

The director's information

The director's information proves to be necessary to perform the functions, escape liabilities and discharge the duties imposed on the individual director. To prevent the anarchy, the given information must find its own limits in these same grounds.

Contrary to the Tunisian law, this idea is well established in the corporate governance in which, these same grounds and limits are inherent to its logic.

This necessity cannot be denied in the Tunisian law, but it's not expressed by any text.

To carry out this director's information, there must be recourse to different means. These means constitute at the same time, the elements stressed on by the corporate governance. Some of these means can be found in the Tunisian law, even if they do not tend directly to concretise the director's information.

However, the carrying out of the director's information can be faced with some obstacles. To go beyond them, the corporate governance is based on a logic and some principles that permit the remediation to these obstacles. A similar logic can be encountered in the Tunisian law, even if such similarity is involuntary.

Therefore, it can be said that the director's information is really and well consecrated in the American corporate governance, a little less in the English one and totally ignored in the Tunisian law. In deed, the principles of the corporate governance deal with the director's information, found it, organize it and protect it. These elements are less apparent in the CC. However, in the Tunisian law, no text consecrates the director's information, neither as a right nor as obligation. Consequently, it's a little difficult to deal with the director's information in the Tunisian law as a matter of fact. All what one can wish is that the courts consecrate this information as happened in the French law, before the NRE, especially that the texts don't deny this possibility.

In the end, there must be noted that in the country in which one is waiting for more respect of the director's information, the overtaking still continues to take place. This overtaking may be illustrated through two main recent cases: the "Enron" case and the "WorldCom case".

The first one took place in December the 2nd, 2001. It concerns the bankruptcy of "Enron", the number one in the world of the brokerage in energy. This bankruptcy is explained by different factors; the main one is the elementary corporate governance rules diversion. Among these elementary rules, there is the "*failing of the directors' information*". In fact, if this information is insufficient or is falsified, the director cannot well control the corporation. This is what happened within the Enron Corporation. Thus, this information's hiatus led to the bankruptcy.

The second case took place in March 2002. It concerns the bankruptcy of the famous corporation WorldCom. In this case, the Arthur Anderson audit cabinet is at the heart of the scandal. "*After have been recognized guilty of hindrance to the justice in the Enron case to have destroyed documents dealing with the accounting of the group, the cabinet also had established the accounts of WorldCom in 2001 and in the beginning of 2002. Carelessness? Anderson tried to sweep the critiques immediately by accusing the financial manage of WorldCom to have hidden him important informations*", therefore, he couldn't communicate a complete and reliable information to the directors.

Consequently, it could be said that, the American corporate governance is the most important doctrine that consecrates and deals with the director's information. This corporate governance is more explicit and clear than the English one, let alone the Tunisian law. Moreover, this doctrine has become a well-established practice for more than a decade. Nevertheless, all these facts haven't prevented the reproduction of these recent scandals of "World-com" and "Enron".

Therefore, what really counts is not the text but rather the awareness of the practitioners and responsables about the importance of the director's information in the business world.

Such a matter leads to wonder about the efficiency of the texts dealing with the director's information.

Moreover, these deviances lead to say that the Anglo-American corporate governance is not the model to be followed by the Tunisian legislator, but it's an example to be considered by him in the director's information issue.