

Corporate Governance
Principles to be applied
And Recommendations to be implemented
For the Development of Governance
In the Private Sector in Lebanon

“Corporate governance involves a set of relationships between a company’s management, its Board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”

“Principles of Corporate Governance” - G20 and OECD, September 2015

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1. Preamble

The principles and recommendations in the area of corporate governance are often drawn from legislation, codes and charters, public or private disclosure, publications in many countries since the emergence in the early 1990s of sound practices in the organisation and administration of Boards. They are also the result of the expertise and the practical experience of the authors of the present document, enriched by interviews with a large number of Lebanese businessmen over the past two years whom have had the opportunity to express their expectations in this regard.

Beyond what needs to be applied freely and the analysis of the specific situation of each company in terms of the separation of powers for instance and especially the main role of the Board of Directors, this document offers an insight on practical aspects of corporate governance and on prerequisites to be known and applied, such as:

- Respect of the “cultural” context of the company
- Application of the Lebanese law
- Selection of a structure adapted to the family business
- An inventory of the state of governance
- Identification of the other stakeholders of the company
- Recall the conditions of convening of the general assembly of shareholders which appoints the Directors
- Distribution of powers within the company (Identification and clarification)
- Definition of the profile of the Director, his rights and duties
- Clarification of the role of the Strategy in the conduct of business
- Reinforcement of the role, tasks and functioning of the Board of Directors in a Governance Charter.
- Facilitation of the creation of value
- Definition of the role of the Chairman and the General Manager
- Definition of the role of Board Committees
- Be aware of the importance of the Minutes of Meetings
- Establishment of the conditions of training of the Directors
- Periodic assessment of the company and the functioning of the Board
- Reinforcement of the role of the Secretary of the Board.

This list may not be comprehensive; it simply contains the relevant topics of today’s corporate governance in Lebanon from the point of view of a large number of business professionals or their representatives, who were invited to express their needs in the framework of several panels. We are not in the process of applying strict rules but rather ensuring the best possible conditions for businesses to further progress towards sustainable development.

2. Background in Lebanon

a) General context

In a region of political and economic instability and uncertainty, the challenges of Lebanese companies in the private sector are considerable. In this regard, the concerned company Directors in all areas of activity and for all types of companies are truly determined and bold.

However, in an international context where the standards of governance are widely shared and increasingly demanding, and in order to reach ambitious targets for growth, competitiveness and sustainability of their activities, company Directors find themselves in the obligation to move forward with their organisation and operations. This is particularly true with regard to the allocation of powers and responsibilities within the company, in policy making and monitoring of the economic and financial performance.

These powers are those of the shareholders, Directors and managers, each from their position with the one single goal the company's own interest. The powers must be expressed in a clear system, with clear definitions of the roles and responsibilities of all parties based on sound governance principles that are approved and published.

In a broad sense, corporate governance is the organisation of control and management of the company in the framework of a clear and well-set strategy. More precisely, the term "governance" is used to describe the relationship between the shareholders and the company's management, and therefore mainly the functioning of the Board of Directors.

In the field of governance and when this is not already the case, the implementation and the application in the company of a set of rules, simple and adapted to the local context, are undoubtedly levers to meet the business's development objectives. Such rules shall allow understanding how the objectives of the company are set, what are the means to achieving them and which criteria are used to monitor and control the performance. On the other hand, the lack of sound governance can be a barrier to the sustainability of the company.

Governance, which is not an exact science but a discipline, is based on a genuine culture within the company and requires, from the shareholders and the first generations of owner-managed companies full acceptance of the identified and desired trends. It is a choice made by the stakeholders within the company and a shared commitment without any particular constraint except for the lasting success of the activity, a matter of professional and ethical conduct.

The first mission of the Board of Directors is to independently validate the strategy proposed and implemented by the managers, accompanying them and supporting them in their choices, and ultimately in the course of its missions, the Board monitors the management of the company. The management needs to be challenged, stimulated by a *Council of Wise Men* which has a broader vision of the Company, gives sound practice and takes its share of responsibility, including towards shareholders and other stakeholders.

Managers are sometimes well on their own, especially when the economic, financial and competitive and political context is complex.

Finally, it is increasingly recognised that an effective system of governance allows, on the one hand, enhancing the confidence of investors and national and international donors of funds, and on the other hand, further strengthening relations with the stakeholders (employees, customers, creditors, suppliers, etc.).

Building governance means building trust.

Reminder of the ‘Principles of Corporate Governance of the G20 and OECD’ of September 2015:

Sound governance is therefore liable to ensure those shareholders and other stakeholders that their rights are protected and to open the possibility for companies to raise capital at lower cost through facilitated access to financial markets. This is a parameter of key importance on today’s global financial markets. International capital flows allow companies to obtain funds from a much wider population of investors. In order to fully benefit from the globalisation of capital markets and attract long-term “patient” capital, companies and countries should adopt reliable and legible corporate governance schemes and meet a minimum set of established principles.

Even if foreign capital does not represent the main source of funding for businesses, ensuring a credible framework for corporate governance, shouldered by effective mechanisms for monitoring and implementation, it contributes to increasing domestic investor confidence, reducing the cost of capital, and allowing a smooth functioning of capital markets, which ultimately provides more stability for sources of funding.”

The stakes are high and it is now time to recognize the advantages of governance formalising thus the principles and sound practices in the organisation and functioning of the Board of Directors.

b) The Lebanese cultural context

Beyond the core principles and best practices applied currently in almost all countries of the world subject of the present document, corporate governance should be conceived in compliance with the environmental culture, a culture that is specific to the country, the company and the sector of activity.

We are here in the context of a culture based on transparency and ethics. Such culture in the business course requires a vision, a strong commitment from the managers, and sometimes a difficult and even painful self-scrutiny. It would appear that, these aspects of sound governance are essential for Lebanese companies to ensure their continuity, companies that are most often family or owner managed businesses. They should be clearly set, established and structured.

Therefore, if we aim to have a generational transition in the best possible conditions, with a view towards growth and economic performance, all leaders must take responsibility of the needed changes. The letting go of some founding managers or shareholders of reference is a vital element in the success of any transmission and handover. Moreover, it is highly recommended for each Director on the Board of Directors and its Committees, to adopt and encourage the new best practices in the framework of performing his tasks and responsibilities.

The noticeable changes and developments will allow for a better performance of Lebanese companies, their development and expansion, and will increase their power to attract more complex regional and global markets.

c) The Lebanese Law (Code of Commerce applicable in 2017):

The operation of the Lebanese private company/Limited Public company is based on a strict separation of powers. The Board of Directors runs the company through management and validates its work. The Board presided by the Chairman – General Manager is considered the executive body of the company. Its powers are assigned mainly through the articles of association as well as by the shareholders during ordinary and extraordinary general meetings. General Meetings have the authority to appoint, dismiss and control the management of the company and to adopt any resolution including the amendment of the by-laws.

