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AN INVESTIGATION OF CORPORATE GOVERNANCE REGULATIONS. A COMPARISON BETWEEN US AND FRANCE CASES

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ABSTRACT
This article presents an investigation of corporate governance regulations, specifically focusing on a comparative analysis between the United States and France. Corporate governance plays a crucial role in shaping the behavior and accountability of corporations, as well as safeguarding the interests of shareholders and stakeholders. By examining the regulatory frameworks in both countries, this study aims to identify similarities and differences in corporate governance practices, assess the corporate governance regulations employed in France and the United States of America.
The study provides a strong foundation on assessing the global investments models and demand for transparency in the management drive for the adoption of modern corporate governance approaches, with many companies being family-based business across the countries, their scale of the breadth has grown in the extent of increasing the seeking of capital outside the company. This hence necessitate the satisfying of the corporate governance standards likely to be the source of competition and the conventional model to be employed in the adoption of the quick standards that can enable the companies realize the corporate governance.

1. Introduction

Corporate governance regulations play a vital role in shaping the behavior, accountability, and transparency of corporations worldwide. As corporations continue to exert a significant influence on economies and societies, effective governance frameworks are essential to ensure the protection of shareholder interests and the sustainable growth of businesses. This article aims to investigate and compare the corporate governance regulations in two prominent economies: the United States and France.
The United States and France represent contrasting models of corporate governance, each shaped by their unique historical, legal, and cultural contexts. The US has long been recognized for its market-oriented approach, emphasizing shareholder value and providing a wide range of regulatory mechanisms to ensure transparency and accountability. France, on the other hand, has embraced a more stakeholder-oriented approach, emphasizing the involvement of various corporate stakeholders and highlighting social responsibility alongside shareholder interests.
By delving into the corporate governance regulations of these two countries, this article seeks to shed light on the similarities, differences, and their implications on corporate behavior and performance. It will explore the legal and regulatory frameworks that govern corporate governance practices, examining key legislations, codes, and guidelines. The roles and responsibilities of corporate governance actors, such as boards of directors, executives, shareholders, and regulatory bodies, will be analyzed in depth.
Furthermore, this investigation will assess the mechanisms established by each country to ensure transparency, accountability, and ethical conduct within corporations. It will examine disclosure requirements, board composition and independence, executive compensation practices, and the mechanisms in place to protect shareholders' rights and facilitate effective corporate decision-making.
The article will also delve into the impact of corporate governance regulations on corporate performance and financial outcomes. By reviewing empirical studies and case examples, it will explore how differing governance practices influence firm valuation, profitability, risk management, and long-term sustainability. This analysis will provide

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valuable insights into the effectiveness of corporate governance regulations in promoting desirable outcomes for businesses and stakeholders.

2. Literature review

The chapter provides an insight of the reviews of the literature concerning the corporate governance regulations, their application, and the application of the regulations for the enhancement of the performance of the organizations.

2.1 Corporate Governance regulations

Corporate governance reform plays a significant role in creating an attractive investment environment for both domestic and foreign investors, while also maximizing the societal benefits of investments. The OECD Principles of Corporate Governance highlight the growing importance of observing good governance principles in investment decisions, especially considering the international nature of investments. The ability of companies to access financing from a larger pool of investors through international capital flows necessitates credible and internationally accepted corporate governance arrangements. To fully leverage the advantages of the global capital market and attract long-term, patient capital, countries must establish governance practices that are well understood and adhere to internationally recognized principles (Ali, 2014).

2.2 Legal, regulatory and institutional framework

A robust corporate governance framework relies on a solid foundation of legal, regulatory, and institutional structures that provide certainty and reliability for all market participants. This framework encompasses various components such as legislation, regulations, self-regulatory mechanisms, voluntary commitments, and business practices, with the specific balance determined by a country's economic circumstances, history, and traditions. It is essential for the framework to adapt and evolve over time to reflect new experiences and changing business dynamics. Additionally, it is crucial to evaluate the domestic framework in light of international developments and requirements.

While a sound legal framework is important for corporate governance, it alone is not sufficient for ensuring effective functioning of capital markets. The regulatory and legal environment in which corporations operate significantly impacts overall economic outcomes. A comprehensive approach that includes laws, regulations, and private arrangements to protect shareholder rights and ensure fair treatment of stakeholders is necessary. However, the strength and effectiveness of these measures depend on the broader implementation and enforcement environment.

2.3 Equitable Treatment

Equity investors possess specific property rights that allow them to participate in the profits of a publicly traded company. These rights include the ability to buy, sell, or transfer equity shares and to obtain information about and influence the company through voting at shareholder meetings. These rights have inherent economic value, and investors require confidence that their entitlements and purchased rights are recognized and protected. The ownership structure of a company has significant implications for the corporate governance framework, with major shareholders often controlling most companies, sometimes through differential voting rights or complex ownership structures. Poor corporate governance affects all shareholders, resulting in lower valuations, limited access to equity finance, and challenges related to succession planning and accessing external talent. Additionally, the broader economy suffers from reduced productivity due to less efficient allocation of investment funds (Baydoun, 2017).

2.4 Protecting Shareholder Rights

Corporate activities that involve conflicts of interest should prioritize the interests of all shareholders and offer effective methods for addressing grievances. The confidence of shareholders and potential investors is strengthened when the legal system provides accessible mechanisms for shareholders to bring lawsuits without excessive costs or delays. A robust judiciary acts as a credible deterrent against the abuse of shareholder rights. Weak judicial systems with lengthy and unpredictable legal processes discourage shareholders from pursuing their rights and deter potential investors. Additionally, companies can prevent abusive violations of shareholder rights by ensuring full disclosure of material related-party transactions to the market, including information on whether such transactions were conducted at arm's length and on normal market terms (Denis, 2016).

