THE CONTRIBUTION OF GOVERNANCE PRINCIPLES TO THE ACTIVATION OF THE PRINCIPLE OF FREEDOM OF TRADE AND INDUSTRY

DR. NADIR ARTBAS
Senior Lecturer A
Faculty of Law and Political Sciences - Department of Law
Mouloud Mammeri University of Tizi Ouzou
Email: nadir.artbas@ummto.dz

INTRODUCTION:

Governance, or as some refer to it, the application of good governance, is one of the modern concepts that has garnered significant attention from researchers due to its impact on all fields. It is a key requirement for effective management within companies. Interest in governance increased after the economic collapses and financial crises experienced by many countries, including Russia and the United States, which suffered from administrative and financial corruption as well as poor management by corporate executives. This situation made it difficult to attract capital.

Therefore, governance was adopted to address these shortcomings and establish related legislations, which is what the Algerian legislator did by enshrining the principle of freedom in investment and trade within a legal framework that provides guarantees and incentives to encourage investment. Among the innovations is Law No. 23/17, which outlines the conditions and methods for granting economic land belonging to the state's private property for the implementation of economic projects (Law No. 23/17, 2023) . Also, the Executive Decree No. 23/486 defines the components of economic land belonging to the state's private property, directed towards the execution of investment projects eligible for granting privileges (Executive Decree No. 23/486, 2023).

It should be noted that governance frameworks vary between countries, and this is due to the differing principles and fields of governance, which are influenced by various factors unique to each country.

Given the role that governance can play in increasing investor confidence, stimulating domestic investment, and attracting foreign investment, the following question arises:

How do the principles of governance contribute to the activation of the principle of freedom of trade and industry?

To answer this question, we have divided this research into two main points: the impact of governance principles on the principle of freedom of trade and industry, and the contribution of governance to revitalizing the principle of freedom of trade and industry.

I. The Impact of Governance Principles on the Principle of Freedom of Trade and Industry

Governance has become a crucial topic at all levels, whether regional or international, as it represents a lifeline for overcoming financial crises faced by certain countries. On one hand, it is considered a transparent mechanism that enables the optimal management of projects and investments. On the other hand, it has become one of the foundational pillars upon which economic units should be built.

This principle is one of the legal foundations for free competition in the economic field, reflecting the freedom of individuals to engage in investment and commercial activities. Such a principle was acknowledged in the 1996 Constitution (Presidential Decree No. 96-438, 1996,) and was reaffirmed in the 2016 Constitution (Law No. 16/01, 2016).

It was similarly upheld by the constitutional amendment of 2020 (Presidential Decree No. 20/442, 2020), as well as by Law No. 22-18 concerning investment(Law No. 22/18, 2022) .

Therefore, it is essential to first define governance in its various forms, and then discuss the key elements that contribute to demonstrating the impact of different types of governance on the principle of freedom of trade and industry.

1. Defining Governance

The concept of governance emerged within the efforts made by international organizations in the field of human development, encompassing its political, economic, and social dimensions. Initially, the term focused on the financial accountability of governments. However, the emphasis later shifted towards the democratic aspects of governance, such as strengthening participation, activating the role of civil society, and revealing all elements that ensure the state legitimately represents its citizens (Abu Al-Nasr, 2015).

There is no unanimous definition of the term "governance," and this lack of consensus is due to various factors that may differ from one country to another. However, most scholars in the field of governance agree that it can be defined as:

"*The existence of systems that govern the relationships between the key parties within a company or institution, aiming to achieve transparency and fairness, and to combat corruption*." (Alawneh & Abdul Karim, 2013, p. 474).

Additionally, several international institutions have provided their own definitions. The International Finance Corporation (IFC) defines governance as:

"*The system through which companies or institutions are managed and controlled*." (Alamgir, 2007, p. 2).

The Organisation for Economic Co-operation and Development (OECD) defines it as:

"*A set of relationships between the company's management, the board of directors, shareholders, and other stakeholders*." (OECD, 2006, p. 5).

From a management perspective, governance is summarized in four key points:

a) The duties and responsibilities of corporate boards in managing companies, handling relationships with shareholders, and engaging with other stakeholders.

b) The mechanisms that influence decision-making processes by managers when ownership and management are separate.

c) The implementation of sound practices and applications for those managing and organizing the institution, ensuring the rights of shareholders, bondholders, employees, and other stakeholders, through the formulation and implementation of contractual relationships between them, and by utilizing sound financial and accounting tools in accordance with required disclosure and transparency standards.

d) The aim to ensure effective management of institutions (Allam, 2009, p. 6).