3. The Principles of Corporate Governance

a) Sound practices

Corporate governance, which contributes to growth and economic and financial performance of the company, is a set of laws and regulations, sound practices and behaviours which define the scope of the powers and responsibilities of the Directors and members of the Board of Directors whose task is to orientate the company in a sustainable way.

Orientating the company implies for the Board of Directors validating and controlling the strategic decisions that are implemented by the managers and have a decisive effect on its continuity and therefore, its sustainable performance. The trust between the Board and the managers is therefore established once the exercise of powers is clearly assigned according to the rules and limitations.

Sound governance lies in the line of understanding and respecting the articles of association of the company, the laws and regulations, general and specific obligations of the Directors, their responsibilities and the recommendations in place (code of sound practices, standards and procedures, listing codes, Board Charters, etc.).

As key corporate actors, Directors must exercise maximum responsibility and contribute to improving the functioning of the Board of Directors and the management of the company. The Board of Directors should be organised as an autonomous body working overseeing the management team.

b) The virtues of corporate governance

Upon the debut of many companies, it is often difficult to draw a distinction between the shareholders, the members of the Board of Directors and General Management. A founding and managing partner can perform some or all of these roles rather informally.

The dynamism and determination of a person (the founder) may have been the key factors in the creation and success of the company, yet they may not be sufficient to ensure the continuity of the company on the long run. In the course of its development, and whereas it seeks to break free of

the chains of the past, the company must put in place a governance process which strengthens sustainability and success away from the efforts and the exercise of the power of a single person.

Furthermore, each company has a 'history' of both capital and economic events: opening of the capital, external funding, ambitious growth projects, succession of the founder, etc. Such events affect the exercise of power and collective decisions. It is therefore necessary to set up a governance framework able to overcome these steps and make sure that the company is managed and controlled in a continuity policy.

c) Family businesses

Over generations, a family business grows in size and complexity. Its members may have different views on the business activity and the use of financial assets. Under such conditions, it is highly appreciated to establish family governance structures in order to facilitate exchanges by facilitating, for example, access to information, promoting family discipline, preventing conflicts, ensuring continuity of operation and preparing as early as possible future generations with proper training.

Once in function, it is important to distinguish family governance from corporate governance, each of both "disciplines" requiring its own operating process with specific duties and issues. In any event, it is essential to ensure that the dual "status" of a family member, who is a shareholder and manager, does not obstruct the functioning of the Board by interfering in its debates.

It is highly appreciated that a Charter or a Family Protocol outlines the vision and objectives of the family for the company. It shall define the role of family governance bodies and their relations with the Board. It shall also mention the key family policies, such as those relating to the effective involvement of members of the family, the transfer of shares, the succession of Chairman, etc. Finally, there is a need to address the questionable separation of responsibilities and powers when a shareholder is both a Director and a manager.

The choice of the family governance process will naturally depend on the size of the company, the number of family members and their degree of involvement in the company.

Family governance bodies (such as the "Family Assembly" and "Family Board") will allow for family members to discuss freely family business and activity. They help to develop a coordinated family approach.

If the setting-up of these structures allows coordinating and unifying the interests of the members of the family, the need remains in order to ensure the survival of the family business, to include on the Board of Directors a number of independent external members.

Ensure that the objectives of family shareholders are identified and agreed upon. Establish family governance that allows for, in a special and autonomous entity, free expression of everyone's expectations, particularly the case in ownership matters. This will help avoiding confusion between the interests of individual family shareholders and the economic and financial interests of the company.

4. The state of governance

a) The needs

An initial assessment of the state of governance enables access to the opinions and formalises the expectations of each of the stakeholders in corporate governance, to improve the smooth functioning of the existing operation. For instance, it should address the following questions:

- How is sound governance needed?
- Who takes the strategic decisions? Who implements them? Who follows-up on them?
- Who has the power?
- Is there a control over the accounts?
- Are the performance criteria identified? Short, medium or long term?
- Are the risk factors identified? Which internal control system to adopt? Which risk management and control procedures?
- Has the work of the Board of Directors been assessed?
- What are the responsibilities of the Director in the course of his/her term of office or terms of office? Are the rights and duties of Directors defined?
- Is the concept of the Independent Director understood and agreed upon?
- Are the stakeholders identified? How are those taken into account?

The idea is that all companies in the private and public sector must put in place appropriate governance in compliance with the applicable laws on one hand, and with the best practices in the matter on the other.

The state of governance can be done in a preventive way — for example in the case of evolution in the family shareholding, in the midst of a crisis or at its outcome, in order to identify potential inefficiencies in management and control bodies.

An external expert may be called in for the review of governance with, if necessary, an expert in strategy and organisation when action goes beyond compliance with laws and regulations and sound practices.

Entrust the task of conducting a survey of governance to an independent professional mandated by the shareholders and the Board of Directors, designated within or outside the company. Formalise the findings on the state of governance, which shall help understanding the organisation of the company, measuring the involvement of players at all levels and identifying the strengths and weaknesses in the applied governance principles. Under the Board's authority, identify progress potential, gain the support of shareholders and managers and set a timetable for the implementation of the suggested improvements.

b) The powers within the company

It is necessary to identify the different powers that are exercised in the company and how their responsibilities are assumed. They are differentiated, while being complementary :

- The sovereign power: the shareholders or members;
- The control power: the Directors.
- The executive power: the managers;

The coordination between these three powers defines how the organisation is governed. These powers can be held either by the same or by different persons but there should never be confusion among them.

The relationship between these powers is the very concept of corporate governance and the manner in which they are actually exercised or not. They are different from the day-to-day management and simply aim to show that the company is in "sound hands" establishing thus confidence for the future among the "stakeholders" and the other partners of the company such as employees, suppliers, customers, financial partners, etc.

a) Shareholders

It is necessary to ensure that all shareholders (private, public, investors, family, etc.) are equally aware of the requirements in terms of corporate governance and wish to carry out reforms according to the findings of the initial assessment.

At the general meeting, shareholders ensure the company's continuity by ultimately endorsing its orientation validating its decision makers. The shareholders' power relies essentially in their ability to appoint, dismiss and influence the decision-making process of the Management Board (appointment of leaders, endorsement of the strategy, management control, etc.).

In the face of the immediate performance required by some investors who can exert pressure on governance, the Board shall ensure that the conditions of the company's long-term prospects are met.

