Democratic Governance of Stock Markets

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Abstract

On the basis of the Law No. 7 of 2010 regarding the establishment of the Capital Markets Authority (CMA) and regulating securities activities and its amendments, particularly in its article 3, points 2, that emphasize growing the capital markets and diversifying and developing investment instruments in accordance with best international practice, and within the framework of the thirty (30) principles and objectives set by the IOSCO to evaluate the compliance of stock markets with universal standards, this paper suggests shifting from technocratic management and regulation of stock markets, whether in Kuwait or in other countries with similar circumstances, notably the GCC countries, to democratic modes of governance, utilizing an institutional approach.

This bottom-up approach in managing and regulating stock markets would have positive impacts on striking a balance between public interest and individual and group interests to pursue sustainable socio economic development through the participation of all stakeholders in providing a clearer vision on pertinent fiscal policies, tax instruments and early warning systems of financial crises.

Keywords: stakeholders, democracy, sustainable development, fiscal policies, tax instruments, financial crises early warning systems

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I. Introduction

Stock markets are essential institutions in most modern societies (Williams, 2012)because they are vital in any free market economy.From a scientific point of view, they are definitely an attractive topic that is continuously addressed from different perspectives and for diverse purposes.

From a legal angle, stock markets constitute a challenging field to tackle because of its rapid evolution, especially during the past few decades; the technological revolution in the means of communication has generated new difficulties that public authorities and regulatory bodies are to face on a daily basis to keep pace with the continuous developments in this field. This task becomes more and more challenging with unpredictable financial crises with global epidemic effects. The ramifications of the U.S.A. financial crisis in 2008 that spread to Europe and elsewhere, including the Arabian Gulf region, are good examples in this regard; in Kuwait, for instance, the epidemic effect of this crisis is undeniable, but it had been amplified by the legal loopholes and the lack of an independent regulatory body [(1)].

In the after math of the 2008 international financial crisis, all financial regulatory systems have been reviewed.The law No.7 of 2010 [(2)] established the Capital Markets Authority (CMA) in the same year, after the fashion of the Gulf States and other Middle Eastern and North African countries.

It is to be noted that the lack of regulation in Kuwait had generated a severe crisis in 1982(“Souq Al-Manakh” crisis). Before 1982, the incorporation of private joint stock companies did not require government regulation (a decree); this allowed many fictitious companies to operate unofficially in“Al-

(1) The absence of regulatory bodies before the crisis of 2008 does not mean that the stock market in Kuwait was totally left on its own; in 1952,the National Bank of Kuwait (NBK) was created and was the first Kuwaiti shareholding company. Nevertheless, the number of companies has continuously increased thanks to the financial abundance of the sixties (1960’s) and the seventies (1970’s).For more details on the financial ease of Kuwait during the seventies and the paradoxical declaration of the former financial minister, Abdel Rahman Salem: “Kuwait is a poor country, all we have is money”, see: Middle East Research Institute, Kuwait MERI report, London, Croom Helm Publisher, 1985, p. 26.

(2) Capital Markets Authority. Law No. 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and its Amendments [Online] <https://cma.gov.kw/upload/CMA_Law_3_12_2015_2681.pdf> (page consulted on December 15th, 2015, 10:00). This law was amended by the law No. 108, issued on July 23, 20 14 and published in the Official Gazette on August 10, 2014 and by the law No. 22, issued on May 4, 2015 and published in the official gazette on May 10, 2015.

Manakh" market. A year after the crisis, the Kuwait Stock Exchange (K.S.E.) was established by an Amiri decree[3].

In pursue of sustainable economic development and in order to synchronize their rhythm with the rest of world, stock markets in the Arab world are thriving to incorporate good governance in their listing requirements.The State of Kuwait, in its turn, via the CMA, has issued a resolution covering the corporate governance rules[4].

While some literature tends to consider stock markets in the Middle East and North Africa (MENA) region inefficient and not in harmony with other markets, the mainstream literature is not oblivious of the relationship between these stock markets' development and the real economy. However, this relationship seems to be significantly negative because these markets have not reached the threshold[5] beyond which they contribute to growth (Ben Naceur and Ghazouani, 2005). According to many studies and reports, the developments in the financial markets in the MENA countries, since 1970 and for almost three decades, have had little impact on macroeconomic balance (Darrat and Haj, 2002, Ben Naceur et al, 2007, MENA-OECD, 2005 …). For instance, Ben Naceur et al (2007) argue that investment and higher economic growth increase in response to stock market liberalization within the frame of institutional reforms. Beiji (2007) concludes that to achieve financial

(3) Kuwait Stock Exchange. Amiri Decree Organizing Kuwait Stock Exchange issued on 14/8/1983, pp. 7-12 [Online], <https://www.kse.com.kw/EN/AboutKSE/Documents/ADecreeOrganisingE.pdf> (page consulted on November 17th, 2015, 08:00).

