the 1990s, various organizations, regulators and researchers around the world have paid especial attention to reform and develop effective systems and practices of corporate governance (Mallin, 2013).

However, corporate governance in Libya did not receive any attention until the Central Bank of Libya (CBL) issued its "Corporate Governance Guideline for Libyan Commercial Banks" in 2006, and the Libyan Stock Market (LSM) issued its Corporate Governance Code for Listed companies in 2007 (Zagoub, 2011).

This development was part of the reform plan initiated by the Libyan government in the former Gaddafi's regime since the 2000s to reform and move the Libyan economy from a planned economy to a free market economy, after 42 years of economic mismanagement and a chronic lack of investment (Dempsey, 2013).

Although this reform is a necessary initial step to reform the corporate governance system in Libya, it has affected by the political crisis after the February 2011 uprising against the Gadhafi regime. These political tensions and the violence of militias have led to political division within the state, where there are now two parliaments and two governments, one in the West and the other in the East of the country.

Despite the efforts of the United Nations, the complexity of the Libyan political background and the interference and conflict of interests of influential countries appear to prolong the crisis, which has led to a legal vacuum. The political and security instability is the biggest obstacle to the

implementation of effective governance systems in Libya. This is the main reason why corporate governance has been ignored for so long and why Libya is still in the very early stage of establishing effective corporate governance (Abdou, 2015).

This paper provides an overview of the corporate governance framework in Libya, and the effort establishing corporate governance in the Libyan banks and companies. For this, this paper depends on available sources about corporate governance and governance in Libya such as laws, regulations, academic and professional research.

This paper organized as follows: Sections 2 provides a brief background about the Libyan political and economic and governance environment. Section 3 gives an overview of the Libyan legal framework of corporate governance. Sections 4 describes the ownership structures of companies in Libya. Sections 5 provides an overview of the Libyan Stock Market. Section 6 outlines the corporate governance aspects in the Libyan legal framework such as the board of directors' practices and shareholder's rights protection. Section 7 provides a general assessment of the application of corporate governance in Libya. Section 8 outlines the challenges of corporate governance in Libya, while section 9 highlights themes of improving the corporate governance framework in Libya. The last section concludes.

2. BRIEF BACKGROUND: LIBYAN POLITICAL, ECONOMIC AND GOVERNANCE ENVIRONMENT

2.1. Libyan political background

Libya is a developing African, Arab state situated in North Africa and a country of the Middle East and North Africa region. The Arab and Islamic culture has a significant impact in forming the culture of the Libyan society. In particular, the Muslim religion, Arabic language, the extended family and tribal values are important characteristics that shape the social environment of Libyan society (Farley, 1971; Agnaia, 1996).

After four decades of Gadhafi regime (1969-2011), Libya was and still faces many obstacles. Libya suffers from an unpredictable and cumbersome business environment, which is characterised by a high degree of administrative bureaucracy, institutional bottlenecks and inefficient regulations, opaque legal and institutional frameworks, economic mismanagement and a chronic lack of investment. The other obstacle is the inadequacy of skilled manpower and technicians that is necessary for the new private sector demands. Although the Foreign Investment Law requires foreign companies to train local workers, the Libyan education and technical training sectors are weak to meet private sector needs (Porter & Yergin, 2006).

Since 2000, Libya has embarked on a strategy and a general plan for economic and institutional reform, but uprising against the Gadhafi regime in 2011 has slowed down the implementation of the plan. At the end of 2013, several proposals were made to restructure public policies and establish a vision for institutional building and governance but did not develop into implementation due to political and security instability. Libya now suffers from political conflict and civil war. Despite UN efforts, the political instability indeed is the most obstacle and pronounced risk to Libya.

So far, the creation of a united Libya remains far away, where the political conflict between the House of Representatives and the High Council of State and the UN-backed government of National Accord continues. In the absence of a unified authority to control state affairs, militias and armed groups with different loyalties, and external interventions from some countries continue to be involved in the conflict and prolong it. As a result, the humanitarian, social and economic situation remains serious (African Economic Outlook, 2018).

2.2. Libyan economic background

Economically, current indicators indicate that the Libyan economy is still highly dependent on export revenues from crude oil and gas, which currently generate more than 90% of government revenues and contribute about 93% of export earnings, (CBL, 2018). Despite that the increase in oil production that reached 1 million barrels per day (bpd) in 2017 boosted Libya's macroeconomic indicators, there is still a lot of uncertainty regarding the performance of the Libyan economy and the well-being of the population. Indeed, the economy is heavily dependent on oil revenues, which are primarily dependent on the security situation and the Government's ability to maintain current production levels (African Economic Outlook, 2018).