Beyond compliance with the law, a governance model is required to sort the different forms of interaction between the company and its shareholders, in particular:

- How can they call for a meeting of shareholders?
- At the shareholders' meeting, how can the shareholders suggest resolutions in order to influence or oppose their right of veto on the decisions taken by the Board, appoint or dismiss the Directors?
- What kind of information must be submitted to shareholders by the company?

In such situations, it is important that the governance model sets in advance the relations between shareholders, this may be done through, and for example, a set of procedures that enable to anticipate conflicts or solve them effectively.

c) The Directors

Exercised by Directors, members of the Board elected by the "sovereign power", this power ensures that the conditions of the executive power exercise are compatible with the general interest of the company, its continuity and its long-term performance.

d) Managers

The executive power outlines the strategy and implements operational decisions that steer the company, under the powers conferred by the shareholders.

The power of the manager must be comprehensive enough to enable them to fully exercise the responsibility for the strategy implementation. Nevertheless, it might be cautious to ensure that

this responsibility can actually be exercised by the Director who has the necessary skills or at least is surrounded by people who do, that there enough space for exchange and assessment to avoid his isolation.

To ensure that the powers and responsibilities within the company are clearly identified and defined, allocated and paid for in a clear manner, preventing each of the different stakeholders (shareholders, Directors and managers) to find themselves in situations where it would be difficult or even impossible for them to take decisions in an objective and independent manner.

e) The “other stakeholders” of the company

In addition to the statutory obligations, the Board and the management team must give a great deal of attention in their agendas and in their strategic debates to “stakeholders” of the business, not just shareholders but also clients, suppliers, employees and the public collectivities. They must also pay attention to the extra financial challenges associated with the activity of the firm: protection of the environment, development of human capital, health, welfare at work, anti-discrimination, poverty and business ethics.

Due to the openness of the company to civil society, it is only natural that stakeholders seek this confidence when they risk their money (shareholders or financiers) but also their work (employees) or their economic future (as suppliers or clients). The risks for the company, on its reputation in particular, to take insufficient account of the prospect of partners can be substantial. Therefore, it is important that the company’s governance defines the means of dialogue and constructive engagement with key partners.

Identify the expectations of stakeholders (shareholders, customers, suppliers, employees and public authorities) in the environment and the context where the company operates. Create the basis for trade which should be maintained with these partners by establishing the means of constructive dialogue in the context of the relationship of trust which should be maintained in the long term.

5. The General Assembly of Shareholders

a) The Lebanese Law:

Following the formation of the Company (which requires the presence of a Constitutive General Assembly) the shareholders meet together within the duration of the company in ordinary and extraordinary general meetings. The holding of general meetings of shareholders is strictly regulated by rules of form and procedure which are mandatory and the breach of some of them may result in the nullity of the proceedings.

The Ordinary General Assembly:

The normal tasks of the ordinary general assembly are set out in Art. 196 of the Code of Commerce. According to that article, it is the responsibility of the Ordinary General Assembly, which shall meet at least once a year after the end of the exercise, to take important decisions relating to the company bodies, namely, the appointment and replacement of Board members as well as the external auditors.

The ordinary general assembly has the power to control the management of the company, through the examination of the company’s accounts to assess the conduct of business by management.

For this purpose, art. 197 of the Code of Commerce provides a right to any shareholder, and subject to nullity of the resolution, to examine the inventory, the balance sheet, the profit and loss account, the list of shareholders, the Board of Directors report, the supervisory Board report, the consolidated profit and loss account and consolidated balance sheet, within fifteen days preceding the meeting of the annual assembly. The shareholders will therefore be able to investigate the status of the company and, if appropriate, hold individually or collectively the Directors accountable for their mismanagement and for any breaches of the law and the by-laws.

The shareholders' meeting holds a powerful weapon as well in the dismissal *ad nutum*, which may not be limited by any statutory or contractual provision, and enables the assembly to retain a greater control of the composition of the Board of Directors and thus to influence the management of the company, dismissal which can be done without just cause and at any time during the meeting, even though it does not appear on the agenda.

Furthermore, the General Assembly has special responsibilities outside the remit of the Board: "ordinary assemblies have competence for all decisions other than the day-to-day management and the amendment of the by-laws.

An ordinary general meeting requires the presence or representation of many shareholders possessing at least the third of the share capital, on first meeting.

Where that quorum is not obtained the Assembly may be convened on a second invitation irrespective of the number of shareholders present.

In ordinary general meetings, decisions shall be taken by an absolute majority of the votes cast by the shareholders present or represented at the meeting (in principle each shareholder is entitled to one vote notwithstanding the double vote conferred to shareholders owning registered shares since at least 2 years).

The Extraordinary General Assembly:

According to Art. 201 of the Code of Commerce, the extraordinary General Assembly has the power to take all decisions involving an amendment of the statutes such as the increase or reduction of capital, change of headquarters, or change of the corporate form.

However, the extraordinary general assembly cannot breach the equality between shareholders and the Art. 201 of the Code of Commerce states that a decision to amend the articles of association may not affect the rights of third parties. Therefore, some decisions fall outside the power of the assemblies and shall be taken unanimously by the shareholders, in particular, decisions that cause to increase costs of shareholders and the decision to modify the nationality of the Company.

The holding of an extraordinary general meeting requires the presence of shareholders representing at least two thirds of the capital at three consecutive meetings for decisions involving amendments to the articles of association, whereas decisions aiming to change the company's object or form require a quorum of at least three quarters of the share capital. The majority required for adopting decisions in extraordinary general meetings shall be two-thirds of the votes cast during the meeting."

b) Principles :

It is therefore the General Assembly that appoints the Directors and vote, within certain limits, the powers assigned to the Board of Directors.

The General Assembly is a decision-making body. Aside from being the point where the executive bodies report on the company's activities and of the functioning of the Board of Directors and the

Specialised Committees (Audit, Remuneration, etc.) it is also a genuine and open space dialogue between shareholders.

Once preparations for the General Assembly are done, the Board of Directors calls for the meeting and submits to the shareholders' vote the regulatory decisions and authorisations deemed as relevant in the line of its duties.

The Board shall publish prior to the general meeting the set of Reports provided for by law; which must be completed by a Report on the state of governance detailing for instance the organisation of the Board, its functioning, the content of its work, etc. This will increase the trust of shareholders in the framework of the strategy and control under the responsibility of Directors appointed by the Assembly.

Permanent dialogue with investors helps shareholders better understand the companies and the companies to become more aware of the concerns of shareholders; trust is indeed only possible if exchange of information with concrete results is done throughout the year.

Involve the Board of Directors in the preparation of the General Assembly; the board shall convene for the meeting and shall submit to shareholders' vote the regulatory decisions and authorisations deemed relevant in the line of its duties.

Ensure the quality of reporting in accordance with the Law and particularly those under the responsibility of the Board; it is recommended to complement the reports by a one on the state of governance.

