

THE IMPROVEMENT OF THE MECHANISMS OF THE CONTROL EXERCISED BY STATUTORY AUDITOR WITHIN THE LIMITED COMPANY IN MOROCCO

Maha AMGAAD

Doctorante at Hassan II University, Faculté of Law and Economy of Mohammedia.
Morocco

Professor M'hamed segame

P.H.D Hassan II Univesity, Faculté of Law and Economy of Mohammedia
Morocco

Introduction

Auditor, is a legal function which finds its origin in business law and more exactly in law N° 20-05 relative to limited company in Morocco, their success requires important regulations knowledge of companies and also their current accounting and fiscal laws.

The aforementioned function, postpones other types of control exercised within the limited company by two aspects:

On one hand, is the control planned legally within the limited company and on the other hand, the one who is made for the shareholders and not for the Directors interest.

The studies made in this sense, demonstrated that the role of auditor in the company remains formal, compared with, the importance which is attributed to him and reserved by the law relative to limited company.

Problematic:

This situation, leads us to wonder about the way to improve the conditions of exercise the auditor mission in Morocco and its relation with the functioning, the sustainability of the company.

To answers to this question will be discussed in the present article:

Research Plan:

1st chapter will be dedicated to study the auditor attributions according by law 20-05 relative to the limited company.

2nd chapter will be dedicated to the mechanisms control conditions with the aim to assure the functioning and the company sustainability.

Chapter 1: The attributions of auditor in the legal control

The control of the first companies was not made by a legal organ such as present, or such as the modern legislation, the need to control companies was a goal to avoid the abuses.

Section 1: The historic evolution of auditor

In the economic entities, control always assigned to one person independent and competent to care of verifying the regularity, the sincerity and the accurate image of the accounts established by the persons in charge of this entity¹.

This function was endorsed to an auditor, he is called statutory auditor², or legal controller, or auditor³.

The auditor was born in Western Europe especially in the second half of ten ninth century, when commercial companies began to submit their accounts to some external expert of their company to verify them⁴.

The movement began in UK, afterward it “rejoin” the United States, after that France and Germany.

His origin can be looked in the organization of commercial company, one of the first forms to have been born.

In this company, the general assembly represents the basis of a pyramid ended an auditor whose mission is to control the accounts and prepare a report to the assembly partners.

In Morocco, the commercial companies by application of Dahir⁵ 1922, the auditor can be chosen among the shareholders and named by their assembly for one year term; their role consists to prepare an annual report intended for the shareholder’s meeting.

To understand better the subject, it is necessary to distinct the notion of auditor and the nearby notions as statutory contribution?

The commercial company is submitted to several controls, what requires to make difference between a various types of similar control that it exists, for example, there are several control institutions as the same mission as auditors like a statutory contribution.

If the auditor, named by the shareholder’s, has for permanent mission to control the regularity and the sincerity of the financial statements, the statutory contribution are chosen by the court, or by general partner’s assembly during the constitution of the company, to evaluate the contribution and the private advantages attributed by the partner’s⁶.

Their quality as special organ control, statutory contribution, interferes during a merger, during a split transformation, or during the purchase by the company with a shareholder.

But for exercising this profession, what kind of conditions must satisfy an auditor to be accepted to the professional examinations?

Section 2: The conditions of exercise to the auditor profession

In consideration of the importance of his job and mission, the future auditor should have high qualifications, and also respect the rules and ethical relative to liberal profession,

According to the article 159 « Law n° 20-05 » relative to limited company, must be indicated in every limited company, one or several auditor in charge to control and follow-up financial statements in the conditions and for the purposes determined by the present law.

This auditor should be chosen among the people registered in official list of expert accountant⁷.

During the constitution of the company, auditors are indicated by statutes, one or several auditors are named for three exercises by the general shareholder’s meeting⁸.

¹ Alain Mikol, « Audit et commissariat aux comptes », 9ème édition à jours au 1èr octobre 2010. E-thèque. P 5

² Vocabulaire de l’union européen.

³ Vocabulaire Américain

⁴ Abdelmajid Lembarki, « La pratique du commissariat aux comptes », 1ere Edition 2010. P 11

⁵ En 1922 un dahir qui, abrogeant l’article 51 du dahir formant code de commerce, énonce que les sociétés par actions sont désormais, sous certaines réserves, régies par la loi française du 24 juillet 1864.

⁶ Drifa Dahmi « Le commissariat aux comptes : Étude de droit comparé ».Op.Cit. Page 23

⁷ Art 160 de la loi 20-05

The auditors function named by the statuses during the constitution of the company can't exceed one exercise. The auditors have to respect also the professional discipline, this last notion, means, if any auditor doesn't perceive purely the professional work or practice of its function, are exposed in every case to penalty.

The auditor's function named by the ordinary meeting of shareholders expires after the meeting of the one who decide on the accounts of third exercise.

When at the expiration of the auditor's terms, it is suggested to the assembly not renewing with them, but for lack naming of auditors by the general assembly, he proceed to their naming by order of the court president, deciding in emergency proceeding , at the request of every shareholder, the administrators duly called⁹.

The auditor's challenge can't be pursued only for a motif, it is necessary to hear any circumstance allowing suspecting seriously the competence, the honesty and the objectivity of the auditor.