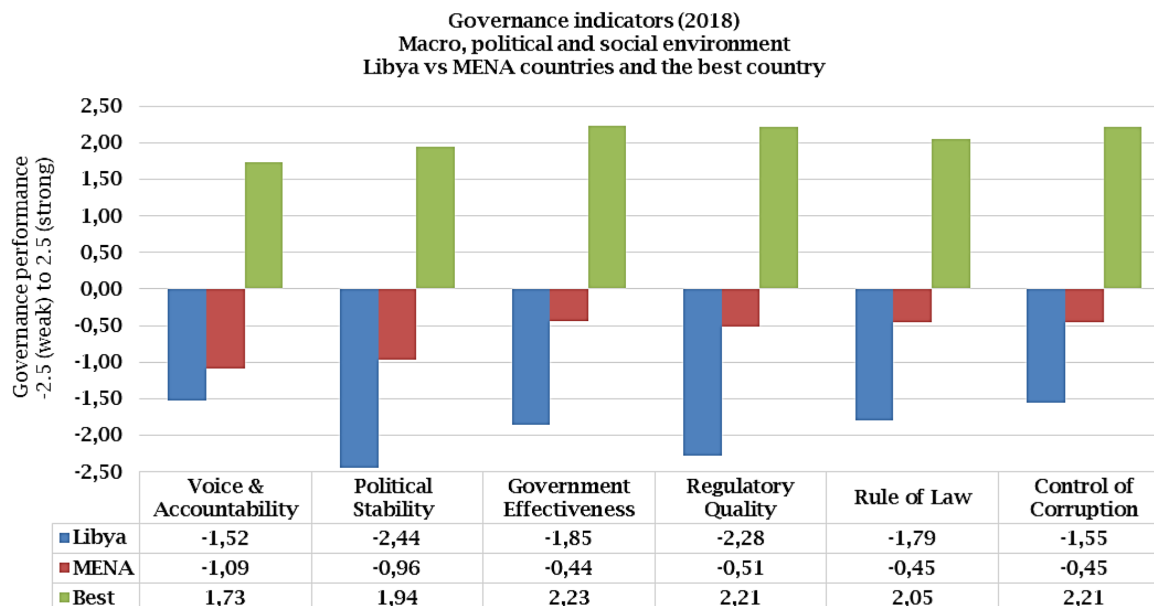
2.3. Libyan governance environment background

Regarding governance, the development of corporate governance concepts and practices in a particular country depends upon the stage of development of social, political, legal, economic and corporate structure in this country (Mallin, 2013). Therefore, to assess how such developments and factors influence and reflect the quality of a country's governance, this section highlights a set of Libya's governance indicators. These indicators are prepared by using a broad and comprehensive range of data on perceptions of various aspects of governance supported by the World Bank Institute.

Figure 1 shows Libya's governance indicators compared to the average of MENA countries and the best country. As shown in Figure, all indicators indicate that Libya has bad governance indicators and it lags behind the average of the MENA countries and far away from the best country by a substantial margin. The figures rank Libya lower in all indicators. According to the study of the Libyan Organization for Politics and Strategies (2016), the most prominent manifestations of governance failure in Libya are as follows:

- the inability of the government to control the state effectively and responsibly;
- the failure of the public administration in Libya to manage public institutions efficiently;
- failure to promote decentralization to ensure the growth of spatial development;
- lack of awareness and training on the requirements of applying governance;
- absence of developed models suitable for Libyan institutions and the local political, economic and social environment;
- the spread of corruption in various institutions, and failure to fight it;
- failure to eliminate bureaucracy and inability to develop the means of management in financial and service institutions.

Figure 1. Key governance indicators, Libya vs. MENA countries and the best country



Source: Kaufmann, D., & Kraay, A. (2018). The Worldwide Governance Indicators (WGI). The World Bank Group.

All these obstacles slow the progress of reforms and hinder the efforts to achieve socioeconomic development and effective governance systems. Moreover, the losses and consequences of war and political conflict are the biggest challenges facing future governments. Libya's government needs to focus on security, reconstruction of infrastructure, and rejuvenation of the economy (African Economic Outlook, 2018).

3. OVERVIEW OF THE LIBYAN LEGAL FRAMEWORK OF CORPORATE GOVERNANCE

Several laws and regulations determine the legal framework for corporate governance in Libya. The main sources of the Libyan legal framework of corporate governance are the "Banks Law" (2005), the "Corporate Governance Code for Banking Sector" (2010), the "Commercial Activity Law" (2010), and "Corporate Governance Regulation" for listed companies". These laws and regulations were reviewed and issued during the 2000s to enhance reform process and economic development such as allowing the private sector to participate in the national economy, paving the way for privatising of a number of public sector banks and companies, and attracting the foreign investment (Ali, 2010). These laws sets of regulations also include provisions relevant to corporate governance. The legal provisions relating to corporate governance in these laws will be detailed further later.

3.1. The Bank Law

It was issued in 2005 to modernise the Libyan financial and banking system in order to meet international standards. In this respect, it aims to restructure and modernise the Libyan banks in order to give the sectors a more active role in the redistribution of capital flows to the country's most productive sectors (CBL, 2010). The Law consists of two parts, the first part of the Law deals with the CBL, specifying its powers and operating framework, as well as defining its precise legal relationship to the Libyan government, while the second part covers the establishment and supervision of the Libyan banks, which liberalises it from the control of State. This part consists of some articles in relation to corporate governance issues such as board structure, number of board members and internal control. However, this Law did not cover and detail many aspects of corporate governance such as shareholders' rights; committees of the board of directors; disclosure.

3.2. The governance code for the banking sector

At the beginning, the CBL issued its Corporate Governance Guidelines for Boards of Directors of Libyan Commercial Banks in 2006 as voluntary guidelines. However, although these guidelines were an initial step and contain general guidance based on recommendations of the Basel Committee (1999) to improve corporate governance practices in Libyan banks, Libyan banks ignored them for a number of reasons. The most important reasons are: 1) in that time, most board members were not sufficiently aware of the development and the importance of corporate governance; and 2) the CBL has not enforced corporate governance, nor monitored the implementation of these guidelines (Zagoub, 2011). Therefore, the CBL revised the codes regulating corporate governance and issued in 2010 the Governance Code for the Banking Sector as mandatory regulation for Libyan banks. The Code aims to ensure that the Libyan banks comply with sound corporate governance practices that would ensure the protection of shareholders and stakeholders. The Code consists of six parts: definitions; shareholders' rights; board of directors; committees of the board of directors; disclosure; other requirements. The main aspects of this Code will be mentioned in next later.