Communicate with investors in sound faith to share their concerns and expectations of each of the Parties.

6. The Board of Directors and its functioning

a) The Lebanese Law (Code of Commerce applicable in 2016):

The Board of Directors is the body responsible for the management of the Company.

Article 157 of the Code of Commerce states that "The Board of Directors has the most extensive powers to enforce the decisions of the General Meeting and execute all the operations entailed in the normal functioning of the company.' Therefore, the Board is by law vested with a general power of managing the Company within the boundaries of the law and the company by-laws. The powers to manage the company shall include in particular:

- The power to enforce decisions of the General Meetings of Shareholders.
- The power to execute all acts and operations included in the normal functioning of the company, excluding day-to-day operations that fall within the remit of the CEO.
- The power to oversee the general management of the company entrusted to the CEO.

The Board is a collegial body composed of at least three members and twelve members at most.

Considering that the shareholders of a company are the best suited to manage the interests of the company, the Lebanese Law provides that the members of the Board of Directors shall be appointed by the ordinary General Meeting among the shareholders. Each member of the Board of

Directors must be a shareholder of the Company, with a minimum number of shares provided for in the company's by-laws, allocated and guaranteed by the performance of the Directors during their mandate.

The Directors shall be elected for a maximum period of 5 years when appointed by the by-laws at the time of the constitution of the company and for 3 years when they are appointed by the General Meeting. Moreover, the law requires that a majority of the members of the Board be Lebanese (except in the holdings and the offshore companies).

b) Tasks of the Board of Directors

The Board of Directors has unlimited power to execute the resolutions of the General Assembly and to execute all operations related to the normal functioning of the company. The Board of Directors is thus entrusted with a general power to manage the company within the framework of /in accordance with the law and the articles of association.

Many aspects of the organization and the functioning of the Board of Directors must be rendered formal and official according to the options granted by the law.

Among such options :

- The Board of Directors is a collegiate body formed by 3 members at least, and 12 members at most;
- Directors are elected for a maximum period of 5 years when appointed by the articles of association and for a period of 3 years when appointed by the Assembly;
- The law stipulates that at least half of the members of the Board of Directors must be Lebanese;
- The composition and organization of the Board must be adequate to that of the shareholders structure, to the dimension and line of business of each company and to the particular circumstances they are experiencing;
- The main quality of a Board of Directors lies in the balance of its composition (male and female members, different competencies, experience and carrier paths, independent Directors, and ethics of the members);
- The Board of Directors is one indivisible body, it represents all shareholders and the resolutions taken for which the Directors are accountable are collegiate;
- The board of Directors receives all information necessary for the execution of its works in the optimal conditions. Nevertheless, such information together with the subjects debated within the board must remain strictly confidential.

Therefore, by performing its legal powers, the Board of Directors performs the following main tasks:

- It examines and validates the strategic guidelines and follows up on their application;
- It shall appoint the authorised representatives Directors responsible for managing the company within its strategy;
- It ensures succession to avoid any vacancy in the executive body;
- It determines the remuneration of Directors;
- It chooses the method of organisation (separation or combination of the Chairman – General Manager functions);
- It shall oversee the management;
- It shall ensure the integrity of the accounting and financial reporting;
- It shall ensure the quality and the communication method of reporting to shareholders and to the market, through the accounts or important transactions.
- It monitors the major acquisitions and disposals of assets made by the company;

- It ensures the presence of procedures and principles for control and risk management and internal control;
- It shall ensure the training and assessment of Directors;
- It shall put in place specialised committees in areas such as auditing of the accounts, remuneration and risk management;
- it shall monitor and manage conflicts of interest that may arise between the management, Directors and shareholders.

There is as well a need to formalise the principles and sound practices of the Board's operation and organisation. Indeed:

- In the context of the above tasks and those stated in the rules of procedures, the Board shall set out its own responsibilities, the relevant matters and those that fall under the management's responsibility
- The Board of Directors shall establish a systematic and formalised definition of the limitation of powers of the general management. The list of matters reserved for the Board of Directors (i.e. subject to its prior approval) should be established. The arrangements for this limitation of powers are to be defined, taking into consideration the financial thresholds related to the executive powers;
- it is sound practice to establish a separation of powers (see above) in a specific document, a Charter of the Board or in a code of governance, specifying the limitations of powers;
- The balance between the areas reserved to the Board and areas covered by the general management is to be reviewed regularly.

These arrangements should be reviewed periodically in order to ensure that they remain relevant in the light of the changes in the structure, the size, scope and complexity of the business.

c) The importance of Strategy

Steering the company requires from the Board to validate and control the strategic decisions which are implemented by the management and which have a determining effect on its sustainability and thus its long-term performance. Trust is established between the Board and the managers when it is clear how the exercise the power is done according to the terms, limits and controls.

The Board's organisation of work and the role of the strategy must clearly establish how and what is the specific role of the executive body (managers). For instance: *"The executive power shall submit the Strategy to the Board for approval and, after validation, shall implement the company's operational decisions, to steer the company within the powers conferred by the shareholders".*

Step 1: The preparation, i.e. the establishment of scenarios and decisions to be taken, taking account the company's project and of the information at its disposal.

Step 2: The choice of strategy, i.e. the selection of the best scenario among those previously defined, depending on the suggested project and the profit opportunities.

Step 3: The implementation function, i.e. specific decisions-making, suitable to achieve the objectives set by the strategy chosen.

Step 4: Monitoring the achievement of those objectives.

Create the best possible conditions for the Board to define, validate and monitor the implementation of strategic guidelines and decisions of the company.

Frequently put the strategy on the agenda of meetings of the Board in coordination with the general management implementing and report it.

d) The composition of the Board, the number and term of office

The composition and organisation of the Board must correspond with the composition of the shares ownership, the size and the nature of the business of each company and the specific circumstances it is going through.

The balance with of composition is the main quality of the board of Directors, with skills, experience, different paths, diversity, gender balance among its members, with Independent Directors (see below), and respect of ethics. The Board is one and indivisible, it represents all the shareholders and all decisions taken by them are collegiate (see below).

The law states that the members of the Board are appointed by the general meeting of shareholders. The Company shall publish the resume of each member of the Board submitted to the vote of the shareholders (new or renewed); the list of his functions and mandates; possible related parties transactions between the Company and their other business activities.

The procedure for the appointment of new Directors should be documented and based on objective criteria that ensure the complementarity and consistency in its composition.

The aim is to integrate the best expertise in key areas such as for example: the strategic analysis, marketing, finance, human resources management, international trade and the study of the geopolitical environment. With the company's growth, it is of the utmost importance for shareholders controlling the capital to pay particular attention to the quality of selection of Board members.