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2.5 Shareholder influence

Participation in general shareholder meetings is a fundamental right of all shareholders, both foreign and domestic, that is critical to their ability to influence the company. The procedures for notification of shareholder meetings and for casting votes should be designed to facilitate and encourage participation. This requires, inter alia, timely notification and voting systems that enable shareholders to engage in the decision making process at reasonable cost (Mallin, 2010).

2.6 The role of the board and the rights of stakeholders

Boards have a duty to act in the best interests of the company and its shareholders, while dealing fairly with other stakeholder interests, including those of employees, creditors, customers, suppliers and local communities. Corporations should recognize that the contributions of stakeholders constitute a valuable resource for building competitive and profitable companies, contributing to the long-term success of the corporation. The rights of stakeholders as established by law or by mutual agreement should be respected. Regardless of how the board members are chosen, in order effectively to fulfill their responsibilities, they must be able to exercise informed, objective and independent judgment, acting as representative of all shareholders (Solomon and Solomon, 2004).

2.7 Voluntary private initiatives

In dealing with corporate governance issues, countries use a varying combination of legal and regulatory instruments, voluntary codes and initiatives, depending in part on history, legal traditions, efficiency of the courts, the political structure of the country and the stage of enterprise development. Many countries, hoping to minimize compliance costs and to provide greater flexibility within a market framework, have developed and sought to promote greater use of voluntary codes and initiatives to improve their corporate governance. Some countries have also sought to implement their codes through "comply or explain" provisions that do not require compliance, but require an explanation when the provision is not followed. In some countries, stock exchanges have imposed corporate governance requirements through their listing requirements. Corporate governance institutes or institutes of boards of directors have also been established in many countries, with an aim to promote awareness and to train directors to understand better corporate governance objectives and requirements.

3. METHODOLOGY

3.1 Research Design

The study employed a descriptive literature survey design**;** the study was employed a qualitative approach particularly focusing on documentary review. The qualitative approach is preferred because it has an unraveling capacity to generate data that has richness, depth, nuance, context, multi-dimensionality and above all complexity in examining cross-contextual generalities. Qualitative research also includes several research strategies; which are flexible combinations of techniques to obtain valid and reliable data (Bogdan and Knopp Biklen, 2006).

3.2 Data sources

The research conducted was a secondary data analysis that examined the application of corporate governance regulations in France and the United States. The study primarily reviewed relevant documents and cases in both countries to gain insights into the topic. The research focused on policy documents related to corporate governance regulations, including ministerial and documentary information.

3.3 Data Collection Instruments

The study will utilize a documentary review as the primary data collection method. The researcher intends to use a notebook and pen to gather information from relevant documents. Specifically, the study will focus on policy and regulatory instruments related to corporate governance. These documents will be carefully reviewed to extract the necessary information for the authors of the study Ethical.

3.4 Data Analysis

The analysis of the data was basically thematic analysis were the information was analyzed according to themes. The data analysis was provided through re-reading the text of the collected data. Key themes and patterns that address the research questions were identified and organized into coherent categories to help in summarizing and bringing meaning to the collected data. The outcome was presented in form of content analysis after comparing and crosschecking of the collected data for accuracy and correctness using triangulation and holistic view.

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4. Presentation and Analysis of results

4.1 USA

The United States of America is defined as a common law country, with the particularity of being a federal country. First governing principle of the United States legal system, the common law is different from the civil law by having a focus on case law and a casuistic approach opposed to the abstract approach of civil law systems. The judge will have a centrality in the legal system that will not have the judge from civil law legal systems that are reduced as "the mouth of the law only and not its actor, thinker (Kaplan & Holmstrom, 2001).

Second particularity of the United States, federalism can be defined as a "system of government in which the authority to govern is split between a single, nationwide central government and several regional governments that control specific geographical areas. The United States have a written Constitution at the Federal level but each of the 50 states that composes the U.S also do have their own Constitutions having therefore a Supreme court in each State and one at the Federal level. Federal system is competent upon U.S constitutional issues, Federal statutes pass by the Congress, and regulations made by Federal agencies such as the SEC (Security and Exchange Commission) or the FTC (Federal Trade Commission). All the other legislation is left to the states such as organization of family rules and divorce or business organization. Hence, the law can vary a lot from a state to another in the United States of America (Lusk, Halperin & Bern (2008). It exists the doctrine of implied powers that will extend the authority of the federal government to rule on a particular area of the law that is not clearly defined as relevant of the federal power in the Constitution. The most famous implementation of the implied powers doctrine is the one of the Interstate commerce clause.

Therefore, business organizations must deal with several rules both at state level and at federal level. Still the federal government delayed much of the organization of the corporate law to the state level, each one having its own rules (Morck & Randall, 2003). The Federal government only put minimum standards for trade in company shares and governance rights such as the Security and Exchange Act of 1934 or the Sarbanes-Oxley Act of 2002. Other initiatives arise in order to give uniformity to American corporate law such as the American Bar Association's MBCA (Model Business Corporation Act) of 1950 that propose standards for corporate law that states can tailored to suit their particular needs. Followed in 1984 the RMBCA (Revised Model Business Corporation Act) that is now widely adopted throughout the U.S. Still it is not a mandatory model and some states are still using different rules such as Delaware

The Delaware State is a pro-corporation state as half of the publicly traded corporations in the U.S are incorporated in the State of Delaware. The state isn't following the RMBCA and has more pro-business rules such as no state income tax if the business is conducted elsewhere than in Delaware, limited liability for directors, no need to hold meetings in persons for the directors… Moreover, the State of Delaware's Court of Chancery is worldwide renowned since 1792 for its expertise on business cases. Former Chief Justice Rehnquist even stated that "the Delaware state court system has established its national preeminence in the field of corporation law (Lewis Black, 2007).