3.3. The Commercial Activity Law (2010)

The first commercial law in Libya was issued in 1953 and replaced in 2010 by the Libyan Commercial Activity Law. The Law regulates different types of companies: 'persons companies', 'funds companies', and 'mixed companies'. Funds companies include joint-stock companies (JSC) that are either private or state-owned companies. The Law explains all the details needed for establishing, registering, managing, bankrupting and dissolving all these different types of companies. However, although the Law is supposed to have been revised and updated as part of the economic reform plan, the Law did not include many aspects of corporate governance. The Law only provided only general guidance on some aspects of governance, such as general assembly meetings, the appointment and obligations of the board of directors, the appointment and responsibilities of the monitoring board.

3.4. The corporate governance regulation for listed companies (2007)

The Libyan Corporate Governance Regulation for Listed Companies was adopted by the Libyan Stock Market in 2007. This Regulation sets forth the rules and standards governing the management of joint-stock companies listed in the market, in order to ensure adherence to best practices that ensure the protection of shareholders' rights and the rights of stakeholders. This Regulation shall be a guideline for all companies listed on the Stock Exchange unless a regulation or other regulation or a decision of the Market Management Committee stipulates the obligation of some of the provisions contained therein. The Company shall also disclosure in the board of directors' report about the applicable provisions of these Regulations and the provisions that have not been applied and the reasons thereof. This Code is based on the "comply or explain" principle of corporate governance.

4. THE OWNERSHIP STRUCTURE OF CORPORATIONS IN LIBYA

Although the Libyan government and CBL have begun to privatise state-owned corporations and banks, establishing the stock market and allowed individuals and foreign investors to take part in the national economy, the state still owns and controls a large share of the ownership of most Libyan companies. For instance, the Libyan government controls, directly or indirectly, the majority of assets and enterprises in Libya, through a substantial portfolio consisting of industries, financial institutions and state-owned enterprises, which constitute the overwhelming majority of economic activities (Porter & Yergin, 2005). Moreover, the Libyan State retains strong monopolistic positions in key infrastructure sectors such as telecommunications and electricity in addition to the banking sector (World Bank, 2006).

In the banking sector, the ownership structure of Libyan commercial banks is still dominated by state ownership. The numbers from this report indicate that the Libyan government holds about 75% of banks' total assets, domestic individual and institutional investors own 18% and foreign institutional investors own 7% (CBL, 2016).

The move towards a market economy in Libya began in the early 2000s with the adoption of an economic reform programme and the launch of privatisation. The Libyan government declared its aim to transfer ownership of 360 enterprises to the private sector in just 4 years (Abdou, 2015). However, although the economic policy allowed private business to compete and replace the state-owned sector, the privatisation practice was not able to help the economy because of the vagueness of this practice. In addition, the sale of small and failing companies has led to the fear and, therefore, the unwillingness of the public to encourage this policy, and allowed only those who have the power and money to buy companies (Larbsh, 2010). As a result, only 115 enterprises have been privatised before the privatisation programme has been suspended.

The government has dominated the economy over the last forty years and that the main purpose of most state-owned institutions is a social objective. However, the State and its institutions had failed to achieve the overall their social and economic objectives. They attributed this to the instability of the economic system, administrative organisation and the institutional instability at all governmental levels; and to the economic blockade and sanctions on the State during the 1980s and the 1990s under the Gaddafi regime.

However, according to the Libyan government's framework for privatisation, this high state ownership in the Libyan economy is expected to decline considerably when the government finishes its privatisation process. Now, there are three main types of ownership structures in Libya: state-owned, mixed ownership and private ownership. The mixed ownership is between the Libyan government, domestic investors (private sector) and foreign investors, whereas the private ownership is owned by domestic investors (private sector).

Regarding the role of the foreign investor in the privatization process, although the Libyan government passed the Foreign Investment Law to encourage foreign investors, the current political situation and the legacy of the former regime hinder foreign investments. According to the UNCTAD report (2018), Libya has not attracted any foreign investment for the last 5 years from 2014 to the end of 2018. The report also said that during the last six years, Libya attracted only $ 702 million in the period from 2013 to 2018. However, the report attributes the reasons for that to the deterioration of the security situation are behind the deterioration of foreign direct investment, despite the great potential, especially oil owned by Libya.[1]

5. THE LIBYAN STOCK MARKET

After having recognized the significance of the stock market in the economy, the Libyan government established The Libyan Stock Market in 2006 under an economic reform plan to develop Libya's economic sector in general and the private sector in particular. The Libyan Stock Market was established

[1] Foreign investors in Libya represent 30 countries, and Britain, Mauritius, UAE and Algeria are the most important investors. These investments represent more than 50% of the total foreign investments in Libya.

in 2006 in the form of a joint-stock company with a capital of 20 million Libyan dinars, divided into 2 million shares with a nominal value of 10 LD per share. In 2010, the Law No. 11 was issued concerning the Libyan Capital Market, which regulates the work in the market. According to the Law No. 11 of 2010 concerning the Capital Market and its regulation, the Libyan Stock Market Corporation's targets are to create a suitable climate for achieving suitable climate for stability, growth and controlling the stock market, particularly the following:

- protecting investors and dealers from non-commercial risks;
- guarantee justice, efficiency and transparency of the stock market's dealings;
- minimizing risks arising from financial dealings;
- guaranteeing impartiality and development of business in the market;
- creating a suitable environment for securities investment;
- overseeing the ownership transfer operations;
- taking the necessary ground-rules for the protection and guarantee of good conduct in the market;
- operating underwriting of shares in new joint-stock companies.