In practice and in the interests of efficiency, it is recommended to limit the number of Directors. A growing number of members may prevent the Board from acting as a united team since it would limit the time and opportunity for members to address the Board. The number of members should depend on the size and the complexity of the company's activities as well as of the mode of operation. To be simple and clear, the rule says that to be efficient, average Board of Directors must count at least 4 members and a maximum of 8 members. In larger companies, the range is between 6 and 12. Indeed, the ability of a Board to take decisions and exercise adequate control will be considerably limited beyond 10 members. A smaller Board will improve the quality of communication, and will focus on any specific subject. The organisation of meetings will also be facilitated.

In summary, the composition of the Board that is in the interest of the company, have the following benefits:

- Appropriate consistency with the shareholders structure in order to respect the rights of all shareholders and ensure proper follow up on their development;
- A number of Directors, age profile adequate to the size and importance of the Company;
- Complementarity and diversity, functional experience and competencies of Directors;
- Average seniority based on periods of mandates not exceeding 4 years;
- a schedule of mandates organised in a way to avoid a bloc renewal of the Board of Directors;
- Unconditional loyalty of each member;
- A commitment to include an appropriate number of Independent Directors;
- Involvement of members to be sufficiently available to fully concentrate on their responsibilities.

It is crucial to consider a regular rotation of members of the Board to ensure a flow of new ideas, with alternance in mandates, so as to avoid a bloc renewal and to ensure continuity.

e) Collegiality (collective intelligence)

Directors may debate but have no individual power of decision. The law only recognises the collective decision reached after the most constructive deliberations within the board. The Board debates in advance (and not ex post) on significant strategic issues and operations having an impact on economic and financial fundamentals of the company before deciding the strategy and approving it.

A Management Board, a forum for exchanging information and debate, may be a source of collective intelligence at the service of the company and provide enrichment of its vision through 'a mirror effect'. The Board should assist management in the implementation of the strategy; it must be available for the support and break the loneliness of leadership as this is usually only one to take major decisions.

The art of "effective governance" is to take advantage of the collective intelligence of the people surrounding the Directors in their daily work, knowing that the Board has no operational responsibility.

f) Formalisation of the Board Charter

In addition to the articles of association, it is sound practice to have a "Board Charter" of the Board of Directors which allows defining the practical operating rules for the Board specifying the areas reserved to the Board and those relative to the management.

Setting the Charter is strongly recommended and yet remains optional. However, it is recommended that, in the absence of internal rules, to establish a Board Charter which reaffirms the Directors rights and obligations.

The Board's Charter sets its functioning rules. It complements the articles of association of the Company and serves as a reference for Directors in the organisation of their work. As mentioned this rules of procedure is strongly recommended although it remains optional.

The Board Charter aims to remind the rights and duties of Directors in the exercise of their duties. It sets up clear rules of professional conduct which must be observed by the Directors..

If the content of the Charter is not legally standardised, usually it states the following (non-exhaustive list):

- The mandatory executive fields of the Board in relation to general management;
- The role of the Director, his freedom of action;
- The rights and obligations of the Director;
- The separation of powers between the Chairman of the Board and the General Manager where applicable;
- The frequency of meetings of the Board;
- The rules of setting the matters on the meetings' agendas;
- The rules on the communication of documents intended to the members of the Board;
- The obligations of information confidentiality;
- The rules of appointing the Secretary of the Board;
- The procedures for drafting and publishing the minutes of meetings of the Board and their validation;
- The existence of the Board Committees, their duties, and operating modes;

- The arrangements for the remuneration of Directors;
- The rules of assessment of the Board’s performance;
- And others.

Establish under the authority of the Board of Directors a Charter that sets the rules of its modus operandi, particularly as a collegiate body. The Charter complements in its practical aspects the Company’s Articles of Association and serves as a reference for Directors in the organisation of their work. It is regularly updated to take account of developments in the Board would in its mode of operation. It reminds the rights and duties of Directors.

7. Directors qualities, rights and duties

a) The Director

Here are some personal qualities and obligations of the Director: independence, honesty, ethics, loyalty, probity, integrity, professionalism, sound faith, diligence and courage.

The Director shall contribute through his skills and professional experience to the Board’s duties work and discussions (availability, attendance, involvement, a duty to express personal questions and views, freedom of opposition).

The Director shall carry out full freedom of analysis, judgment, decision and action. He must have a proactive capacity to identify risks and strategic challenges.

The Director represents a vote in the Board (the Chairman is entitled to a casting vote when no majority is reached), except if it is clearly mentioned in the by-laws.

The Director shall attend the General Assembly, convened by the Board.

The Director must limit the number of his mandates to be fully available, bearing in mind that being a member of a Committee of the Board is a significant and demanding task.

As previously mentioned the renewal of the members of the Board must be carefully prepared, taking into consideration the age (age limits are specified in the Charter) the seniority of some members, new competent members and new generation members, particularly in family businesses. In this context, the gender balance must be sought and anticipated; Independent Directors must be sufficiently available.

In addition, in order to ensure the independence of the Board with regards to Directors, sound practices of Governance recommend the presence of Independent Directors within the Board. Subject developed separately in chapter 14.

b) Balance within the Board

During the first years of existence of a company, the shareholders controlling its capital may be uncomfortable to “invite” the Independent Directors.

They may not be ready to share with outsiders sensitive information on the Company and the powers of decision. Thus the Board often consists of other important shareholders, members of the family or close friends.

However, knowing that Directors must mainly show integrity, competence, and be active, present and involved and should the balance of needed percentage of Independent Directors may not be reached, it is important to have within the Board a significant proportion of independent Directors who can respond to market expectations and improve the quality of the deliberations.

The independent Directors shall be half the members of Board in dispersed ownership companies without controlling shareholders. In controlled companies, the proportion of Independent Directors should be at least one third.

c) The duties of the Director

Here are some major points relative to the principles of behaviour mentioned in the Board Charter:

- Respect of social interest, without being influenced; resistance to pressure;
- Respect the interest of the company, its reputation;
- Respect the confidentiality of the discussions and decisions, duty to exercise discretion, preserve secrecy;
- The Board addresses the other stakeholders with one voice, that of the Chairman;
- Non disclosure of inside information;
- Obligation to refrain from making transactions on the stocks at certain times;
- Actor in the quality of work of the Board and of its added value, seeking greater efficiency of the Board's work, improvement of the functioning of the Board;
- Duty to warn the Chairman on elements known by the Director and that might affect the interests of the Company;
- Declaring any potential conflict of interests, business relations; duty to inform the Board and abstention in participation in debates and decisions;
- Participation in at least one Committee of the Board;
- Paying attention to agendas of meetings and proposals;
- Request information if necessary, particularly in the context of meetings but also in the normal course of activity of the company.

d) Directors' rights

The following points should be adopted in the Charter or in the Regulations of the principles of behaviour which appear to be relevant:

- The Company shall hand the Director, within reasonable deadlines, information relative to the current affairs of sound corporate governance practices, and the proceedings of the Board (the file of the Committee), nevertheless the Director is entitled to request this info if not handed in timely date.
- Knowledge of the company, training on professions, and meetings with the managers.

e) The remuneration of the Director

Sound practices encourage the remuneration of the Director for his added value to the company.