4.2 France Overview

France is a Civil Law country and has most of its laws codified in Codes. The French law is both national with codified law and possible interventions from the Minister of Economy, and supranational, observing directives from the European Union. Hence, the Codified rules are embedded in the Civil Code (1804) and the Commercial Code (1807. These two Codes conditioned the general rules applicable to companies and also to corporations (Art. 1832 to 1873 of the Civil Code) and also special rules applicable to each type of business entity (*Livre II* in the Commercial Code and especially the articles L. 225-1 to 225-270 and L.242-1 to L.242-31 for the *Société Anonyme*) Other Codes exists such as the Monetary and Financial Code (CMF) but mostly complete the Commercial Code on specific issues.

4.3 Corporate Governance regulations in USA and France

4.4 Pre-incorporation in USA

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The pre-incorporation process in France is regulated by a formal regime given by the tribunals, the “company in incorporation. This means that the corporation is not yet registered in the Commercial and Corporate Charter (Registre du Commerce et des Sociétés) of the regional area of which the Société Anonyme has chosen to incorporate in France. Hence the corporation doesn’t have any legal personality and cannot act on the legal world (cannot conclude contracts, sell products. The Pre incorporation process will include several steps such as raising money, setting up a business plan, finding shareholder and confirm the will to conduct business together. Indeed, the associates of the Société Anonyme make an act of will to do business together, as the spirit of the article 1832 of the Civil Code requires the *affectio societatis or the will to associate*, and will be bind by the Articles of Incorporations (Status) they will sign. The Articles of Incorporations are considered as a common contract while they are not registered under the rule of the article.

4.5 Pre-incorporation in France

As in France, the process of preincorporation in the United States is the precedent to the formal incorporation of the company and the beginning of its existence as a legal being with rights and duties. The preincorporation process will be, here too, the crucial step of raising money, setting up a business plan, finding shareholders, directors, managers, employee. The founders of the corporation are here called the promoters; they will also make all the expenses, decisions and contracts necessary on the behalf of the future created corporation. These preincorporation contracts in the United States also raise the issue of the contractual liability. The promoters will be held liable until the corporation is duly formed and possess a legal personality. Indeed, the corporation may, once it is registered, ratify or adopt the contracts made by the promoters on its behalf (McArthur, 1892)

4.6 Public Private Documents:

4.6.1 USA

The articles of incorporation are the starting point for the corporation legal life, and are a *prima facie* evidence of the corporation’s existence. They must include several information such as the name of the corporation (which should have been checked available and the, reserved among the states the corporation wants to do business in), the duration, the names of the associates, the purpose of the corporation (which must be lawful), but also items dealing with shares and their composition (common/preferred) and the registered agent for service process. This latter information is mandatory in order to file correctly the articles of incorporations, indeed the registered agent for service process is a physical person whom will receive lawsuits and documents on the behalf of the corporation in order to respect the fourteenth amendment of the Constitution and the Due Process Clause that the defendant (here the corporation) must be provided with adequate notice of any proceeding to be accorded finality as stated by the Supreme Court of the United States

4.6.2 France:

As in the U.S, some documents are mandatory in France in order to incorporate properly a corporation. The Status is the French equivalent to the U.S Articles of Incorporation. According to article 1835 of the Civil Code and the article L.220-2 of the Commercial Code the Status must be written and must include the name of the corporation, the name of the associates, the purpose of the corporation (that must also be lawful), the duration, the headquarters and the capital of the corporation. There is no need of having a registered agent for service process in France contrary to the U.S. The Statuts needs to be registered at the nearby Company’s incorporation Center which will transfer the demand of registration to the relevant Registry of the Commercial Tribunal. If the corporation fails to respect one of the legal obligations in the statutes, the company can be voided.

Under French Law bylaws (or Règlement Intérieur in French) are not a mandatory requirement in order to incorporate. It is more an at will document that will also stays private. Publicly traded corporations in France may be required to adopt bylaws as suggested by the soft law AFEP-MEDEF code but it is not a requirement even if for practical reasons and because it is much easier to change than the Statuts which would necessitate an extraordinary general assembly (or special meeting) of the shareholders and a vote in order to modify them (CA Lyon, 2014). Indeed it has been

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judged that is not possible for directors to change the Statuts by their own but they still can modify the bylaws without the consent of the shareholders which make them far more flexible.

4.7 Minimum capital requirement
4.7.1 France
Societé Anonyme is a capital society. Meaning it will have capital and especially a minimum capital requirement of 37 000 Euros. This minimum requirement is set to protect creditors if the corporation is going on liquidation. But still the former requirement for a reinforced minimal capital toward public offering Sociétés Anonyme of 225 000 euros has been suppressed in 2009. As a capital business organization, shareholders must make capital contribution either in "nature" or trough money when they start the business. The amount of money put in the company must be freed from half of its amount the moment the company is incorporated then the rest must be get back by the corporation through 5 years

The Société Anonyme is able to issue par value stock or to decide not to. If the Société Anonyme decides to issue par value stock, the amount of this stock must be written in the Status and it is impossible to sell below this amount a stock. Only the shareholders can modify this amount by modifying the Status. If the Corporation as issued all of its stock, it needs to raise the amount of the capital, an operation that needs to be validated by the shareholders in an extraordinary meeting or the shareholders can also delegate this ability to the board of officers under conditions.

4.7.2 USA
As in France, in the United States stock is authorized if it has been formerly provided for in the articles of incorporation. The articles of incorporation must state the classes of stock, the number of authorized shares (meaning the number of shares that could be issued), and the rights of each class of stock. Issues common to stock include dividends, liquidation rights, voting rights, conversion rights, and redemption rights. If a corporation issued all its authorized shares and it wanted to issue more, it would need to amend the articles to include more authorized shares (Andrei & Wolfenzon, 2002).

