

THE CONTRIBUTION OF LÉGAL RISK CARTOGRAPHY TO IMPROVE THE INTERNAL CONTRÔL IN A LIMITED LIABILITY COMPANY

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Asbtract

To operate a limited liability company, to insure it's functioning, to plan its strategy, can be guaranteed only through an efficient légal control.

Originally, the control is intended to protect the sustainability and the continuity of the company by protecting shareholder interests.

The success of this mission supposes that the limited liability company in Morocco respect all the rules relative to the control of the law N°20-05, and also set up a system of devices to improve and strengthen the internal control.

Having said that, it's necessary for attending the goal of this control, is to implement shares to detect the negligence's and non – compliance at the level of the respect and application's law inside the company.

As among solutions, we must reach at the legal function a "jurist business law"; who will plan the legal risk cartography witch is an effective means to discover any dysfunction factor.

In the present communication, will go to study in the first chapter the relation, between the control of legal risk cartography, and legal function organization in a limited liability company in Morocco.

The second chapter, it will be dedicated to study the improvement of legal risk cartography and its implements to organize and to improve internal control.

Keywords

Limited liability company, Légal control, légal function, legal risk cartography

The world business has known an economic development recently, the reasons why the limited liability company, seems the exact structure adequate to any type of companies, to its financing, to its organization and to the changes of the financial market through time.

The legal structure of this company changed in its lines and remained in the center of the doctrinal debates, reforms in the whole legislations¹.

These debates which are neither old, neither classics, nor even surpassed, give sometimes a rise decision to militant².

The company comes from the Latin "sociétas" which means partner³, it proceeds only by contract⁴, and it is the most contractual of all contracts. It is called "Unknown Company" in France, because the names of the shareholders do not need to be known⁵.

¹ Paul le Cannu, " la société anonyme à Directoire", LGDJ, Paris, 1979, N°1, page: 22.

² Claude Chamaux, " Le contrat de la société existe –t-il encore?", Bilan et perspective, Economica, page 125.

It is the company which finds its origin in the profile of the company created in 17th and 18th century in France to allow the nobility to invest in commercial activities without "Derogate", that is means breaking rules and keeping their advantageous fiscal status⁶.

In Morocco, the limited liability company came up further to 'Fes treaty' concerning the establishment of the French protectorate⁷. This legal regime company knew several debates since 1913 through Dahir of August 12th 1913 forming commercial law.⁸

Afterward, it is the dahir 1922 that was born; several main reforms were introduced by the dahirs June 18th, 1927, November 14th, 1931, November 12th, 1945, January 13th, 1951, January 26th, 1955, June 20th, 1955 and August 10th, 1955.

Furthermore, Morocco introduced a new management legal framework for Limited Liability Company by taking some particularities of the Moroccan economy, as well as, the European and world economy through the law 17-95 relative to Limited Liability Company⁹

Today, Moroccan Liability Company has new criteria to identify the governance system based in internal and external legal control introduced by law 20-05.

The motives behind adopting these operations, aim to respect rules and management order, for detecting, preventing and clarifying strategic objectives.

But the economic crisis in 2008, had demonstrated the non-efficiency of the control system made by the various participant internally or externally which are recommended, imposed by the law 20-05 relative to the limited liability company.

Problematic:

Considering this situation, will it be possible to implement other mechanisms to reinforce this control, by detecting the negligence and non-compliance at the level of respecting the law inside the company and allowing the prevention of the legal risk? If yes, what will be their natures and their characteristics?

Research Plan:

In the present communication, we will be studying in the first chapter the relation, between the control of legal risk, and legal function organization in a limited liability company in Morocco.

The second chapter, it will be dedicated to study the improvement of legal risk cartography and its implements to organize and to improve internal control.

To answer this question, we are going to handle in the present communication the subject according to the following plan:

Chapter 1: The relation between internal control and legal function inside Limited Liability Company

Section1: The fundamental conception of the legal risk

Section 2: The contribution of the legal function in internal control and prevention of the legal risk

³ Chaput Yves, "Droit des sociétés", PUF, 1993, page 18.