The remuneration of a Director is linked to his presence, contribution and to civil and criminal liability that he shows by attending meetings of the Board. In addition, the preparation of a Board's meeting may require one or more working days depending on the extent or complexity of the agenda.

The remuneration of a Director in the form of "fees" may be discussed and negotiated by mutual agreement between the Chairman and the persons concerned, in the light of experience and the skills required. The total amount of fees, adapted to the financial situation of the company and its size, is approved at a General Meeting.

In the context of a GA and distributed by the Board of Directors between members, the remuneration of a Director generally consists of a fixed part defined on an annual basis, plus, if necessary, a variable part depending of the time spent or additional services.

The remuneration should reflect the expertise of the Director and the time devoted to his mandate, vary according to the importance of the functions performed by the Board and be as simple and as transparent as possible with regard to the shareholders. The amount of the fees depends on the size of the company in relation to other comparable companies or with the market rate.

The remuneration may be supplemented by a reimbursement of costs incurred by the administrator or a flat-rate allowance.

Remark: to motivate the Directors, it is essential to ensure a favourable environment that allows for productive meetings leading to understanding the strategic challenges and the decision-making process.

Build a balanced Board, with responsible, available, complementary and experienced Directors for different and complementary experiences, with a share of Independent Directors and a balance of gender in members.

Identify potential conflicts of interest in the framework of an annual statement of each of the Directors on all their activities and business relationships.

Ensure that the Board is regularly renewed in harmony and receives new Directors.

8. The management of the company and the creation of value

The managers have the responsibility for the day-to-day business development and performance. In this context, they must for example:

- Prepare the strategic decisions that the Board must validate, perspectives and budgets;
- Implement the strategy approved by the Board of Directors;
- Perform actions related to the Board’s decisions on investments, mergers and acquisitions, etc.;
- Respect all stakeholders (shareholders, employees, clients, suppliers, the State, etc.);
- Manage the treasury, open bank accounts and manage them safely (signatures);
- Sign contracts and other legal documents;
- Delegate powers and powers of attorney and transfer;
- Organise external communication (e.g. press releases, reports, etc);
- Organise talent recruitment and remuneration of staff and ensure stability;
- Put in place a system of internal control and risk management
- Control measures taken in the context of health and safety;
- And others.

The general management contributes to the enrichment of the company in the framework of its object and by respecting the stakeholders. The performance criteria, which are specific to each company and in the continuity of its operation, are defined in agreement with the Board. The latter is regularly informed of the activities in terms of value creation.

Trust is needed between the general management and the Board as in the rest of the company. This confidence is built (and can be easily destroyed) on rational and irrational factors. In any event, the Board should remain very attentive towards managers:

- The Board must play a positive and supportive role;

- the Board must not intervene in the day-to-day management;
- The Board must not play a police function except in the case of crisis;
- General management (in the broad sense) needs to be stimulated by a challenging “wise Board” which has a more comprehensive vision of company: the Board is the key player in governance.

9. The Chairman – General Manager

a) The Lebanese Law (Code of Commerce applicable in 2017):

The Board is chaired by a Chairman – General Manager, physical person, appointed by the Board of Directors from among its members.

As stated by his title, the Chairman – General Manager shall at the same time assume the functions of Chairman of the Board of Directors and General Manager of the Company, as the Code of Commerce of Lebanon still does not provide for a separation between the functions of the “Chairman of the Board of Directors” and “General Manager”.

However, Art 153 of the Code of Commerce allows the CEO to suggest to the Board the appointment of a Deputy General Manager” who according to the same Art. 153, would serve the Chairman under his own personal responsibility.

In addition, Art. 153 Code of Commerce grants to the Chairman – General Manager the power to to establish consultative committees responsible for the study of specific questions referred by the latter. However, the opinions delivered by these committees are not mandatory and may bind neither the Chairman – General Manager nor the Board of Directors, notwithstanding any clause to the contrary in the statutes.

According to Article 157 paragraph 2 of the Code of Commerce: “The Chairman of the Board, and possibly the General Manager pursuant to subparagraph 4 of Article 153, represent the Company towards third parties, assume the day-to-day business of the Company, as determined by the statutes or the practice, under the supervision of the Board of Directors [...]”.

The law does not specify a clear outline of the concept of day-to-day businesses. Decisions and current business could be determined by the articles of association and, depending on the type of activity of the company and the company objective. Lebanese case-law defines “current business as the operations [...] that are likely to aim to meet the company’s objective and require, in view of their urgency and repetition, a speedy management which would not be done in a Board deliberation.”

As mentioned previously and even though the Lebanese Code of Commerce does not provide for the separation between the functions of the “Chairman of the Board of Directors” and “General Manager”, it is worth exploring the conditions for a possible separation.

As to the choice of options in the organisation of management and control powers, the first principle to be applied is transparency. Therefore, it is essential that shareholders and third parties are fully aware of the chosen option between the separation and the unity of functions of the Chairman – General Manager.

The Chairman of the Board shall organise and lead the work of the Board of Directors and reports to the General Assembly and implements its decisions. He ensures the smooth functioning of the company’s departments and makes sure Directors are able to fulfil their mission.

The proponents of the separation of powers generally adopt the hypothesis that the “separated” role of the Chairman and the General Manager is fundamental, as it constitutes a balance of power with the general management. In fact, it is up to the Board to decide on the most appropriate form of governance for the Company.

The French “Institute of Directors” identifies the advantages and limits of each of the options:

b) **Board of Directors with a Chairman – General Manager**

Advantages :

- Strengthening operational efficiency with better co-ordination of operations within the group;
- Simplification of the decision-making process;
- Responsiveness to the competitive environment;
- The strengthening of cohesion between the strategy and operational function;
- Close relationship between managers and shareholders;
- Unity of command internally and externally (better readability and ease of internal decision-taking);
- Logic of the manager entrepreneur.