4.8 Stock and Equity-Debt Capital
4.8.1 France
French corporations can also issue common stock if these were allowed in the *Status*. These stocks are following the same applications than the one described in the United States Legal system having voting rights (Article L. 225-122) and having no privileges on the rank toward the payment of dividends or on the assets if the company dissolves. The French corporate law has aligned itself on the United States in 2004 (Ordinance of 24 June of 2004) in codifying the preferred shares (*action de preference* in French) to the articles L. 228-11 to L.228-19 in the Commercial Code. These preferred are vows to get a preferential rank in the payment of dividends, on the assets if the company is going to dissolve… They are some very adaptable shares in able to give special voting rights (Article L.228-11 al.2) or special rights to dividends originally destined to financial investors.

4.8.2 USA
As in the United States, French Sociétés Anonymes can go in debt in order to finance themselves, but this option has a cost (creditors interests) and can also have risk of conflicts with creditors ending to courts. The Sociétés Anonymes could then prefer to raise money through equity capital. Contrary to the United States, the shareholders will be less reluctant to allow the issue of new equities by an extraordinary assembly in France thanks to the article L. 225-132 of the Commercial Code. This article creates a preemptive right to the shareholder if any capital increase occurs on the new shares issued. This right is guarantee by the law and said irreducible, if a company voluntarily unknown this preemptive right then the attribution of the new share through the general assembly can be voided. Still this right can be suppressed if the shareholders have consented to or even sold. These possibilities left to the shareholders make them far more receptive to vote in favor of a capital increase by the issue of new shares than in the United States (Lusk, Halperin & Bern, 2008).

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4.9 Stock options and dividends

4.9.1 USA. While many corporations might prefer cash in exchange of shares, some could exchange shares against knowledge and labor in order to attract the best employees and especially the best managers. These exchanges are called stock-options as they are stock sold at a fixed price to the managers or another person. This price is known as the striking price. These stock-option are generally part of a "Management package" that's principal's aim is to get the manager more involved in the company, the price of his stock received being linked to the success of the company. Stock-options are even the principal form of compensation for CEO's in the United States (Richard, 2010). It is worthy to note that stocks are depending of the market value of the corporation, in financial crisis period of time, this way of compensation might not be the most favored one as the global market value will decrease and then the price of the company's stock.

4.9.2 France: In France, Stock options are codified under the article L225.177 of the Commercial Code. The issuance of stock-options by the Société Anonyme must be validated by an extraordinary general assembly after reports from the Administration council and the Certified accountant.

4.10 Investor Protection

4.10.1 USA

These stocks and the rights granted with them alongside with bonds and other titles are governed by investment rules in order to protect the investor, especially when these titles are offered to the public on the financial markets. As relevant to the interstate commerce it is the Federal government that rules about this subject throughout federal agencies such as the Security and Exchanges Commission. The SEC operates under the Securities act of 1933 and the Securities Exchange Act of 1934. The first statute provides for basic information toward the public, the registration of a "prospectus", through the EDGAR, system which is the document having these information, such as the stock options of the company, its ongoing litigations, its current operations, its financial viability all of them certified by a public accountant. If the corporation fails to properly register these information, it could be held liable for it. Corporations with a turnover superior to 10 of millions of dollars needs to do additional reporting. The Securities Exchange Act of 1934 regulates the annual report of the corporations, mandatory at least ninety days after the end of the fiscal year. Also, section 10(b) of the latter, prevent insider trading which is characterized by the possession of material information not available to the general public. Are also regulated at section 16(b) short swing profits earnings which are the making of profits by the selling of shares in the first 6 month after their purchase for a director or shareholder owning at least 10% of the company. If the Federal government is competent to rule the interstate commerce, intrastate commerce still belongs to the States. In order for a corporation to make an intrastate offer, the corporation must be a resident of the State, making at least 80% of its revenues in the State and the majority of the profits earned through the sale of the shares also in the state according to the Securities Act of 1933. Once the offering is intrastate, state rules apply. Most of the States have "Blue Sky Laws which are laws prohibiting the sale of valueless shares of a company to prevent shareholders to acquire a part of the blue sky.

4.10.2 France

The French authority regulating public offerings is known as the AMF (*Autorité des Marchés Financiers*) which is the French equivalent to the SEC with also, sanctions powers. The AMF is an independent administrative authority aiming to protect the investors and the public in general. Its independent character means that the authority is able to edict its own rules toward the market under to approval of the French Minister of the Economy (Article L. 621-6 of the Financial and Monetary Code). Such rules include the deliverance of a prospectus if the corporation is willing to make a public offer of its shares to the public; the prospectus similarly to the one mandatory to file with the SEC must include "complete and understandable information" according to the article L.621-8-1-1 of the Financial & Monetary Code. The AMF has also authority to pursue insider trading thanks to the article L.465-1 of the CMF. The fraud is characterized when someone has access to privileged information, unavailable to the general public, upon the company that is making the public offer and use this information or sell it in order to make profits. However, French officers and directors are exempt from the short swing profit recovery system of the article section 16(b), no such rule exists in French law.