During this period 2006-2010, which is the first phase of establishing the Market, the focus was the introduction of tariffs and financial rules, and start listing eligible companies for listing in the market. In order to ensure adherence to best practices that ensure the protection of shareholders' rights and the rights of stakeholders, the Libyan Stock Market issued its Corporate Governance Regulation for Listed Companies in 2007, which sets forth the rules and standards governing the management of joint-stock companies listed in the market.

According to the Libyan Stock Market Reports, there were only three listed companies in the banking and insurance sectors, which increased to 6 companies in 2007. In 2008, there were 8 companies listed in the Market. Then, in 2009, the number of companies increased to 10 companies in the main list, and 14 in the sub-list of the market. In 2010, the number of listed companies increased to 12 in the main list and 13 in the sub-list of the market. However, the companies decreased to 10 companies in the main list and 10 companies in the sub-list of the market in 2013.

Regarding market indicators, the Libyan Stock Market is in the process of being established and is considered one of the smallest financial markets in the region. the largest market value of trading volume reached 4 billion D.L in 2012, however, the trading volume decreased to 2 billion D.L in 2014 before the stock market has been suspended in 2014 (CBL, 2018). The Libyan Stock Market closed following the eruption of the Libyan Civil War in February 2011. It remained closed until reopening in 2012 but it suspended now due to continued security and political instability in the country.

Although the existence of the Libyan Stock Market Law is essential to regulate and control the market, there are some structural and technical imbalances in the Law that must be reviewed such as the subordination of the Stock Market Authority should be the highest authority in the state, not the executive branch (government) as stipulated by Law. In addition, the Law ignored the protection of the rights of minority shareholders. There must be provisions in the Law that provide adequate protection of the rights of the minority shareholders. Moreover, separation of deposit and settlement functions from the functions of the trading market in order to separate the authorities of the Stock Market Authority and the Libyan Stock Market Corporation.

This amendment will increase the independence of the Stock Market Authority and thus increase the confidence of dealers in the market. Regarding governance, the governance rules for listed companies included several requirements that will be mentioned in the following sections.

6. CORPORATE GOVERNANCE ASPECTS IN THE LIBYAN LEGAL FRAMEWORK

The following subsections detail the corporate governance aspects and requirements in the Libyan legal framework.

6.1. Board of directors composition

Corporate law in most countries mandates every corporation should have a board of directors. Boards of directors are categorised according to their type, either as unitary (one-tier) or dual (two-tier). According to the Commercial Activity Law (2010), the board structure is a unitary board comprising of both non-executive and executive directors. The Law mandates that every Libyan company to have an effective board of directors to direct and monitor the company, which is responsible for the success of the company. Moreover, the Law allows the boards of directors to delegate their powers to an executive committee. However, the Libyan Bank Law (2005) and the Corporate Governance Code for Banking Sector (2010) obligate each bank to have a board of directors composed only of non-executive members. The Libyan Bank Law (2005) and Corporate Governance Code (2010) require the board to appoint a general manager and senior executive managers to manage the bank's business and they should not be board members. This means that the Libyan bank Law and implicitly require banks to adopt a dual board model.

The OECD (2004) claimed that the separation of the roles of the chairperson and chief executive officer positions helps to achieve an appropriate balance of power and increase corporate accountability. In Libya, the separation between chairperson and chief executive officer posts is not required as according to the Commercial Activity Law (2010), except for banks. The chairperson and chief executive officer in all Libyan banks have to be held by different individuals, in accordance with best practice. The Libyan Bank Law (2005) and Corporate Governance Code for Bank (2010) clearly require that the roles of chairperson and CEO shall not be combined, following the BCBS' Recommendations (1999).

Regarding the existence of non-executive and independent non-executive directors, the Corporate Governance Regulation for Listed Companies (2007) requires that the majority of the board of directors shall be non-executive directors. The Libyan Banks

Law (2005) requires that the board should only comprise non-executive directors, as mentioned above. The Commercial Activity Law (2010) is largely disappointing with respect to director independence since it does not provide any provisions regarding the independence of board members. However, the Corporate Governance Regulation for Listed Companies and the Governance Code for the Banking Sector (2010) require that the board should be independent of bank management to avoid conflicts between the management process and the monitoring process and improve the accountability process for bank's management. Therefore, both regulations require that the number of independence of board members should be no less than two members in banks, and should be no less than two members or one third of the members of the board in listed companies. Moreover, both regulations further outline that the most important relationships that prevent a board member from being considered as an independent board member are: 1) if there are conflicts among members of boards of directors; 2) if there are consultation relationships; 3) if there are direct or indirect interest relationships between a board member and the bank; and 4) if there is any new relationship existing between a board member and the bank.

Although the Commercial Activity Law (2010) did not specify the number of directors on the board, the Corporate Governance Regulation for Listed Companies (2007) states that board size should be between three and eleven. In the banking sector, the Libyan Banks Law (2005) requires that the number of board directors should be between five and seven members.

With regard to female representation on the boards of directors of companies, there is currently no information and need academic research on the subject. However, based on experience and the report of the Friedrich Ebert Foundation-Libya Office, and Jusoor Centre for Studies and Development on Women in the Libyan Labour Market (2017), it can be said that women's representation is very modest. Despite the interest and encouragement of women's work, which the Libyan state has provided since its independence in the 1950s through the enactment of pro-women legislation and policies. However, all these efforts have not contributed to improving their actual status in the labor force, and the significant progress made by women in educational achievements has not translated into a similar improvement in their place of work.