Limitations :

- The leader’s actual capacity to hold dual responsibilities between management and operation and as to his audit mission at the Board’s level;
- Director-shareholder enhanced link may limit the consideration of the interests of other stakeholders (employees, customers, suppliers);
- Availability of the Director to fulfil his tasks of Chairman of the Board (Board coordination, management of shareholders, etc.);
- Non-compliance with governance practices relating to the separation of the functions of management and control;
- Risk of lack of open debates in the Board of Directors.

c) **Board of Directors with separation of functions of Chairman and General Manager**

Advantages :

- Reinforced capacity in running the debates of the Board, managing the shareholders, the general assembly, and Directors;
- Monitoring the correct operation of social bodies and implementation of corporate governance practices;
- Representation of the interests of shareholders irrespective of the executive power;
- Focus on and accountability of the General Manager on his executive role;
- Improved compliance with governance practices relating to the separation of the functions of management and control;
- Clear distinction between the functions related to strategic orientation, decision-making and control (Board) and operational functions and executive (General Management);
- Improvement of the functioning of the Board through the presence of a person exclusively to preside it;
- governance format suitable for companies with a significant family shareholding, and the progressive succession of a CEO;
- Balanced allocation of powers allowing limiting the isolation of the Director and by fostering a dialogue between equals.

Limitations :

- Governance format based on the quality of the relationship between the Chairman and the General Manager and their respective prerogatives;
- Method often used as a transitional measure to facilitate the process of succession to the head of the Company;
- Appointment of former CEO at the head of the Board of Directors is considered by some experts contrary to the principles of governance where it is recommended to call upon an independent Chairman;
- distribution of roles poorly described by law and needs to be refined in the Charter in a very operational and concrete way, that must be adopted by the Chairman and the General Manager;
- Mode of governance which operates provided there is sufficient space for specific assignments at the Board level (management of shareholders, major risk management, etc.);
- Separation of powers may raise some issues as to the representation towards third parties: Who's the "Boss"?

It does not seem necessary to systematically request the separation of functions and responsibilities of the Chairperson of the Board of Directors and the General Managers, especially as the separation of functions is not the only solution allowing for a certain balance within the Board.

It is important to leave it to the Board to choose between the meeting or the separation of functions of Chairman and General Manager. The balance of powers with the General Manager is unquestionably a legitimate and important question, and the separation of functions cannot be seen as a single concept of governance and disregard the reality of the operation and the specific needs of companies.

Other mechanisms to ensure effective participation of members of the Board and of the "challenging" General Manager independently, contribute to ensuring the desired balance more effectively yet. A proper functioning and work of the Board Committees, consisting mainly of Independent Directors, free to set the agenda of their meetings, are elements that ensure the separation of powers between the Chairman and the General Manager.

Specify, in the 'Board Charter', when it exists, the responsibility of the Chairman in preparing and running the objectivity of any meetings of the Board which has the power of control and subsequently in the formalisation of decisions taken and the follow-up of them. Define the role of the Chairman in dealings with third parties and stakeholders when it speaks on behalf of the Board and the company in certain cases.

10. The Board Committees

a) Principles and role

The role of the Committee shall be to prepare and facilitate the work of the Board; it does not take decisions.

It is free to set its agenda provided that the items of the agenda are within its prerogatives as such mentioned in the Board's Charter.

It is the Board which decides to create committees, their composition (recommendation: 3 to 4 Directors) and their tasks. The Board shall ensure that documents relevant to their work are put at

their disposal and that they have the opportunity to meet the concerned Directors or experts when necessary.

The number of meetings of a Committee must match the needs and availability of the executive Directors, it may be limited to 2 to 4 per year, and its Secretary shall draw up the minutes of the meeting which is the subject of its Chairman's address in the meeting of the Board. The Report is available to Directors; it may be annexed to the Board minutes.

The existence of these Committees should be without prejudice to the collective responsibility of the Board of Directors. They provide a preparatory work, but do not have the power to take any formal decision.

b) The Audit Committee

In the framework of the activities of the Board, it shall be responsible in particular for:

- The annual accounts and its consolidated accounts if any in conjunction with the Financial management and the auditors;
- Monitor the financial reporting process;
- Monitor the effectiveness of the internal control systems and risk management;
- Check that the rules on conformity and compliance are fulfilled on the basis of clearly established and well known rules;
- Monitor the independence of auditors.
- In the case where there is no Risk Committee, inform the Board of any substantial risks in the decisions it takes.

c) The Nominations and Governance Committee

It may address the following key tasks:

- Applications from new Directors, as an Independent Director;
- Exercise of the General Management;
- The proposal for the appointment of the General Manager;
- The procedure for preparing plans of succession of senior executives;
- Compliance with the Code of Governance sound practices;
- Governance issues linked to the operation and organisation of the Board;
- The conditions under which the periodic assessment of the Board is carried out;
- Reflections on the Committees responsible for preparing the work of the Board;
- Updating the Board's Charter.

d) The Remuneration Committee

It may address the following key tasks:

- The fixed and variable remunerations of the Chariman of the Board and the General Manager;
- The scope of the allocation and distribution of attendance fees;
- The establishment of long-term incentive plans;
- The human resources policy (social relations, diversity, recruitment, talent management, loyalty, etc.);
- The rules of sound ethical conduct (respect, integrity, etc.).

Clearly identify the needs of the Board in the process of creating the Board's Committees. Define the mission of each Committee and the extent of its work. Ensure the availability of members of the Committees. Ensure that the Committees' proposals are subject to discussion and that they account for their work in a formal way.

11. The minutes of the meetings

The drafting of minutes of meetings and their signatures by the concerned directors constitute a condition for the validity of the Board's decisions.

The minutes shall constitute a working tool for Directors. Its consultation allows them to register their debates over and over ensuring thus a continuity and coherent long-term follow-up of their decisions.

In addition, the report must assess the share taken by individual Directors in the decision-making process, in the case where the liability of Board members would subsequently be sought. Disputes and questions of Directors should be recorded accurately which will define where appropriate the individual responsibility of members of the Board.

The draft minutes shall be forwarded to members before the meeting at which it is adopted. It is then carefully reviewed and the text is compared with the member's own notes. Each Director may check that his declarations and position have been accurately and clearly referred to. If that were not the case, he should not hesitate to request a correction of the draft.

In particular, in all cases in which a member has decided to withdraw a decision, it is wise that the opposition is expressly mentioned in the minutes.

Where an administrator is unable to attend one of the meetings, he still has the opportunity to make observations, at the next session, at the time of the approval of the minutes of the meeting in question.

Because it can happen that the minutes refers more to reflect a consensus than to report accurately all the positions expressed, particularly when they were too far apart, it is up to the Director to maintain both a written record of his interventions and all of the documents which had been sent to him in order to be able to justify a possible request for rectification. In the case of complex or sensitive subject, the Director may also express his position in a few lines and to hand them to the Chairman. Thus, his position will be reflected accurately in the minutes.

With regards to the meetings of Committees, the drafting of any minutes is not legally required. However, it is sound practice to systematically have written minutes, particularly for the audit Committee. This is all the more important as the Board takes the responsibility attached to the tasks of the Committees.