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4.11 Type of corporate governance

4.11.1 USA

U.S Corporation, the supremacy of the One-tier system, In USA: Corporations, in the U.S, will have generally a board of directors that will control effectively the company, collegially, and officers being the administrative agents of the corporation. If the corporations are usually governed by a board of directors it is not always the case, some states don't require corporations to be managed by a board of director. Indeed as there is no any minimum of number of shareholders required to start the corporation, hence it would be difficult for a sole shareholder in a small corporation to assemble a board of director. The Code of Delaware admits expressively the possibility for corporations to choose another way of governance in Section 141(a) as said: "The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation. The officers, handling the day to day management of the corporation are also usually regulated by the bylaws of the company or by the board of directors. The MBCA of 2011 hold that: "A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

4.11.2FRANCE

On the other side, the French Société Anonyme it can choose its way of organization between a "traditional" one tier and a "German" two tier system. The first system, the one tier system is composed of an administration council and its President and a General Director. The first one is in charge of the administrative control of the company and over the action of the executive direction of the company of the General Director. Before 2001, the President of the administration council was also the general director of the company (PDG) but since the NRE law in 2001, there is the possibility to separate these functions. Indeed, has been criticized the fact that the organ of control was also the direction one. Some analysts saw the direct influence of the American law and the distinction between the board of directors and the officers, hence between the control power and the executive power Still, contrary to the U.S corporation and its liberty given in the choice of its own organization, the "traditional" or one tier system Société Anonyme has to be governed by an administrative council and a General Director The President of the Administrative council also needs to be elected accordingly to the letter of the law, as every other stipulation will be voided. This way of management of the company is the most popular among Sociétés Anonymes in France as we count 30 one tier system for each two tier system Société Anonyme. The two tier system has been copied over the German system in order to have a true and watertight separation between control and direction functions since 1966. Thenceforth, the Société Anonyme could have the choice between the two types of governance that must be written in its Statuts according to the article L.225-57 of the Commercial Code. This two tier system is composed of a Board of Directors also called Directoire and a Supervisory Board. The first one, is composed of a maximum of 5 persons (7 if the SA goes public), persons and among them a President elected by the Supervisory Board. Here again, the law prohibits any change and any provision made by the Status to the hierarchy of the Société Anonyme is considered voided. The Board of Directors is ensuring the direction of the company and is controlled by the Supervisory Board, but a director cannot be in the Supervisory Board other as in the one tier system allows it.

4.12 Director's Nomination and Removal

Directors and appointed Officers are the leaders of the corporation; also they are not necessarily shareholders. However they are elected by the shareholders following the bylaws or the article of incorporation. The first board of director will be usually elected by the incorporators at the organizational meeting or designated by the articles of incorporations. Then they will be regularly elected since the first shareholder's meeting and at the general assembly of the shareholders held each year. The officers will be appointed by the directors without any decision from the shareholders. However the officers can be removed by the directors or the shareholders at-will and not need a cause in order to do so. Directors are more protected by the American law. Thenceforth, bylaws are almost always mentioning the necessity to revoke with a cause the directors making it more difficult for the shareholders (Cozian & Viandier, 2013). The dismissal might also be judicial if the director is "engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation and removal is in the best interest of the corporation.

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4.12.1 France In France, the nomination is similar between the French Administrators and the American Directors. The administrators in a one tier system corporation are designated by the Status or by the incorporators after the organizational meeting and are in office until the first general assembly and the vote of the shareholders. The president of the Board of Directors is elected by the directors among them. Then the Status have to provide, since the NRE law, if the President of the board of directors will also occupy the functions of Chief Executive officer.

4.12.2 USA

4.13 Compensation

Usually compensations in the U.S are decided by a compensation committee composed from member of the Board of Directors, thus deciding of their own compensations. Still, the articles of incorporation or the bylaws can provide otherwise. The compensation of the Officers are also decided by the Board of Directors. The Say-On-Pay provisions of the Dodd-Franck Act allow the shareholders to vote on the amount on the pay package of the executives.

4.13.1 French:

The French compensation of the executives has also inherited the restrictions from the financial crises. Indeed since the Loi Sapin II executives' pay package from publicly traded Sociétés Anonymes are submitted to mandatory vote from the shareholders. However this conception is in contradiction with the Motte case of 1946 which is imposing a strict respect of the hierarchy of the organs in a Société Anonyme and a clear separation of powers hence the opportunity of the control of the executive's compensation is still questioned. Otherwise, the CEO from common Sociétés Anonymes have their compensations decided either by the Board of Directors or by the Supervisory Board (Loi, 2016). The Supervisory Board and the Board of Directors only receive attendance fees of which the price will be fixed by the shareholders in a general assembly

4.14 Duties / Liability

With great compensations come great responsibilities. This sentence can sum the duties related to the Directors that are multiples in the United States. These duties also apply to officers. The directors can be held liable for torts, crime, gross negligence or any break of the law, still there is special duties that apply to them. The first one is the duty of due care by which the directors are expected to run the company as an ordinary prudent director would have done. In Smith v. Van Gorkom the duty of due care due to the corporation and the shareholders is find breach by gross negligence from the directors who didn't even informed themselves about all the elements of a merger. In case of gross negligence, the directors will be held liable as even the business judgment rule can't apply. This notion, has been created in order to protect the liberty of decisions of the directors, still it cannot protect the directors against gross negligence. The fiduciary duty is very close to the notion of the Business Judgment, in Dodge v. Ford, the Business Judgment rule has been defined as to tend to the maximization of shareholders' wealth and cannot cover all the decisions of the directors if it is clearly seeable that the latter decisions were taken by forgetting this aspect. Here is the duty of loyalty, which prevent directors to compete with the corporation they work for but also prevent them from self-dealing as exposed in Guth v. Loft. Inc where the director has acted only toward his own interest and not toward the ones of the company he managed (Pierre-Louis, 2015).

France: In France, executive officers also have a duties and can also be held liable for tort, crime or gross negligence. The U.S law seen above has been of a great influence on the French corporate law such as the duty of loyalty. This duty isn't precisely defined by the Commercial Code but has been by the jurisprudence trough the *Vilgrain82* case in which the duty of loyalty towards the shareholders has been first recognized. It consists of a duty to act in good faith and to put the interests of the Company and its shareholders ahead of any interests persona might have.