2. Types of Governance

Governance, as an administrative system, plays a crucial role in controlling the operations of institutions and companies. Its primary purpose is to prevent corruption and organize the relationships between key parties, employees, and management to achieve fairness and eliminate corruption by ensuring transparency in all management activities.

Therefore, governance varies depending on the nature of an institution's work and the activities it engages in. Some of the most important types of governance include:

- **Institutional Governance**: This type of governance relates to how internal affairs are managed within the institution, through the establishment of principles and laws that regulate work processes. The goal is to continuously activate and enhance productivity at all levels.
- **Financial Governance**: This pertains to financial matters within the institution and is sometimes referred to as banking governance, focusing on the management and oversight of financial operations.
- **Corporate Governance**: This type focuses on companies and ensures the effective management of corporations. It monitors the management structure to ensure that it operates efficiently and in accordance with established principles.

- Public Governance: This type of governance focuses on government organizations and public entities, ensuring that they function effectively and transparently.

- Project Governance: The goal of project governance is to ensure that projects are executed according to a solid plan, with active and effective monitoring to achieve desired outcomes.

- Good Governance: In Algeria, the concept of "Good Governance" was adopted with the establishment of the Charter of Good Governance for Algerian Enterprises in 2009.

In collaboration with small and medium-sized enterprises (SMEs) and the Forum of SME Presidents, the term "good governance" was used as a synonym for "corporate governance." The Charter emphasized that good governance, in its comprehensive sense, refers to administrative processes aimed at increasing transparency and rigor in managing, overseeing, and controlling enterprises. It is both a management philosophy and a set of practical measures designed to ensure the sustainability and competitiveness of institutions (Bakkouch, 2016, pp. 47–48).

- Global Governance: This refers to the process of organizing and coordinating political actions between countries, exercising certain powers by international institutions, and managing financial flows in the global economic environment. It aims to harmonize efforts on an international scale, ensuring that countries cooperate on global issues such as trade, finance, and environmental concerns.

- Environmental Governance: This type ensures effective environmental management and the preservation of natural resources. It includes a set of legal and institutional mechanisms that guide how humans interact with the environment across various uses and activities. Environmental governance addresses both formal and informal factors that influence sustainable environmental practices (Ghari & Sara, 2018, p. 310).

- Administrative Governance: This refers to the body of laws, regulations, and decisions aimed at achieving quality and excellence in administrative performance. It involves choosing appropriate and effective methods to accomplish the plans and objectives of any organized work, whether in private sector units or public sector units.

- **E-Governance**: This involves the use of information and communication technology (ICT) in public administration. E-governance brings changes in organizational structures and prepares individuals for the efficient use of new technologies in governance (PMC, 2009, p. 9).

In addition to these various areas of intervention, as mentioned earlier, governance can differ based on the nature of the institution's work and its specific activities.

II. The Impact of Governance Principles on the Principle of Freedom of Trade and Industry

Economic institutions and enterprises, in general, represent one of the most important pillars of the economy, as they aim to achieve sustainable development in its broadest sense. In their pursuit of this development, various institutions have relied on governance and its principles to reach the highest levels of growth.

This section will discuss the principles of governance and their impact on the principle of freedom of trade and industry.

1. Principles of Governance

Governance is built upon several pillars and principles, which have prompted many international bodies and organizations to study the topic of governance and establish a set of principles, objectives, rules, and practical standards. Among the most prominent organizations that have developed these principles and rules are:

- The World Bank
- The International Monetary Fund (IMF)
- International Securities Organizations
- The New York Stock Exchange
- The Cadbury Committee (United Kingdom)
- The King Committee (South Africa)
- The Vinto Committee (France)

- The Organisation for Economic Co-operation and Development (OECD) (Suleiman, 2006, pp. 47–48) .