(4) Capital Markets Authority. Resolution No. 25 of 2013 of the CMA Board of Commissioners Concerning Issuing Corporate Governance Regulations for Companies Regulated by Capital Markets Authority [Online], <https://www.cma.gov.kw/templates/search_en/search.asp?zoom_sort=0&zoom_query=Corporate+Governance+Regulations&zoom_per_page=10&zoom_and=0> (page consulted on November 18th, 2015, 8:00).On November 8th, 2015, the Board of Commissioners passed a resolution approving the issuance of the executive bylaws of law No. 7of 2010 and its Amendments. The module No. 15 was dedicated to corporate governance on the basis of the 'comply or explain' principle.[Online], <https://www.cma.gov.kw/pdfviewer/?file=/documents/20622/413876/0.pdf/4b1e00a2-4d0b-491d-bae1-59c8c3abfa73#page=1&zoom=page-fit,-22,849> (page consulted on November 24th, 2016, 20:00)

(5) For detailed information about the notion of 'threshold', see Samouel BEJI ,Financial Openness and Financial Development in the South Mediterranean Sea Institutional Approach and Calculation of Development Thresholds, European Research Studies Journal,vol. X, special Issue (3-4), 2007, pp. 107-125.

development, the region should concentrate on improving its level of legal and institutional development. Indeed, during the past years, policymakers in a number of MENA jurisdictions, mostly in the Gulf Cooperation Council Countries (GCC), have been focusing on better implementation of laws and regulations. The task does not seem challenging because most stock markets are state-owned or organized as public institutions and, hence, do not face conflicts of interest between regulatory action and commercial activity (MENA-OECD Investment Program, September 2005).

In order to enrich the debate from a legal perspective, this paper attempts, via an institutional approach, to transpose democratic principles into the regulation of the Kuwaiti stock market in order to evaluate the compliance of stock markets with universal standards for better governance.

The present research does not pretend to be able to examine the huge amount of legal materials pertaining to Kuwaiti stock market, especially the variety of regulations and circulars,issued by the CMA, KSE, the Ministry of Commerce and Industry (MoCI) and the Central Bank of Kuwait (CBK). Nevertheless, its starting point is inspired from the objectives that guide the action of the financial sector in Kuwait, as set the Law No. 7 of 2010 Regarding the Establishment of the Capital Markets Authority (CMA) and Regulating Securities Activities and its Amendments, particularly in its article 3, points 2, that emphasize growing the capital markets and diversifying and developing investment instruments in accordance with best international practice(6).

In addition to the existing literature, the benchmarks of this research are inspired from the thirty (30) principles and objectives set by the International Organization of Securities Commissions (IOSCO)(7) to evaluate the compliance of stock markets with universal standards; yet, commensurate with the objective of the paper, the focus is rather put on the first seven principles pertaining to regulation and self-regulation.

In a first step, the paper tries to establish the link between democratic principles

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(6) Capital Markets Authority. Law No 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and its Amendments [Online] <https://cma.gov.kw/upload/CMA_Law_3_12_2015_2681.pdf> (page consulted on December 15th, 2015, 10:00).

(7) International Organization Of Securities Commissions (Iosco). Objectives and Principles of Securities Regulation, May 2003 [Online] <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD154.pdf> (page consulted on December 10th, 2015, 13:00).

and governance of stock markets to suggest a smooth shift from technocratic to democratic governance of stock markets; as for the following step, it suggests three major results of democratic governance that would serve better financial sustainable development in Kuwait and in countries with similar circumstances, particularly the GCC countries.

II. Governance and Stock markets

The term "governance" appeared for the first time in the writings published by the World Bank; the first, entitled "Governance and economic management", was published in 1986. The author of this article, Benno J.Ndulu, uses the term "governance" instead of "government"(Ndulu, 1986) in order to criticize States without undermining their sovereignty explicitly. In his writing, Ndulu rejects the hypothesis of the neutral role of the state, conceived as a volunteer arbitrator to serve the national interest, economic growth, efficiency and social welfare.