6.2. Board committees

The Commercial Activity Law (2010, Article No. 196) mandates that every corporation sets up only a monitoring committee consisting of three members, and at least one member should have a university degree in finance and accounting experience and one should have a university degree in Law. The Law required that a member of the monitoring committee should not have any close family relationships or any business relationship with the company itself or other companies under the company's control. According to the Commercial Activity Law (2010), the main responsibilities of the monitoring committee are: 1) monitoring the company board and senior management to ensure that it works in accordance with the law and the company's articles of association; 2) ensuring that the company is maintaining adequate accounting records; 3) ensuring that balance sheet and profit and loss accounts reflect the company's accounting records.[2] However, the monitoring committee is not a board committee, since it is established, and its members directly appointed, by shareholders. Moreover, the committee should submit its report directly to the shareholders assembly.

Regarding the Libyan banking sector, the Corporate Governance Code for Banking Sector (2010) required that every bank has an audit, remuneration, risk management, and governance committees. All these committees are directly subordinated to the bank's board of directors. The board should be responsible for determining the authorities of these committees. The Code also stated that the responsibilities of audit committees must include: 1) a review and audit of the bank's operations; 2) the preparation of a quarterly report on its activities for submitting to the bank's board of directors; and 3) coordinating communication between the bank's management and external auditors.

6.3. Compensation of board of directors

The Libyan Commercial Activity Law (2010) only states that a company's articles of association should determine the remuneration of board members. Also, the Libyan Banks Law (2005) and the Libyan Corporate Governance Code for the Libyan Stock Exchange (2007) only stated that a board of directors' remuneration policies and practices should be set in a resolution issued by the company's general assembly. However, according to Article No. 183 of this Law, the board of directors should disclose in a detailed statement, signed by the chairperson, all remuneration received by the directors such as base salary, pension, and any other benefits. In addition, the Law requires that all board members should be responsible for the accuracy of data provided about their remuneration.

6.4. Role of the board

Concerning the duties of the board directors, the Commercial Activity Law (2010) only states that board members should carry out their duties carefully as imposed by a company's articles of association. Art. 182 entitled "duties of the board of directors" states that 'a chairman and members of the board shall undertake their duties as stated by the constitution of the company and as required by legal rules of the agency'.

However, the Corporate Governance Regulation for Listed Companies (2007) specifies in detail the functions and responsibilities of the Board. For example, the Regulation states that the board of directors is fully accountable for the company, and must perform its duties in good faith in accordance

[2] The responsibilities 2) and 3) above are similar to explanation provided by Cadbury Report (1992) on statutory responsibilities of directors and auditors when it explained as background to its recommendation in the Code of Best Practice that board is responsible, for maintaining adequate accounting records for safeguarding the assets of company, for preventing and detecting fraud and other irregularities, and for ensuring that balance sheet and profit and loss account prepared under and complies with the legal requirements.

with the interest of the company in general, which including:

- adopting and overseeing the implementation of the Company's strategic directions;
- developing regulations and controls for internal control and general supervision;
- establishing a corporate governance system and monitoring the extent of its effectiveness and amend it when needed;
- establishing clear and specific policies, standards and procedures for membership in the board of directors and put them into effect after approval by the General Assembly;
- developing a written policy that regulates the relationship with stakeholders for their protection and preservation of their rights;
- developing policies and procedures to ensure that the company respects the rules and regulations and its obligation to disclose the essential information to shareholders, creditors and other stakeholders.

In the Libyan banking sector, the Libyan Bank Law (2005) did not identify the role and responsibilities of the board of directors. However, the Libyan Corporate Governance Code (2010) stated that the board of directors' responsibilities are regulated in accordance with the powers given to the board under the bank statute and the relevant laws and legislation.

6.5. Rights and activism of shareholders

Shareholders' rights are usually stated clearly in the laws and by-laws of securities markets and companies law. The Commercial Activity Law (2010) sets out some of the previous rights in the Commercial Activity Law (2010) such as the right to attend the general meetings and to vote; the right to participate in decisions concerning fundamental corporate changes; and the right to sue. However, the Corporate Governance Regulation for Listed Companies (2007) sets out additional provisions and clauses concerning best practices to ensure that such companies adhere to the best practices of shareholder protection.

According to this Regulation, the shareholders have certain core rights. Specifically, they have the right to attend general meetings, the right to vote, the right to a share of the distributed profits, and the right to a share of the company's assets upon liquidation. Further, shareholders have the right to participate in the company's deliberations and vote on resolutions; the right to dispose of shares; the right to monitor the management and sue the board of directors; the right of inquiry and the right to request information that does not compromise the interests of the company and is consistent with the market system and the company's implementing regulations.

In the banking sector, shareholders rights are included in the Libyan Banks Law (2005) and the Libyan Corporate Governance Code (2010) such as general shareholders rights; facilitation of shareholders' exercise of rights and access to information; shareholders rights related to the general assembly; voting rights; and dividends rights of shareholders.

Regarding shareholder activism, there are several ways that shareholders can use to influence a company's board of directors and executive management actions such as dialogue with managers and give formal proposals, which are voted on by all shareholders at a company's annual meeting. According to the Commercial Activity Law (2010), shareholders can hold two types of meetings: ordinary meetings and extraordinary meetings. Furthermore, shareholders who hold 10% of the company's capital have a right to call a meeting of shareholders.

The Commercial Activity Law (2010) requires certain mandatory duties of shareholders such as the appointment of board members and an external auditor and determining their remuneration. They are also responsible for ratifying financial statements, ratifying the board's declaration of dividends, reviewing and making decisions regarding all affairs concerning the company, looking at any issues that the board of directors may present, and discussing reports of the board of directors, the watchdog committee and/or the external auditors.