Most, if not all, of these organizations have established governance principles. Some have identified three principles, while others have outlined six, and some have added further principles. However, the most important principles include:

a) The Availability of an Effective Corporate Governance Framework:

This principle, as stated by the OECD, aims to:

"*Encourage transparency and market efficiency, ensure compliance with the law, and clearly define the distribution of responsibilities between supervisory and executive entities*." (Suleiman, 2006, p. 49) .

b) Shareholders' Rights and Core Ownership Functions:

This principle mandates that shareholders exercise their rights, including:

- Ensuring ownership registration
- Transferring or selling shares
- Accessing relevant and sufficient information about the company
- Participating in voting processes
- Receiving a share of profits
- Participating in decision-making processes (Al-Mashhadani & Talib, 2011, pp. 36–38).

c) Equal Treatment of Shareholders:

Governance should ensure fair and equal treatment of shareholders, including minority and foreign shareholders. It should also provide equal opportunities for all shareholders to obtain effective compensation in case their rights are violated (Qabaha, Hamid, & Al-Shaqani, 2008, p. 42).

d) **Reporting the Rights of Stakeholders by the Management:**

Company management is committed to reporting on the rights of stakeholders as stipulated by law and encouraging cooperation between companies and stakeholders (Hamada, 2005, p. 43) .

e) Disclosure and Transparency:

All company operations should be conducted with the utmost transparency and integrity, particularly in terms of accounting and adherence to governance rules (Khalil, 2003, p. 33).

f) Board of Directors' Responsibility:

The board of directors should have a strategic vision for the company and maintain rigorous oversight of management. The board can also be held accountable by shareholders (Al-Shammari, 2008, pp. 131–132).

This principle is essential as it emphasizes the management, organization, and supervision of companies.

When discussing these principles, the OECD also acknowledged that they would be defined in alignment with the experiences of the organization and non-member countries, taking into account legal conditions and cultural differences. The primary goal of these principles is to assist governments in evaluating and improving the legal and regulatory frameworks for governance at all levels. They also aim to provide guidance to financial markets, companies, investors, and other relevant stakeholders.

2. The Contribution of Governance in Revitalizing the Principle of Freedom of Trade and Industry

Governance plays a significant role in enhancing various activities and promoting transparency and good management, which directly or indirectly contributes to attracting investors due to the fairness and integrity in dealings. This, in turn, positively impacts the state's ability to attract capital flows in a natural and sustainable way.

Several points can illustrate how governance contributes to this, either directly or indirectly. The key points are summarized as follows:

- **Financial Governance and Economic Growth**: Financial governance plays a major role in driving economic activity. Banks and financial institutions, both banking and non-banking, are the cornerstone of economic growth. Any disruption to these institutions affects the economy and negatively impacts investment and business cycles. Therefore, successful governance is, in reality, a success for economic development.

- **Corporate Governance and Development**: Corporate governance is one of the fundamental methods for revitalizing the development process. This is evident through the proper functioning of companies, leading to enhanced performance efficiency. Improved company performance has a positive impact on its operations, which in turn increases the revenue generated by the company (Khalil & Al-Ashmawi, 2008, pp. 35–37).
- **Transparency and Investor Attraction**: Transparency in all management and business transactions is a sufficient cause for attracting investors. This transparency allows for a financial flow that can help reduce financial and administrative corruption.
- **Mitigating Financial Crises**: Governance, in all its forms, contributes to preventing financial crises due to its direct influence on the national economy. By establishing strong governance practices, countries are better equipped to avoid financial disruptions and stabilize their economies.
- **Privatization and Public Confidence**: Governance strengthens public confidence in the success of privatization processes while ensuring that the state achieves the best return on its investments and improves national economic growth rates.
- **Corporate Efficiency and Stability**: Governance contributes to enhancing the efficiency and effectiveness of companies, ensuring their continuity and growth within the business world. This, in turn, leads to a stable revenue stream for the national economy and the state's treasury.
- **Attracting Funding for Companies**: Fair governance plays an essential role in enabling companies to secure desired funding from a broader pool of investors, enhancing the companies' financial performance.
- **Avoiding Mismanagement and Supporting Market Stability**: Governance, when built on solid principles, helps avoid incorrect financial and administrative practices, strengthening the stability of companies and supporting both local and international financial markets.
- **Sustainable Development and Good Governance**: Good governance is a key to achieving sustainable development due to its strong positive effects on social trust and political stability, which help accelerate the pace of development.

For investors, it is crucial to access financial information before making investment decisions, including:

- The Long-Term Performance of Financial Institutions and their ability to generate profits.
- The Profitability Trend of the institution.
- Dividend Distribution Policy.
- The Financial Position of the institution and future influencing factors.
- Potential for Growth and development of the institution.

Proper governance within any institution makes investors eager to invest due to the transparency, fairness, and the professional competencies available within the institution. Therefore, there is a significant link between institutional governance variables and the indicators of institutional sustainability, which positively impacts investor attraction.