⁴ P.didier et B.Saint Alary, "Répertoire des sociétés", Dalloz, Sociétés 1985, page 3.

⁵ Paul le Cannu, "Droit de société", Domat droit privé 2^{ème} édition, page 353.

⁶ Sophie Watillon, André pierre Dumont, Jean pierre Renard "Guide pratique: constitution d'administration et assemblée générale", Edition 2007, page 25.

⁷ Maria Bahnini, "La société anonyme en droit marocain analyse et explications", Edition Head line 1998, page 7

⁸ Paul Decroux, "les sociétés en droit Marocain", Edition la porte, 1993, page 125.

⁹ Dahir n° 1-96-124 du 14 Rabii II "30Août 1996" portait promulgation de la loi n°17-95, relative aux sociétés anonymes tel qu'il a été modifié par la loi n° 81-99 promulguée par le dahir n° 1- 99 9 327 du 21 Ramdan 1420 "30 Décembre 1999".

Chapter 2: The implementation of prevention mechanisms and control legal risk "The Cartography legal risk"

Section1: The importance of cartography legal risk in prevention

Section2: The steps in the implementation of cartography legal risk

Conclusion

Chapter 1: The internal control of the legal risk within the limited Liability company

Every day, from January 1st till December 31st of every year, the sustainability of any company can be questioned further to the realization of one or several risks, no matter its size, its activity, its age¹⁰.

The risk is an inherent and permanent component of the economic and social environment and the activities of our modern company. The conditions of the company's activities generate constantly new forms of vulnerability and impose more and more rigorous control of resources¹¹.

Creating the risk culture, the implementation of monitoring units¹², by the legal department, became essential to protect companies and prevent all negative results caused by the various risks including the legal risk¹³.

Section1: The fundamental conception of the legal risk

Before defining the legal risk, it is essential to define the meaning of the risk, which is a concept in its historical perspective often allows understanding the current events¹⁴.

The history of the humanity and the history of the risks have been attached. Always the man was displayed to risks, and the human activity generated risks for its environment. The man always looked, with the huge ability of imagination which characterizes him, to manage these risks. But, this does not translate a stable situation through ages, because the field of the risks is constantly transformed.

Today, the risk is defined as a danger, which means, no danger, no risk, according to the philosophic language dictionary of Paul Foulquié¹⁵ identifying the risk as " Danger when the idea of coincidence is accused, but with some advantage perspective. With these advantages that the man assumes the risks.

However, the big companies became aware of the importance to put a control risk system, facilitated by their size, their internal functioning and their real-life experience. Consequently, some structures dedicated to the risk management are born and big consulting firms, the traditional source of skills for these companies, make of it a major preoccupation¹⁶,

Therefore the subject is still absent, or almost, in small and medium company¹⁷.

But how can we identify the legal risk in Limited Liability Company?

For Doctor Christophe Collard¹⁸, " The legal risk is the meeting between a legal rule and an event, the one and/or the other one being struck by uncertainty, legal and/or factual uncertainty, generating consequences being able to affect the value, strategic, financed institutional of the company.

¹⁰ Darsa, Jean-David, "365 risque en entreprise", Edition "Gereso", publier en 2014, page 8

¹¹ Véret, Catherine, Mekouar, Richard, " Fonction Risk Manager", Edition" Dunod3, Publication: 2005, Page 1

¹² Hassid, Olivier, " La gestion des risques", Edition" Dunod", Publication: 2008, page 1

¹³ Cordel, Frédéric -Lebègue, Daniel, " Gestion des risques et contrôle interne, De la conformité à l'analyse décisionnelle", Edition : Vuibert, Publication: 2013, page 1

¹⁴ Le Ray, Jean, " Gérer les risques: pourquoi? Comment? " Edition" AFNOR", Publication: 2010, page 3