During the past few decades, the World Bank has been prolific in producing documents concerning governance, but with an entirely different meaning: "general tool of the international development process". For instance, in its report published in 1992, entitled "Governance and Development"(8), the World Bank defines good governance as "the manner in which power is exercised to manage the national economic and social resources for development". According to the same report, the interest of the World Bank in governance derives from its desire to ensure sustainability of the projects it finances. The report concludes that sustainable development requires the existence of a transparent and reliable framework of rules and institutions for the conduct of public and private affairs.

Subsequently, the writings were multiplied by giving governance various meanings; one of these meanings is that "governance can be understood as the intentional regulation of social relationships and the underlying conflicts by reliable and durable means and institutions, instead of the direct use of power and violence" (Roe, 2012).

(8) World Bank Group. Governance and Development, Report published in May 1992.

Consequently, this paper would come to the fact that the term "governance" underlines the role of non-state actors in the political regulatory mechanisms, notably the role of civil society.

The projection of the concept of "good governance" into the financial sector that nourishes the real economy, presupposes that sustainable development of financial markets requires the existence of a transparent and reliable framework of rules and institutions. I, hereby, would evoke Pearce's conception of sustainable development as "vectors of desirable social objectives, that is to say, a list of attributes that the company seeks to achieve or maximize" (Pearce et al, 1990).

According to the afore mentioned objective set out the Law No. 7 of 2010 regarding the establishment of the Capital Markets Authority (CMA) and regulating securities activities and its amendments, particularly in its article 3, points 2, that emphasize growing the capital markets and diversifying and developing investment instruments in accordance with best international practice, good governance of stock markets would be an unavoidable issue to pursue this objective. Further more, the approach according to which this issue is addressed would have undeniable effects on the conception of good governance of stock markets.

a. Stock market Governance Approaches

The approaches to be used to explain governance systems can be classified into two different currents: structural determination and institutionalization process.

According to the first, it is the structural preconditions of the legal and political environment in which companies exist and operate that determines national governance regimes (Hewson and Sinclair, 1999). These approaches run the risk of a historical determinism that mitigates the role of stakeholders and their interests.

The second trend conceives governance systems as products of stakeholders' mobilization in a given historical context (Hewson and Sinclair, 1999) where each group of interests (officers, directors, shareholders, employees, trade unions ...) uses its own strategies to impose a standard of governance. Governance is, therefore, the result of confrontation of interests of stakeholders.

According to the institutional approaches, governance institutionalization is built upon the basis of the opposition of interests and is not imposed by the structures of the environment. However, this approach runs the risk of being short of the ground on which conflicts can be managed to reach a consensus on an acceptable system of governance by all stakeholders (Hewson and Sinclair, 1999) because in the quest of imposing their interests, individuals or groups can synergize their efforts to try to change, in their favor, the institutions or the government practices. The mobilization of different resources, especially political and legal, by different actors would result in the victory of the largest coalition that imposes to the minority, a governance standard

b. From Technocratic[9] to Democratic[10] governance of stock markets

It is natural that individuals and interest groups use different means to influence the legislator, or more comprehensively social norms makers, in order to institutionalize stock markets governance in the way that serves better theirinterests. Synergizing those interests to transform them into collective practices that ultimately crystallize into effective institutionalization of the desired governance requires sufficient compromise to establish the legitimacy of governance.

According to the International Organization of Securities Commissions' s report (IOSCO), reliance on self-regulatory organizations (Carson, 2011) may support better-regulated and more efficient capital markets, but the value of self-regulation is being questioned and needs to be consolidated in many countries. The global financial crisis of 2008 yielded new debates related to governance of stock exchanges. Self-regulation that the World Bank and other policy advisers recommend in emerging markets (CONSIZLAR, 2005) seemed not enough. In Kuwait, it has previously been pointed out in the introduction that the CMA was established in 2010 to consolidate the KSE as a self-regulation body.

Before February 2010, there was no independent regulatory body in Kuwait;

(9) Technocratic governance is an organizational structure or system of governance where decision-makers are selected on the basis of technological knowledge.

(10) Democratic governancehas to do with developing institutions and processes that are more responsive to the needs of ordinary citizens and that promote development.

the ministry of commerce and industry (MoCI), the Market Committee (MC) and the central bank of Kuwait (CBK) respectively supervise the primary market (the KSE securities issuers and intermediaries), the secondary market (the securities market) and the financial institutions (banks and investment firms listed on the KSE)(11).