CONCLUSION

It is evident from the above that the principles of governance hold significant importance in encouraging investment activities. Governance acts as a strategic framework that any institution must follow to succeed in its operations. The application of governance principles not only contributes to protecting the interests of stakeholders, but it goes beyond that by helping to identify weaknesses within companies and addressing them by improving their performance. This enables companies to better face various types of risks that may come their way.

By examining the principles of governance and their dimensions (disclosure, transparency, responsibility, accountability, fairness, and independence), we find that they are intrinsically linked to the principle of enhancing economic performance. This has been demonstrated through the implementation of governance practices in Algerian companies, where experiences have shown that they effectively contribute to improving the economic performance of businesses. Moreover, these practices have led to a significant increase in the volume of exports, further highlighting the positive impact of governance on economic growth.

REFERENCES

Books :

1. Abu Al-Nasr, M. M. (2015). Good Governance in Managing High-Quality Institutions. Cairo, Egypt: The Arab Group for Training and Publishing.
2. Alamgir, M. (2007). Corporate Governance: A Risk Perspective. Paper presented at Corporate Governance and Reform: Paving the Way to Financial Stability and Development Conference, Egyptian Banking Institute, Cairo, Egypt.
3. Alawneh, S., & Abdul Karim, N. (2013). The commitment of Palestinian public shareholding companies to governance code rules. In The Third Conference on Corporate Governance and Social Responsibility: Emerging Market Soil, April 17–18, Faculty of Law and Administrative Sciences.
4. Hamada, T. A. (2005). Corporate Governance: Concepts, Principles, and Experiences (Governance Applications in Banks). Alexandria: University Publishing House.
5. Khalil, A. W., & Al-Ashmawi, M. A. F. (2008). Institutional Governance: The Approach to Combating Corruption in Public and Private Institutions. Cairo: Al-Hurriya Publishing and Distribution Library.
6. Organization for Economic Co-operation and Development (OECD). (2006). Policy Brief on Corporate Governance of Banks in Asia. OECD Publishing Service.
7. Performance Management Consulting (PMC). (2009). E-Governance: State-Citizen Relations in the Digital Era, Panorama, Challenges, and Prospects in Africa. April.
8. Qabaha, A., Hamid, M., & Al-Shaqani, I. (2008). Strengthening Corporate Governance in Palestine. Palestinian Economic Policy Research Institute (MAS), Palestine.
9. Suleiman, M. M. (2006). Corporate Governance and Addressing Financial and Administrative Corruption: A Comparative Study. Alexandria: University Publishing House.

Theses:

1. Bakkouch, I. (2016). Good Governance and Its Role in Achieving Sustainable Development (Master’s thesis). University of Maghnia.

Articles :

1. Al-Shammari, S. R. (2008). Governance: A guide for financial and institutional reform. Baghdad College of Economic Sciences University, Issue 17, May, pp. 125–138.
2. Ghari, A., & Sara, A. (2018). Environmental governance: A conceptual approach. Algerian Journal of Security and Development, University of Batna, No. 13, July, pp. 308–321.
3. Khalil, M. (2003). The role of the management accountant within corporate governance. Journal of Business Studies and Research, Faculty of Commerce, Benha University, Issue 02, pp. 15–42.

Laws:

1. Law No. 16/01 dated March 6, 2016, on constitutional amendment. Official Gazette of the People's Democratic Republic of Algeria, No. 46, 2016.
2. Law No. 22/18 dated July 24, 2022, on investment. Official Gazette of the People's Democratic Republic of Algeria, No. 50, 2022.
3. Law No. 23/17 dated November 15, 2023, defining the conditions and methods for granting economic real estate belonging to state property for investment projects. Official Gazette of the People's Democratic Republic of Algeria, No. 73, 2023.
4. Presidential Decree No. 20/442 dated December 30, 2020, on issuing the constitutional amendment approved in the referendum on November 1, 2020. Official Gazette of the People's Democratic Republic of Algeria, No. 82, 2020.

5. Presidential Decree No. 96-438 dated December 7, 1996, issuing the text of the constitutional amendment approved in the referendum on November 28, 1996, amended and supplemented by Law No. 02-03 dated April 10, 2002, and Law No. 08-19 dated November 15, 2008. Official Gazette of the People's Democratic Republic of Algeria, Nos. 76 (1996), 25 (2002), and 63 (2008).

Executive Decrees:

1. Executive Decree No. 23/486 dated December 28, 2023, specifying the components of economic real estate belonging to state private property, intended for investment projects and eligible for granting concession. Official Gazette of the People's Democratic Republic of Algeria, No. 85, 2023.