Moreover, shareholders are 'exclusively responsible' for amendments to the constitution of the company, issuing bonds, hiring a liquidator for the company and determining their powers, and approving the board of directors action to sell more than half of the company's assets. In addition, shareholders at extraordinary meetings are responsible for deciding capital increases, capital reductions or share buybacks. The approval of shareholders at an extraordinary meeting is required for central transactions such as mergers, divisions, changes of form and voluntary dissolution of the company. In order to take place, an extraordinary general meeting requires the presence of shareholders representing at least three-quarters of the company's capital and the enactment of shareholders resolution requires an approval of more than half of the attendees (Commercial Activity Law, 2010).

However, according to the Libyan Stock Market Law, shareholders who own at least a percentage of 5% of the company's shares can suspend the general assembly's decisions, which violates the law or basic system according to the reasons stated by a number of those shareholders.

Although shareholders have legal rights, but most of the shareholders, especially minor shareholders, do not use their rights because of the weakness of the business culture and the lack of awareness of their rights. The interest of the majority of individual shareholders is to obtain dividends on their shares, and they do not care about anything else if they receive a satisfactory dividend. Moreover, the weakness of the legal regulatory framework and the absence of an institutional and stakeholder culture had a significant impact on the role and rights of shareholders and stakeholders in the Libyan business environment (Zagoub, 2011).

6.6. Disclosure and transparency

Most mandatory disclosure and transparency requirements are mandated by the Commercial Law Activity (2010). This Law paid attention to financial reports and its complementary interpretation of the financial situation of the company. The Law requires companies to disclose the balance sheet, profit and

loss account, executive manager's report, monitoring committee report and external auditor's report. In spite of this requirement, the Law did not provide guidance for such disclosures or which accounting standards should be adopted to disclose these requirements. Moreover, the Law did not require companies to disclose information on their major shareholders and voting rights, the payment policy for boards of directors and executive managers and their qualifications, predictable risk factors, corporate governance codes and policies and how they are implemented.

Disclosure and transparency are still one of the biggest problems in the Libyan corporate sectors, and one of the issues raised was about the timeliness of disclosure. The best corporation issued its annual reports five months after the end of the financial year, and as a result, the information in annual reports lost its reliability and usefulness for shareholders and other stakeholders. Moreover, annual reports only contain the financial statements, the board's report, and the external auditors' reports. For example, annual reports do not disclose cash-flows statements, or information about ownership and voting rights, major owners, major shareholder participation on the board or management, remuneration policies of board members and executive managers, or risks. Moreover, there is no disclosure about corporate governance information such as the board's composition, directors' qualifications and the extent of a company's compliance with corporate governance practice.

This situation is attributed to several reasons. The most important reasons are that the Commercial Activity Law and Banks Law did not provide guidelines for disclosure and transparency, or which accounting standards should be adopted. There is a considerable lack of legislation concerning public disclosure requirements, and if there were requirements, these only focused on specific disclosures for the Regulatory Authority and ignored the disclosure to shareholders and other stakeholders. Moreover, the other reason is the absence of national accounting standards and the weakness of the Libyan Accountants and Auditors Association that can play an important role in pressing towards improvements in disclosure and transparency requirements.

7. GENERAL ASSESSMENT OF APPLICATION OF CORPORATE GOVERNANCE IN LIBYA

Some researchers have assessed the application of the corporate governance in Libya such as Larbsh (2010); Zagoub (2011, 2017); Abdulsaleh (2014); Iswaissi and Falahati (2017) and Atkins et al. (2018). General results of these studies indicate clearly that Libyan companies have not yet established their own corporate governance principles. They only adopt and comply with some practices of corporate governance contained in relevant laws and regulations.

For example, Zagoub (2011, 2017) and Iswaissi and Falahati (2017) concluded that Libyan commercial banks are still in the early stages of applying and complying with corporate governance practices and only some corporate governance practices have been applied. They need time and many things need to be done before they can apply and comply fully with the practices of corporate governance.

One of the most important reasons for this situation is the absence of institutional and stakeholder culture. Most companies have not yet institutionalised their corporate governance practices. The main feature of Libyan organisations for the last 40 years has been the instability of administrative organisations and the individualism of management. Therefore, the most important aspect of corporate governance needed is a high degree of institutionalisation and institutional stability. Libyan organisations should institutionalise their corporate governance practices in order to gain their stability and legitimacy in society.

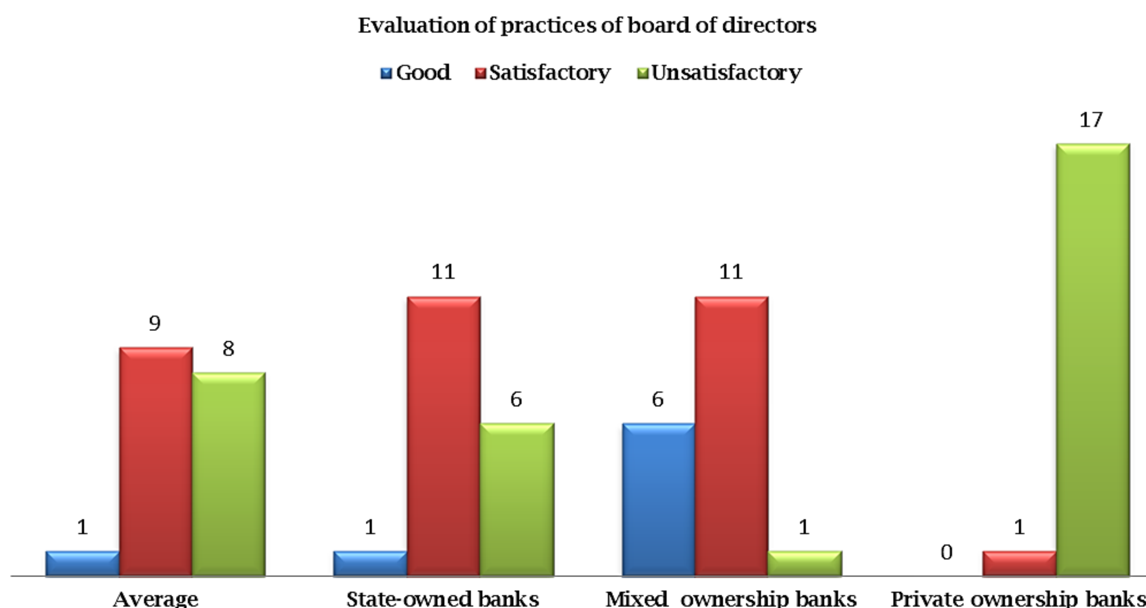
The other issue is the weakness of the regulatory and supervisory authorities (such as the CBL) in monitoring and ensuring compliance. The Libyan corporations sector needs an enforceable authority such as the CBL for banks and the Stock Market Authority for listed companies to monitor and ensure corporations' compliance with corporate governance practices. The absence of the obligated statutory framework of corporate governance is the main source of non-implementation corporate governance in Libya.