4.15 Rights of stakeholders

4.15.1 USA

As investors, the shareholders have a right to information and inspect the documents of the company. This right is considered fundamental by many peoples and courts as the absenteeism is the main factor of decrease of the shareholder's power onto the corporation. Indeed the Delaware Supreme Court explains in Williams v. Geir that "the stockholders control their own destiny trough informed voting. This is the highest and best form of corporate

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democracy." The right of information is regulated by the federal government and also by the States and their common law. The Code of Delaware for instance grants the right to access copies of documents or to the list of shareholder as well as the MBCA recognize implicitly the right of information by making it mandatory for the directors to assemble a list of shareholders available prior to any meeting by the shareholders. However the American law requires a "proper purpose" for the shareholder to access this information, a purpose relative to "the shareholder's interests. The law of Delaware, more pro-business is linking directly the quality of shareholder to the right to have access to the company's information. If the company refuses to give access to these documents, it will have to prove the shareholder wasn't acting in his own interest. There is also a duty of information towards the shareholders arising from the duty of care and loyalty of the directors which must give updates to the shareholders about the company's activities.

4.15.2 France

Across the pond, the French law clearly exhibits several rights dedicated to the shareholder. The right of information, the right to participate, the right to obtain dividends and the right to sell or not his shares. The right to information of the shareholders in the Sociétés Anonyms is embedded in the Commercial Code and set as permanent and contrary to the United States, the shareholders do not need to have a "proper purpose" and personal interest to access to the company's document, which protect in a better way this right for the shareholders. The shareholders also have a reinforced right to information prior to each shareholders' meeting in order to exercise in the most informed way their right to participate in the company's decisions set at the article 1844 of the Civil Code. Hence, the right to participate includes the right to vote and exercise as in the United States an equal and free vote.

4.16 Meetings

4.16.1 USA: For a shareholder meeting to be valid, a quorum is necessary which the number will be determinate by the state where the meeting will be held. Before each meeting a notice will be sent to all the shareholders to inform them on the place, the time and the purpose of the meeting. This allows a normal exercise of the right to vote of the shareholders. Still, if the shareholders cannot attend the meeting, it is possible for the shareholders to vote by proxy which under U.S state law can be provided both by the law or the bylaws. Still the Federal government, trough the Securities Exchange Act of 1934 and especially its Section 14(a), ensures true and faithful information are given to the shareholder's in order for them to make proxies accordingly to their informed decision.

4.16.2 France: Under French law, annual meetings have the ability to vote on every aspect of company excepting the one modifying the Status, which aspect will be reserved to special meetings as under U.S law. There is also a quorum necessary for the votes of the shareholders to be considered valid. This quorum is fixed by the law both for the special meeting and the annual meeting. However, if the quorum isn't reached in the first annual meeting then another has to be set up where there is no quorum will be required in order to let the company go forward and not be stopped in its business. As in the U.S a notice needs to be sent prior the meetings in order to inform the shareholders about the date, place and purpose of the meeting, they can also reply with questions to the directors that will be answered during the meeting. If the shareholders cannot attend it, proxies system also exists in France. Indeed, for unlisted companies, the shareholders need to choose another shareholder or their spouse to give the proxy whereas listed companies have a wider possibility and it can be any physical person. Still the proxy can only be given for a precise meeting and can't be a perpetual given right.

4.17 Taxation

4.17.1 USA

In the United States, corporations are taxed at the Federal level but can also be taxed on their income at State level. It is the Constitution's 16th Amendment that allows the Federal power to levy taxes among the states which is done by the IRS (Integral Revenue Service) in charge of collecting taxes around the country. The IRS Form for the corporations is the Form 1120. The maximum Federal corporation tax rate in the United States is at 35% on all of its taxable income. The IRS also developed the accumulated earning tax which prevents corporations to avoid double taxation upon

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shareholders by keeping the benefits in the corporation and not issuing dividends. The double taxation is the fact of taxing the income of the company and then the personal assets of the shareholder when he receives dividends.

4.17.2 French

French corporate tax doesn't suffer from two tax levels as it doesn't exist yet any European tax. Hence, only the French State is authorized to levy taxes on the French territory trough laws as provided by the Constitution. French *Sociétés Anonymes* are taxed under the General Tax Code on a territorial basis meaning that only the incomes made in the country will be taxed in France with a general tax rate of 33,33% for French commercial companies, this level will decrease to 28% in 2020. As in the United States, shareholders in France will also be taxed upon the dividends they receive from the company; however there is no equivalent in France with the accumulated earning tax made up by the IRS in the United States. The company will only be taxed once

4.18 Differences between corporate governance regulations in United States of America and France

4.18.1Legal regulatory system

In contrast to the American judiciary system, the French corporate litigation operates through the Commercial Tribunal, which benefits from its own jurisdiction and specialized judges. The Commercial Tribunal, governed by Article L.721-3 of the Commercial Code, handles business cases. This exception is based on the principle that special rules take precedence over general ones due to the need for expediency and the complexities of business law. Unlike the U.S. and common French judiciary systems, judges in the Commercial jurisdiction are elected merchants who serve for a term of two years initially and then four years, rather than professional judges appointed by the government. They have full autonomy in delivering justice, with no professional judges involved in the process.
Additional participants in the corporate legal framework include Independent Administrative Authorities such as the Autorité des Marchés Financiers (AMF) and the Autorité de la Concurrence (Competition Authority). These authorities play a role in regulating specific aspects of business and have the power to impose sanctions on corporations without the need for a trial. However, their decisions can be challenged in French administrative courts.
In France, Sociétés Anonymes (public limited companies) compete with other forms of business entities, such as Sociétés par Actions Simplifiées (SAS), which is increasingly popular due to its flexibility in terms of company statutes. Sociétés à Responsabilité Limitée (SARL) is another trendy form of company, suitable for medium-sized enterprises and offering limited liability to shareholders. The Enterprise Individuelle à Responsabilité Limité (EIRL) differs from a sole proprietorship as it grants limited liability to the owner, although it does not create a separate legal entity. Lastly, Sociétés en Nom Commun (SNC) and Sociétés en Commandite Simple (SCS) are business forms that are declining in usage in France as they do not provide limited liability protection to shareholders.