Reliance on the traditional mode of governance of regulatory bodies in Kuwait was not enough effective and needed to be improved. The Kuwaitistock market observanceof the IOSCO's objectives and principles(12) of securities regulation had been estimated insufficient. As regards the first seven (7) principles pertaining to regulation, the IMF's 2004 report revealed that out of five principles related to the regulator, none of them is implemented; as for the two principles related to self-regulation, they are but partly implemented. The below chart constitutes a summary of the report as per the objective of the present paper and can give some explanations to Souq Al Manakh crisis that struck the Kuwaiti financial sector four years later.

(11) Mutual Evaluation Executive Summary. Anti-Money Laundering and Combating the Financing of Terrorism. State of Kuwait, June 24th, 2011, p. 7 [Online] <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Kuwait%20ES.pdf> (page consulted on December 15 th, 2015, 23:00).

(12) As has been mentioned in the introduction IOSCO has developed 30 broad Principles for securities regulation in order to promote their full implementation in the regulatory framework of every member jurisdiction.

Principle		Assessment	recommendation
N°	Content		
1	The responsibilities of the regulator should be clear and objectively stated	Not implemented	The objectives, responsibilities, functions and authorities of the securities market regulator (MC) should be clearly defined by and stated in one comprehensive law unifying present laws; to be formulated in line with relevant technicaland prudential principles and requirements of securities markets.
2	The regulator should be operationally independent and accountable in the exercise of its functions and exercise of his powers	Not implemented	The law should set the basic principles regarding the objectives that the regulator should meet: (1) protection of investors, (2) ensuring that markets are fair, efficient and transparent, and (3) the reduction of systemic risk.
3	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers	Not implemented	The law should give the MC a full, comprehensive, and overall power to develop, organize, and regulate the securities market and to license, regulate, and sanction all types of market intermediaries and participants.
4	The regulator should adopt clear and consistent regulatory processes	Not implemented	The MC should have the necessary power to enforce the law,executive regulations, and decisions setting the basic principles regarding the objectives that the regulator should meet.
5	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality	Not implemented	The MC should be empowered to set the rules and regulations that would continuously meet the market's changing requirements, keep pace with development needs, and keep the market in order and maintain its integrity.

1. Summary Chart Elaborated from the IMF's report on Kuwait's Financial Sector assessment [(13)]

According to the abovementioned IMF's report, the regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that must be subject to the oversight of the regulator. Those organizations are defined by the International Council of Securities Associations (ICSA) as "private, non governmental organizations that should be dedicated to the public interest objectives of enhancing market integrity, investor protection, and market efficiency"[(14)].Though the IOSCO's standards require that SROs should be actively supervised by the government regulator(s), those organizations can ensure that stakeholders have a meaningful role in governance and that conflicts of interest between commercial and regulatory activities can appropriately be managed.

Six years of the IMF's report, the CMA, that was established when the Kuwaiti Parliament enacted the Capital Market Law to create an independent, accountable authority with the power to develop and regulate the capital market as an independent agency, under the oversight of the Minister of Commerce and Industry [(15)]. It then came to remedy to some of the critiques of the IMF's 2004 report.

According to the international standards of IOSCO, the regulator, though accountable, should be independent, having clear basic objectives, especially, protecting investors, ensuring that markets are fair, efficient and transparent and reducing systemic risk. The regulator should also dispose of proper means to meet these objectives, have clear and consistent regulatory process

(13) International Monetary Fund. Kuwait: Financial Sector Assessment Program-Detailed Assessment of Observance of Standards and Codes-International Organization of Securities Commission (IOSCO)- Objectives and Principles of Securities Regulation, IMF Country report No. 04/352, November, 2004.

(14) International Council Of Securities Associations (ICSA). Best Practices for Self-Regulatory Organizations, p. 3 [Online] <http://www.icsa.bz/img/letter_pdf/ICSABestPracticesSRO.pdf> (page consulted on December 21st, 2015, 11:00).

(15) Capital Markets Authority. Law No 7 of 2010 Regarding the Establishment of the Capital Markets Authority and Regulating Securities Activities and its Amendments [Online] <https://cma.gov.kw/upload/CMA_Law_3_12_2015_2681.pdf> (page consulted on December 15th, 2015, 10:00).

and be enough flexible to keep pace with the developments of the financial markets[16].