However, some of Libyan banks and companies comply with some legal requirements as mentioned above. Such pressures arise from legal and regulatory requirements, and therefore, the existence of an obligated statutory framework of corporate governance would improve the compliance with corporate governance practices through the legal pressures.

Zagoub (2017) assessed the board of directors practices in Libyan banks. The overall findings provide clear evidence that most banks were considered to have poor corporate governance practices in general. Moreover, findings indicate that the board of directors practices in all Libyan banks are not in line with best practices. The results show that no board practices are assessed as good, except for attending and discussing board meeting agendas.

As shown in Figure 2, only eight of eighteen board practices were rated as satisfactory, while the other nine practices were considered to be unsatisfactory. The findings also indicate that, although some board practices are satisfactory, especially in terms of compliance with board composition requirements, most other board practices are not. This suggests that there is a general dissatisfaction by stakeholders with the performance of boards of directors in respect of the responsibilities that they should shoulder. However, the results reveal that the performance of boards in state-owned banks or in mixed-ownership banks (privatised banks with a foreign strategic partner) are assessed in general to be better than those in private banks are. From this, it can be concluded that the different ownership structures and the privatisation of LCBs with the participation of foreign investors may have an impact on improving the practices of corporate governance in LCBs.

Figure 2. Evaluation of practices of boards of directors in Libyan banks



Note: This Figure summarises the evaluation of the board's practices in each of the Libyan banks.

These results can be interpreted as argued by Oliver (1991) and Goodstein (1994), that large organisations, state-owned banks and mixed-ownership banks are more susceptible to institutional pressures than small organisation, because of their impact in society or because of their ownership structure and, thus, they are more likely to receive more attention from the regulator (the CBL) and the public. Accordingly, they are more responsive and less resistant to institutional pressures (isomorphism) than the smaller organisation in order to conform to legal, social or economic norms.

Moreover, taking into account the market share and long history of state-owned banks and mixed-ownership banks in the Libyan banking sector, such results may reflect that these banks are more susceptible to strong competitive institutional pressures than other banks. Therefore, state-owned banks and mixed-ownership banks may focus more on efficiency or legitimacy considerations than other banks, which faces more pressures from its major owners in accordance with their personal interests more than efficiency or legitimacy considerations. Therefore, it can be concluded that a bank's ownership structure, history, size and privatisation policy have, to some extent, impacted the board practices.

Similarly, Atkins et al. (2018) investigated the extent to which the mechanism of the board of directors has been implemented in Libyan listed companies. The results of this study show almost the same results as the results of Zagoub's study (2011, 2017) in relation to the board of directors' composition. However, the results were different with regard to the performance of the boards of directors.

While the findings of Atkins et al. (2018) indicate that boards in Libyan listed companies are generally carrying out their duties and responsibilities properly in accordance with internal regulations and laws, and the stakeholders are broadly satisfied that board members are devoting sufficient time and effort to discharge these duties and responsibilities properly, the findings of Zagoub et al. (2011, 2017) provided an evidence that there is a general dissatisfaction by stakeholders with the performance of boards of directors in respect of the responsibilities that they should shoulder. This difference is probably due to the difference in the study population, although both studies included the same listed banks. The difference may also be due to the imbalanced groups of participants in the study of Atkins et al. (2018) as reported in their study. Their study did not include stakeholders of listed companies from the second branch of the Libyan Stock Market located in the Eastern region of Libya, where at least 40% of listed companies located.

8. THE CHALLENGES OF CORPORATE GOVERNANCE IN LIBYA

Although the corporate governance reform in Libya has begun since 2006, several obstacles have impeded the application of effective corporate governance in Libya. The main obstacles or challenges in applying an effective corporate governance system in Libya are presented below.

8.1. The political issue

Indeed, the political and security instability is the biggest obstacle to the implementation of governance in Libya, where the political and security situation has been difficult for international organizations to engage in training and guidance programs related to the implementation of governance in Libya. This situation has worsened the economic and social indicators of Libya. For example, increasing the level of corruption and the difficulty of preventing it, lack of accountability, bureaucracy. This makes the process of transition to

governance very difficult and requires substantial support from the government to ensure its success.