4.18.2 Differences in Minimum requirements

Also, as in France, Shareholders approval is necessary for amending the articles of incorporation. In the beginning, par value was close to the going rate for stock. The corporation could not cut a deal and sell stock to insiders at less than par. Par value has now usually nothing to do with going rate. Some states have eliminated the concept of par value such as California others put par value at a nominal amount, such as dollars. However even if there is no any minimum amount required for a capitalization, the "corporate veil" protecting the incorporators then shareholders might be pierced for undercapitalization if conducting business without enough money in the corporation's capital in order to protect the contractors from insolvency

4.18.3 The issuance of dividends in France is codified in the Commercial Code at the article L. 232-12. However, the decision to issue the dividends according to the latter article rest in the hands of the shareholders contrary to the United States. Still it is possible to state otherwise in the *Statu*. Similarly, as the United States, the dividends are reserved to stockholders and the stocks are typically reserved to the type of stock the stockholders own. Also, the dividends can either be However, the cumulative right to dividends held by the preferred shareholders in the U.S isn't commonly held by French courts. These right needs to be specified in the Statuts, there are only eventual

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4.18.4 US federal agencies are based on security
Federal government that rules about these subject throughout federal agencies such as the Security and Exchanges Commission. The SEC operates under the Securities act of 1933 and the Securities Exchange Act of 1934. While the French authority regulating public offerings is known as the AMF (*Autorité des Marchés Financiers*) which is the French equivalent to the SEC with also, sanctions powers. The AMF is an independent administrative authority aiming to protect the investors and the public in general. Its independent character means that the authority is able to edict its own rules toward the market under to approval of the French Minister of the Economy
4.18.5 Differences in Organisation: The corporations in the U.S is directed by a one tier system (1) while the *Sociétés Anonymes* in France have the choice of a one tier system or a two tier system (2) more close to the German way of corporate governance.

Both France and USA have stances of corporate law involved in the management of the nomination and dismissal. In France three ways of dismissal exist but the law isn't as protective toward the directors as in the United States, in order to equilibrate the factual power of the directors upon the company. First is the ad nutuum dismissal that allows the shareholders to revoke at will any of the directors or members of the Supervisory Board without the need of any cause. The Chief Executive Officers are more protected and can only be dismissed under a "right cause which can as easily be constituted as a difference between the views of the future of the company or of its daily management.

4.18.6 Duties and Liabilities: The duty of care or "devoir de diligence" is another key point duty of the executive officers/directors which requires that the manager is doing his work as a reasonably prudent manager would have done it, meaning in an informed manner and by being among other things assiduous. As the duty of loyalty, the duty of care isn't specifically codified in the Commercial Code and is contained in the scope of the duty of loyalty previously seen. This duty comes directly from the U.S law and is gaining influence in France, however, the American business judgment rule as yet no concrete and real counterpart in the French judicial system.

4.18.7 Taxes: USA corporate regulations consider taxation and taxation laws are made at state level with just some national federal pull available for the collection of the taxes while in France taxes are collected and managed at the central government with the regulations provided at the central government and the national pull for collection.

4.19 Similarities between the corporate governance regulations in USA and France
On incorporation both USA and France regulations call for binding legal rights and duties, As in France, the process of preincorporation in the United States, is the precedent to the formal incorporation of the company and the beginning of its existence as a legal being with rights and duties.
Both have mandatory documents: As in the U.S, some documents are mandatory in France in order to incorporate properly a corporation. The Statuts are the French equivalent to the U.S Articles of Incorporation. According to article 1835 of the Civil Code and the article L.220-2 of the Commercial Code the Statuts must be written and must include the name of the corporation, the name of the associates, the purpose of the corporation (that must also be lawful), the duration, the headquarters and the capital of the corporation
4.19.1 Minimum capital requirement
As in France, in the United States stock is authorized if it has been formerly provided for in the articles of incorporation. The articles of incorporation must state the classes of stock, the number of authorized shares (meaning the number of shares that could be issued), and the rights of each class of stock.
Therefore the French system appears to have more flexibility by leaving to the company the choice of a one tier or two tier system but in fact, the law restrains more its liberty and options of governance whereas the American system is giving more liberty and flexibility to companies by allowing them to adapt their organizational options to their particular needs
4.19.2 Termination: In both countries, termination is done through a voluntary resolution.
French Sociétés Anonymes are also most commonly terminated through voluntary dissolution. The French Civil Code provides two main types of voluntary dissolutions as the automatic dissolution trough time and a provoked dissolution trough the will of the directors and shareholders. As in the U.S, the Société Anonyme can end up because the company

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will reach its limited amount of time provided for in the Status if they have not been amended in order to pursue the company. However, usually the dissolution after the time period ends is unrecoverable and a formal act is needed in order to amend the Status, but in 2007 tacit prorogation can be tolerated when the company is still actively doing business.

4.19.3 Involuntary dissolution

Finally creditors might, as well as in the United States, go before courts (the Tribunal of Commerce) in order to seek payment of their debts, and then the courts might put the *Société Anonyme* into liquidation and nominate a liquidator in order to protect the interests of the unpaid creditors. Hence the involuntary dissolution of the company is quite similar in both countries except for the procedure itself of liquidation and the administrative dissolution which is rarer in France.