¹⁵ Paul Foulquié (1893-1983) was a French thinker and philosopher known for his books on metaphysics, epistemology, existentialism and psychology. His works have been translated into different languages

¹⁶ Hassid, Olivier, "La Gestion des risques 2^{ème} Edition", Edition: Dunod, Publication: 2008

¹⁷ Le Ray, Jean, " Gérer les risques: pourquoi? Comment?" Edition" AFNOR", Publication: 2010, Page XXIV

¹⁸ **Christophe Collard**, Docteur en droit, Il mène ses recherches autour des notions de performance juridique, du management du risque juridique et de la compliance.

The definition of the legal risk and its various components, supposes the existence of a strategic vision of the legal department towards the management of the legal risk.

The identification of the legal risk passes by several stages:

The good understanding of the company and the nature of its activities like:

- ✓ To analysis company strategy with regard to its resources and its skills.
- ✓ To search for the causes and for the events which are at the origin of the legal risk.
- ✓ To prepare a questionnaires for internal jurists business, to determine the nature of the legal risk as civil and penal

The legal risk requires more attention; it can have an impact in the form of degradation turnover in a company.

Among the consequences of legal risks, which mark particularly the company, we identify: the penal risk.

For the penal risk, it was ignored for a long time by the company, but at present all the companies are conscious of the importance of this risk which can damage its image. Most of the time, the penal risk requires the application rules bounded to: the breach of trust, the misuse of corporate assets, the insider trading, etc.

When to its management, it requires sufficient skills and need an important jurist business with collaboration with the other component departments of the company.

Section 2: The contribution of the legal function in control and prevention of the legal risk

The legal departments within the limited liability company constitutes an effective means of legal monitoring and the treatment processing dispute, this objective can be fruitful only through a good organization of the legal function within the limited liability company,

Indeed, the current legal departments has a mission in their environments, to detect and to prevent the legal risk through the control, to make progress the notions dedicated for the legal conformity and to avoid any dysfunction in company.

The 1st mission of the legal function is the legal monitoring, which includes the legal rules¹⁹ that contain "the codes, the regulations, the decrees, the charters"

This one consists of four parts:

- **The informative day before monitoring:** the documentary day before is also called, characterized by the immediate collection and the distribution of the information with legal character.
- **The analytical monitoring :** it concerns the interpretation performance and the implementation of rules by the legal function
- **The anticipative monitoring:** It is a question of anticipating if need be the procedures to be set up and the tools of processing to be developed, by following legal texts progress.
- **The legal adviser**²⁰.

The 2nd mission of the legal function is treatment disputes which seem essential, the fact that the disagreement constitutes a major operational risk bound at the risk of adopting unfit judicial trainees; to make errors of jurisdictions, to appreciate badly the founding arguments of the request or the defense, of its regulations, are determining factors organization²¹.

¹⁹Jean Michel Daunizeau et Martine Leimbach,"Contrôle des risques: mieux comprendre les fonctions juridiques et de conformité", op.cit. page 64

²⁰Jean Michel Daunizeau et Martine Leimbach,"Contrôle des risques: mieux comprendre les fonctions juridiques et de conformité", Op.cit. Page 65.

²¹Jean Michel Daunizeau et Martine Leimbach,"Contrôle des risques: mieux comprendre les fonctions juridiques et de conformité", op.cit. Page 104

In the other hand, the legal department cannot work in arbitrary power, it will need a composition for function "the legal monitoring, the legal conformity, and the writing legal acts in association with the other operational direction in limited liability company, consisted of:

- Internal business jurists
- Lawyers and external advice
- Tools of information and documentation like: a library, a legal Intranet and of information system.
- Legal Director: Who must be legal expert in a company where he works, as manager control legal risk.

Chapter 2: The implementation of prevention mechanisms and control legal risk "The Cartography legal risk"

The term "Control" in Anglo- Saxon expression means keeping or preserving the control in a situation, in French the word "controls" is more included as fact to exercise a supervision action on something²².