Despite international recognition, the Government of National Accord still struggles to obtain the support or recognition of the House of Representatives in eastern Libya. There is still disagreement regarding Libyan Political Agreement Article No. 8, which states that the Presidential Council heads the Government of National Accord and assumes control of the army. House of Representatives wants to cancel this Article. The talks are all part of the UN Action Plan, which aims to conclude the process with a referendum to adopt a constitution. Under this framework, a president and parliament would be elected to end the transitional phase (African Economic Outlook, 2018). However, there is no prospect of ending this crisis in the short term or even in the medium term.

8.2. The economy and culture issues

The economy is affected by social and cultural aspects and thus, social and cultural factors have a significant impact on Libyan companies to adopt good practices of corporate governance. For example, a culture of clan, tribe, and nepotism with bureaucracy are dominated in the Libyan environment. Such culture affects the appointment process of top management and board members and discourages good practice of governance in companies. Political conflict and civil war in 2011 has increased the dominance of such social and cultural factors in Libya. Although the Islamic values encourage and impose people to be sincere in their works, and not to use their position to realise their own personal purposes, unfortunately, this culture had broken these values in many cases. People often did not adhere to the Islamic values concerning their personal transactions as much as their adherence to worships (Zagoub, 2011).

8.3. Legal system and enforcement issue

Although the legal framework of corporate governance contains many good corporate governance rules and in line with the best international standards, there are two issues that must be taken into consideration. The first issue is some of the laws and regulations governing corporate governance in Libya need to add rules related to the protection of stakeholders and activating the activity of shareholders, disclosure and corporate social responsibility. The other issue is the weakness of the process of supervision and enforcement of laws and regulations.

8.4. Disclosure and transparency issue

Disclosure and transparency are some of the biggest challenges in Libya. The legal requirements of disclosure and transparency are insufficient. Although the legal system governing companies requires preparing annual reports, these reports only focused on specific disclosures to the regulatory authority and ignored any disclosure to shareholders and other stakeholders. The weakness of disclosure and transparency in Libyan companies attribute to the absence of national accounting standards, the weakness of financial knowledge, and the weakness of the Libyan Accountants and Auditors Association that could play an important role in pressing towards improvements in disclosure and transparency requirements. In addition, the weakness of disclosure and transparency attributes to the weakness of the role of the regulatory authority in monitoring and in punishing lapses.

9. IMPROVING THE CORPORATE GOVERNANCE FRAMEWORK IN LIBYA

The Libyan government and corporate sector have not succeeded in establishing and implementing good governance practices for the above reasons. There is an urgent need to adopt a comprehensive governance strategy in Libya. The overall framework of the strategy can include the following themes (Larbsh, 2010) and the Libyan Organization for Policies and Strategies (2016):

- educating stakeholders about the concept, standards and applications of governance in all institutions and at all levels, and encouraging the awareness of the benefit of corporate governance practice in companies;
- developing qualified leaders to absorb governance in all Libyan institutions and levels of management;
- creating the necessary legislative capacity and enhancing the enforcement of the legal system by a qualified judiciary to ensure the successful implementation of the government;
- developing monitoring mechanisms to enhance governance and its applications;
- eliminating the unethical culture by ensuring the complying with ethical standards;
- developing the physical infrastructure to provide support to society and commerce, and encouraging the private sector and reducing the bureaucracy;
- supporting the national and international agencies to play a role in monitoring and developing the framework of corporate governance;
- establishing an independent council to enhance the professions of accounting and auditing, and establishing Libyan accounting and auditing standards that derived from International Accounting Standards and encouraging the partnership with international auditing companies.

10. CONCLUSION

In conclusion, the concept of governance is still very limited in the Libyan Business environment. A large number of board members and senior staff have no background in corporate governance, and they do not have the knowledge and skills to apply its standards correctly. Corporate governance has been introduced first time in 2006 when the CBL issued its Corporate Governance Guidelines for Boards of Directors in Libyan banks, and the Libyan Market Authority issued its Corporate Governance Regulation for Listed Companies in 2007. Although about 10 years have passed, corporate governance adoption in Libya is still in its early stages due to the political and security situation in Libya.

On the other hand, some of the principles contained in the current governing laws in corporate banks are not applied in practice. This may be in the Libyan Business environment, due to the poor awareness of shareholders and other stakeholders or corporate departments of these standards.

Although these Guidelines and Regulations were very important for Libyan banks and corporations to establish their own corporate governance systems and practices, they are not yet ready to accept and adopt corporate governance because boards and executive management are not keen to be involved in adopting corporate governance. Moreover, these Guidelines and Regulations need efficient and expert board members in dealing with corporate governance issues, and therefore, they have been mostly ignored and have resulted in many poor practices.

Overall, there is a need for more effort and pressure to be exerted to encourage and force corporations to adopt better corporate governance practices. Moreover, there is an urgent need to develop laws to protect the rights of shareholders and other stakeholders such as bondholders, lenders and employees. It is also important to develop the practices of the boards of directors in companies to strengthen and encourage shareholders to practice their rights. In addition to the need to complete the legal framework that ensures the proper application of governance, including the review of the Stock Market Law, the Commercial Activity Law, the law of practicing the profession of accounting and auditing, and transparency and combating corruption law. Finally, there is a need to adopt a strategy for the implementation of governance in Libya, based on raising awareness at all levels, and training leaders in various institutions on them, while developing the legislative tool to comply with the requirements of governance.

Finally, it should be noted that this research has been based on an analysis of the results of the most important research available on corporate governance in Libya conducted during the period from 2010 to 2017. This period so far is a period of political instability and war between the conflicting parties as mentioned earlier. Consequently, the results of this research and this research, in turn, may also be affected by the unstable events in the country, especially since all this research relied on the analysis of participants' responses, to some extent, on the perspective of the researcher and evaluation, which can be more impressionist and subjective.

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