5. Conclusion

5.1 USA

The article analyzes the corporate governance regulations of France and the USA, starting with a rule-based approach to understand the characteristics and differences of each system. However, the text points out that this approach has limitations in fully capturing the situations being studied.

The findings reveal that there has been significant harmonization in corporate governance regulations in the USA since the end of World War II, primarily driven by the Model Business Corporation Act established in 1950. This act aimed to unify corporate law and was initially adopted by three states (Louisiana, Washington, and Kentucky) in 1928 as an effort to harmonize American law. It led to the development of influential organizations like the American Bar Association and American Institute. The act's provisions were non-mandatory, and each state had different interpretations and implementations of the proposed acts. However, many states recognized the need for economic soundness and gradually tailored their activities accordingly. This eventually led to significant modernization of corporate regulations in 24 states in 2002 and 2011.

The text highlights that the federal government has the power to preempt state sovereignty on constitutional subjects. The federal power, particularly through the wide extension of the interstate commerce clause, has influenced various aspects of human activity. As a result, the federal government could potentially develop company law reforms in the future, which may impact the sovereignty of states in economic matters.

5.2 France

France has corporate governance regulations that are mostly similar to those in the USA, with the exception of Alsace and Lorraine, which have unique statuses inherited since World War II. France has achieved harmonization of its corporate laws through the European Union. European directives must be implemented in national law, and the European Union has introduced the Societas Europaea (European Company) as a specialized form of company to facilitate cross-border European business activities, aiming to harmonize corporate laws in Europe.

The Societas Europaea was enacted by a directive in 2001 and implemented in France in 2005. It allows for the incorporation of European companies under national law, incorporating European law and articles of incorporation into subsidiary forms. This model draws from the French societal and one-tier systems, providing flexibility due to the absence of a two-tier system. However, despite its potential as a powerful tool for harmonization across the European Union, it has not achieved the success it promised. This is due to the lack of harmonization of taxes and cultural differences among European states, which are seen as more burdensome than national corporations in French society. Nevertheless, efforts towards harmonization of corporate laws in European Union countries like France continue through the European Union's initiatives.

REFERENCES

Acemoglu, S, & Robinson, l. (2012). Public participation in public policy. International Governance Structures, 116(2), 267-282

Ali C B. (2014). Corporate Governance, Principal-Principal Agency Conflicts, and Disclosure', in *Working Paper Series: 2014 – 125*, pp. ?-?, Paris: IPAG Business School

Ali S (2019). Challenges of strategy implementation at k-rep Bank of Kenya limited. University of Nairobi

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International Journal of Engineering Technology Research & Management
www.ijetrm.com

Amy K. E and Kathleen W H (2010). Short selling in initial public offerings. Journal of financial Economics 98.1: 21-39, 2010

Arroyo, C, & Sirker, G. (2015). Paramount Accountability. International Disclosure on Performance, 15(1), 1-31.
Asilis. (2014). Generations Accountability. Society Accountability Journal, 116(2), 327-340
Baker, H.K. and Anderson, R., (2010), *Corporate Governance: A Synthesis of Theory, Research, and Practice.* John Wiley & Sons

Barnett, A and Balasundrun M (2008). "A Comparison of U.S. Corporate Governance and European Corporate Governance." *The Business Review, Cambridge*, (Volume 9, Summer).

Bauer, R. (2013). Relationship between governance and capital expenditure. Journal of Economic Geography, 62(4), 231-274
Baydoun, N., (2017). Corporate governance in five Arabian Gulf countries', in *Managerial Auditing Journal*, Vol. 28, Issue 1, pp. 7 – 22.

Bhaduri, S. N., & Selarka, E. (2016). Corporate Governance: An Overview. In*Corporate Governance and Corporate Social Responsibility of Indian Companies* (pp. 61- 72). Springer Singapore.

Biljana S (2015). Managerial incentives explanation of equity carve-outs initial returns. Working paper available at SSRN.
Brown, L., & Caylor, M. (2019). Corporate governance and firm operating performance Review. Cambridge: Cambridge University Press
Butler J, Louis G and Edmond F (2004). "The Corporate Governance Landscape in the United States." http://www.globalcorporategovernance.com/
Calder, A., (2008), *Corporate Governance: A Practical Guide to the Legal Frameworks and International Codes of Practice,* London: Kogan Page.
Dalton, J. (2015). Corporate leadership governance. Journal of strategic management, 11(4), 403-411.
Denis, D. K. (2016). Corporate Governance and the Goal of the Firm: In Defense of Shareholder Wealth Maximization. *Forthcoming in the Financial Review*

ERM and Taylor B. (2019). Effects of Economic Crisis on Corporate Governance, Erm Initiative Faculty, 2019 [online] Available from: http://poole.ncsu.edu/erm/index.php/articles/entry/economic-crisis-governance/
Fama, E. (2018). Financial agency. Journal of Financial Institutions, 24(10), 997-1010
Grout, P.A and Zalewska, A. (2019). The effect of option granting on executive stock purchases, 2012, Economics Letters 114, 12-15.
Gugler, K., (2004), 'Corporate Governance and Globalization', in *Oxford Review of Economic Policy*, Vol. 20, No. 1, pp. 129 – 156
Himmerlberg, C. (2015). Understanding the determinants of managerial ownership. Journal of Financial Economics, 120(4), 489-507
Joel G (2010). You Can Be a Stock Market Genius: Uncover the Secret Hiding Places of Stock Market. P. Simon and Schuster. Journal of Empirical Finance, XXX
Kim, T-N., and Palia, D. (2019). Private equity alliances in mergers. Journal of Empirical Finance XXXX
Knoeber, C. (2016). Managerial compensation and the threat of takeover. Journal of Financial Economics, 48(4), 543-562