Draw up a draft Minutes of Meeting at the end of each Board meeting, including a list of the Directors present or represented, and of possible guests, agenda, decisions taken, under which conditions. Obtain formal approval of the draft at the next meeting of the Board in advance and in sufficient time to address all Directors. Detail the minutes according to the expectations of the Board. Ensure archiving of the minutes, which is a confidential document, in optimum conditions of safety.

12. The training of Directors

In order to fulfill their individual and collective mission, the Directors must be able to get to the depth of the files that are entrusted to them or that they get to examine. In case they are not equipped with the necessary technical knowledge of the company's activities, it is nevertheless essential to have them understand the main activities of the company, the stakes and the main accounting and financial principals that are applied. That is where certain training is needed.

The training of Directors is ensured by the company or by an outsourced body, it may be customized or in organised courses, and it will cover both law enforcement and the existing recommendations on sound corporate governance practices, the different fields of the company, its strategy and performance criteria. The Director shall be regularly informed of developments on those matters that are not raised by themselves.

The general training covers basic skills: ability to read and interpret accounts, know the legal rights and obligations of the Director, and others. These areas are evolving: even experienced Directors may deem it appropriate to update their knowledge. The Company may organise some training sessions or entrust specialised companies for that.

The company's own training is essential, since it allows for a better understanding of the context in which the Board decisions will be taken. It shall take the form of presentations to the Board by managers of main duties or in optional sessions on specific topics that are open to all members of the Board.

Aside from an additional acquired knowledge, training offers the opportunity for Directors, including those from outside the Company, to meet executives and identify future talent.

Provide systematic training to new Directors on the company's activity, its organisation, its history, the principles adopted in the framework of its economic and financial management and the level of performance. This basic training may be complemented by a training "à la carte" on specific aspects of interest for Directors.

13. The assessment of the Board's works

a) A sound practice

To achieve sound corporate governance, the Board of Directors must proceed to an assessment of its capacity to address the needs of the shareholders who entrusted the Board the management of the company; this shall be done through a regular evaluation of its composition, its organization and its functioning (which even implies review of the members of the Board). Therefore, each Board shall reflect on the desired balance of its composition and that of the Committees within, and whether the organization or the functioning matches the tasks on hand.

An annual evaluation is the most logical; since it meets the Board's working cycle. The evaluation within the Board requires a debate on the agenda of a Board's meeting.

b) The method

In order to have a successful evaluation of governance, we suggest the following six advices:

- The Chairman should be involved in this process to obtain feedback on the efficiency of his own management of the Board;
- The use of a questionnaire allows an objective evaluation and assessments made by the Directors, all the more in the case of possible qualitative interviews. Examples of questionnaires/interview guides are available and may be obtained upon request;
- The guarantee of the confidentiality of individual evaluations and data collected from each Director;
- Avoid anything that refers to a ‘rating system’ may it be individual or collective;
- Particular attention should be given to the assessment as to cooperation with the management of the company;
- A meeting of the Board specially dedicated to this subject is to be organised to gather the reactions of Directors, but also to raise a collective discussion on any shortcomings detected and, primarily, on the solutions to implement because it is important to know what to do with the results of the evaluation.

Improve the quality of the work of the Board of Directors and its Committees including, if possible every year, an examination of the conduct of its works. The principles and the form of this evaluation must be formalised in the Board’s Charter. A particular issue is on the agenda of a Board meeting and give rise to discussion. The findings of the evaluation shall be regularly monitored regarding the application of the envisaged progress.

14. The Independent Director

An independent member of the Board shall be a member free of interests who helps through his competence and freedom of judgment, the Board to carry out its tasks. In order to be characterized as an independent member of the Board, this member must not be in a situation that could impair his independence of judgment or put him in a situation of actual or potential conflict of interest. An independent member justifies his competencies by his professional career and not by being close to a Director to the shareholders.

By definition, a Director is independent in so far as he represents all the shareholders and his decisions are taken in the public interest.

Generally, here is a formal list of criteria that may prevent the Independent Director to be placed in a situation of conflict of interests with the company or any company of the group:

- No employment relationship or management function;
- Not hold a dual mandate;
- Not be or represent a substantial shareholder;
- Not to be or to represent in any significant manner from, a commercial or financial partner, a stakeholder, a consultant;
- Not having a close family tie with a Director/major shareholder;
- Have no special relationship with the latter (common interest networks, shared interests, etc.);
- Not sit a member for a long period: it is recommended that the independent member of the Board is not, for example, member since more than three terms.

When the Company does not abide by this recommendation, it must explain its reasons.

As for the more subjective criteria: the competence and experience of the Director, his strong character and independence of mind, his working conditions. In the latter, three issues deserve

particular attention: allocation of own resources of the Board; facilitation of access to information for members of the Board; organisation of debates respecting the work of Directors with a faithful and transparent reality transcription.

The more external and independent the “Director”, the more he is likely to have an objective judgment on the executive decisions without being biased. But he will inevitably be less aware of true facts in the company, its facilities or its specific abilities that only “the internal members” may be familiar with. Therefore, what is gained by the objectiveness is lost in the true knowledge of the company’s specificities. Therefore, effective control serves as a balance of the needed number of internal and external members in order to ensure equitable judgments based on a more or less extensive knowledge of the company.

15. The Secretary of the Board

The implementation of the principles of governance, defined according to sound conducts codes or recommendations when no text of law is available, cannot be developed without the presence of another function accompanying the Chairman that follows closely the sound practices and their implementation in both form and substance.

The Secretary of the Board of Directors must have the means to fulfill his / her role (as specified in the Board Charter); he/she is the guardian of compliance and the promoter of mutual governance to ensure the quality and validity of decisions taken by the Board particularly in the area of strategy. The Secretary shall ensure the balance of power within the organization.

In the context of a balanced, harmonious and with regular renewal of its members, the Secretary contributes to the successful integration of the new Directors and responds to their requests for training. He shall inform them of their rights, duties and obligations.

The Secretary manages potential conflicts of interests according to specific procedures. He shall ensure that regulated agreements are well identified and recorded.

The Secretary shall ensure that the Board’s Charter, of which he is often the initiator in conjunction with the Legal Service, covers aspects relating to missions and competencies of the Board, the rights and obligations of Directors, the functioning of the Board, the Board Committees and the remuneration of Directors.

Appoint a Board Secretary responsible for the application, in the context of the law, sound corporate governance practices, particularly those relating to the quality of the Board’s work, seriousness of the decisions taken collegially and control of economic and financial performance.

Formalising the role of Secretary in the Board’s Charter and grant the the necessary means to fulfil his mission independently.