In the "classic" sense: the internal control is defined as all the devices aiming, on one side to insure the protection, and the quality of the information, the application of the direction instructions.

However, legal risk control requires some mechanisms such as legal risk cartography fixed by: the legal department, the manager or assistant-manager legal risk, also the implementation of action risk plans involving shareholders and finally checking the effectiveness of action risk plans.

Section1: The importance of cartography legal risk in prevention

The control and management legal risks are a major concern of companies, furthermore legal risks becomes progressively sources that degrades financial and strategic value of the company and its reputation²³.

For reinforcement of internal control, we should provide legal risk and establish a legal culture inside the company. This is an essential part of legal risk management process in Limited Liability Company.

Risk cartography allows²⁴ :

- Identify risks and classify them,
- Identify critical risk "medium or high impact and low level of control" for the establishment control and monitoring action plans,
- Designate the major legal risks in the company,
- Integrate analysis process and capitalize operational expertise,
- Adapt the most effective risk actions "Prevention and Protection"
- Initiate a quantifying process of financial needs after risk reduction action

Moroccan case: what about Morocco's company

In Morocco, the concept of cartography legal risk is timid in most company, this situation due to many reasons as, the criteria and position of jurist business law without forgetting the management strategic toward the role of legal department.

²² Bernard, Frédéric, Gayraud, Rémi, Rousseau, Laurent "Contrôle interne", Edition "Maxima", publication 2013, page 23

²³ Christophe Collard, " La cartographie des risques juridiques: un outil de management au service de la stratégie", Centre de recherche Legal Edhec, Rencontre organisée par l'Anvie en collaboration avec l'association française des juristes d'entreprise " AFJE" et l'association pour le managent des risques et des assurances des entreprises, le Mardi 13 Novembre 2012.

²⁴ Véret, Catherine, Mekouar, Richard, " Fonction Risk Manager", Edition "Dunod3, Publication: 2005, Page 9

For example:

80 % companies in Morocco²⁵, refer to a specialist jurist business law just to assure a specific action or to propose solutions in contractual cases.

In general, at this kind of situations, the jurist business law occupies other function like human resources or administrative function.

Section2: The steps in the implementation of cartography legal risk

The achievement of the cartography legal risks, dependent on the Legal department which sets out the broad priorities by respecting certain steps:

Step 1: Risk Identification

The first step is to cartography all risks from a list proposed by the legal team:

- The class or subject of risk,
- The origin of perils: the causes,
- The consequences
- The most important activity or "the risk manager"
- For the affected company resources.

Step 2: Prioritization risk

After the 1st step risk identification completed, we specify the 10 to 30 major risks retained for an additional evaluation.

After that, the prioritization risks should be done from the basis of the risks identified by a "committee of experts".

Step 3: Risk Assessment

This step includes assessing risks identified and the consequences of risk impact on: financial, human, material, legal, image company.

Step 4: control means²⁶

This step is performed with step 3, the aims is to identify and select appropriate action plan legal risk in order to reduce it, when its considered too serious for the company.

Step 5: Prepare the available cartography

The cartography results are translated to a series of reports chosen from the following options:

- Report risk identification,
- Map risk impact,
- Criticality map / level of treatment,
- Illustration links risk / risk factors "causes",
- Illustration risks / objectives "risk management",
- Map risk / "risk managers"

²⁵ Questionnaire réalisée par : Maha AMGAAD sur 100 sociétés de type "société anonyme au Maroc", novembre 2014.

²⁶ Véret, Catherine, Mekouar, Richard, " Fonction Risk Manager", Op.cit, page 130

Conclusion:

Ensure the functioning in limited liability Company in Morocco, can be assured only through

- ✓ An effective control that respects all the rules relative to law N° 20-05
- ✓ Encouraging legal department inside the company
- ✓ Recruitment a preferment jurist business law
- ✓ Implementation a legal risk prevention culture to reinforce the internal control

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