As regards incompatibilities, the law fixed a set of conditions which are going to limit the choice of auditors

They can't be indicated as auditors:

- 1) The founders, the auditor, the beneficiaries of particular advantages as well as the administrators, the members of the supervisory board or the management of the company or one of the subsidiaries.
- 2) The spouses, ascending and downward up to the 2nd degree up to and including people aimed at the preceding paragraph.
- 3) Those who assure for the aimed people, for the company or for the subsidiaries of the function susceptible limit their independence or receive from one of them remuneration for function other than those planned by the present law.
- 4) The expert account's company which one of the partners is in one of the situations planned in precedent paragraphs, as well as the chartered accountant associated in chartered accountant's company when this one is in one of said situations.

The auditor is invested with a permanent mission of control over the accounting and financial situation of the company, he fills then a control mission and a certification mission¹⁰.

The auditors can't assume correctly the legal control of the accounts company only if he has a sufficient knowledge¹¹, not only objectives and structure of the organization of this one, but also the modalities of implementation of the control procedures which are practiced there.

Chapter 2: The appreciation of the control and the improvement of the auditor exercise

The control is all the safeties contributing to maintain the company; it aims assuring the protection, the saving holding and the quality information, the application of the direction instructions at favoring the improvement of the performances¹².

Section 1: The Formation of the auditor opinion

To appreciate regularity situation, it's to confront the reality with the contents of the principle legal reference, to deduct an opinion from it, to express this opinion.

The efficiently of the auditors involves making a decision from a significant opinion, as well as the effective expression of this opinion on the regularity social life¹³.

But the question is: which criteria that the auditor respects for supplying an opinion which will keep the functioning and the sustainability of the company?

⁸ Art 20 de la loi 20-05

⁹ Art 165 de la loi 20-05

¹⁰ Hassania Cherkaoui, « La société Anonyme ».Op . Cit, page 161

¹¹ Alain Sayag « Le Commissaire aux comptes, Renforcement ou Dérive », Étude du Centre de Recherche sur le Droit des Affaires, Edition Librairie Technique, page 805

¹² Définition selon la : OECCA, 32 eme congrès 1977

¹³ Dominique VIDAL, « Le Commissaire aux comptes dans la société anonyme », Edition Librairie générale de droit et de jurisprudence 1985, page 183

Auditors will have any significant and useful information for the normalization of the social risk which is a factor of dysfunction.

The independence of the control considers that they have never proved the opportunity of investigation in which they are engaged.

The character liberated from the principal free information of auditors, could not be disputed all the less that it takes a legal counterparty: the professional secrecy.

In general, the auditor's investigation powers should not practice in susceptible conditions to hinder the functioning of the company, and the auditor would engage his civil liability by controlling in the only purpose to complicate the manager spot by proceeding to obviously useless checks.

The harmonious and spontaneous communication information constitutes the normal mode of information of auditor, it allows to the auditor to make a personal opinion.

The annual accounts certification, main act of the legal control, constitutes a personal commitment of auditor; it gives him a sufficient knowledge of the reality which recovers the accounts¹⁴, the terms of the social risk.

Section 2: The expression of the auditor opinion

The freedom expression control, and the freedom information control, should be the object of a careful examination, her respect is necessary for the correct determination of the contents of the information of control.

The communication of the information control must be free of any constraint, exempt of any pressure which could allocate the loyalty to the auditor's opinion. Every partner of the company has to respect this freedom.

The independence is a complex notion, the one is independent, when in his function does not receive the order to make or not to make something and makes its decisions in good integrity, it is the case of the magistrate and the professional people.

The independence is thus question of a balanced position between all the interests in set inside the company, but this balance is not only a distance question between every interest.

The balance is also determined in a positive way, in reference to a superior rule, an objective autonomous and common to all: the risk normalization is the only objective in the realization which every partner finds his real interest.

The information content control

The analysis of auditor function, and also its particular role of social risk guard, gave rise to some indication on the contents information control.

Special report

The special report has for object to allow the shareholders to know the economy, to appreciate the normalization reached by advantages established by the manager, but at the same time the agreement, even opposed under certain aspects, presents an interest for the company.

General report:

The general report is the legal instrument which allows the partners of limited company to have a significant knowledge of the terms in which is committed the social risk.

The denial of certifying the accounts does not mean inevitably that they are irregular; the refusal certification is the observation that the social risk is not normalized.

¹⁴ Dominique VIDAL, « Le Commissaire aux comptes dans la société anonyme », Edition Librairie générale de droit et de jurisprudence 1985, page 236

Conclusion

A successful audit inside the company needs:

1. For the manager:

- Choose a good auditor with a real security experience, not just check lists.
- Insist that the auditor's report reflects the organization's risks
- Involve business unit managers
- Spell out the company objectives

2. For the auditor's

- Auditor's need to be able to understand the client's business and industry
- A good auditor is able to sort out connection and linkages within the organization to focus the audit approach
- To put the audit plan with appreciation and an understanding of the organization and what constitutes a logic
- The auditor should have a basics of sound technical ability and solid ethical foundation and high communication skills
- Have leadership spirit

Bibliographies

1. La loi 20-05 relative à la société Anonyme au Maroc
2. La loi 05-96 modifiée par la loi 20-10 du 30 juin 2011 relative à la société à responsabilité limitée.
3. M. Dominique Vidal « Le commissaire aux comptes dans la société anonyme », Librairie générale de droit et de la jurisprudence. Édition 1985.
4. Abdelmajid Lembarki, « La pratique du commissariat aux comptes », 1ère Edition 2010.
5. G.Ripert, "Traité Élémentaire de droit commercial", LGDJ, Paris, 1959.
6. M. Youssef Alakhouch, « La mission du commissaire aux comptes dans les sociétés par Actions », L'économiste, Édition N°187, du 06/07/1995
7. M. Idrissi Benyacine My Ahmed "Revue Gestion et Société ", E.S.C.A.E Édition 1979.