From a statutory viewpoint, the CMA is an independent agency, managed by a board of commissioners [17]. Nevertheless, Kuwaiti press has reported some challenges that the CMA faces since it started operating, especially that market capitalization losses have reached KD 5 billion ($17.5 billion) due to its tight regulations over companies [18]. This would mean that the State of Kuwait could adopt an alternative approach as per the regulation of securities market; i.e., an institutional approach, based on the involvement of all stakeholders in the regulatory process in order to guarantee a better conception of the ongoing developments in the financial sector. The French model is inspiring in this regard because the Financial Markets Authority (l'Autorité des Marchés Financiers (AMF) is an independent administrative authority with legal personality [19], created by the law of August 1st, 2003 [20], after the merger of the Bourse transactions commission (Commission des opérations de bourses (COB), the Financial Markets Council (Le Conseil des Marchés Financiers (CMF)) and the Disciplinary Board of Financial management (Le Conseil de discipline de la Gestion financière (CDGF)) (Kovar, 2012). The AMF is responsible for supervising the financial markets, protecting and informing investors and regulating financial transactions. It also participates in the harmonization of financial regulations at the European and the international level [21]. In order to implement its missions effectively, the AMF is composed of a College[22],

(16) International Organization Of Securities Commissions (IOSCO). Objectives and Principles of Securities Regulationloc.cit.

(17) According to article six of law No 7, the Authority shall be managed by a board called "Board of Commissioners of the Authority" consisting of five (5) full-time commissioners who shall be appointed by decree upon nomination by the Competent Minister as well as the Chairman and his deputy who are designated from the board members.

(18) U.s. Department of State. Executive Summary, June 2014, p. 4 [Online] <http://www.state.gov/documents/organization/231064.pdf> (page consulted on December 20 th, 2015, 11:00).

(19) For more details on the independence of the regulatory agencies from the political power, see for example, Jean-Philippe KOVAR, L'indépendance des autorités de régulation financière à l'égard du pouvoir politique, in Revue française d'administration publique, 2012/3 n° 143, pp. 655 à 666.

(20) See article L621-1 of : Loi n° 2003-706 du 1er août 2003, JORF n° 177 du 2 août 2003, pp. 13220.

(21) Idem.

(22) The College is the decision-making body of the AMF.

a Sanctions Committee, five permanent consultative committees[23] and a Scientific Council[24].

III. Non-State Actors implication in Stock market regulation

In the Arab world, most corporate governance codes are currently applicable on a voluntary basis and, therefore, regulatory bodies do not monitor compliance with the codes[25]; however, these codes are increasingly adopting a "comply or explain method" which will enhance the role of regulatory bodies in this regard [26]. The choice of the suitable approach depends on many factors, especially the structure of governance, based on the distinction between state-owned stock markets, whose share capital is detained by the state (United Arab Emirates, Oman…), public stock markets which are organized as public agencies (Egypt, Jordan, Lebanon…) and mutualized ownership of stock markets (Morocco, Tunisia, Iraq…). In Kuwait, the KSE began the several-year process of privatization that has been delayed by legal obstacles because, as confirmed by a senior CMA official, any changes to the law would require passage through Parliament[27].

The interest in corporate governance as a listing requirement suggests that financial actors, especially stock markets, do not only have a lucrative objective; they are potential tools of sustainable socio economic development. Therefore, the public interest is not to be excluded from the objectives of stock markets, which implies that the task of stock market regulation is not an exclusive task of financial experts, but should be extended to other sections of the society for a better guarantee of public interest.

On the basis of the above chart, notably the recommendations of the IOSCO as concerns the principles to be observed by the Kuwaiti authorities for

(23) The consultative committee of investors, the consultative committee of organization and functioning of the market, the consultative committee of financial management activities, the consultative committee of financial operations and Information.

(24) See article L621-2 of Loi n° 2003-706 du 1er août 2003, loc.cit.

(25) Alissa Amico, What role for MENA Stock Exchanges in Corporate Governance? Discussion Paper Prepared for the First Meeting of the Middle East and North African Taskforce of Stock Exchanges for Corporate Governance, p. 14 [Online] <http://www.oecd.org/corporate/ca/48897794.pdf> (page consulted on December 22 nd, 2015, 09:00).

(26) Idem.

(27) U.s. Department Of State. Executive Summary. pp. 4,5, loc.cit.

more efficient regulation of the KSE, it should be said that theCMA,though accountable, has to be anindependent body.To enhance the autonomy of this key regulatory body, itshould be constituted of a board that represents a wider range of Kuwaiti stakeholders. Hence, the Kuwaiti financial market is perceived through diverse perspectives and not only through a financial angle[28].

Consequently, this paper claims that involving civil society in the regulation of stock market would step up the regulatory mechanism, whether in Kuwait or in the G.C.C. countries,to be able to face the challenges of financial markets fluctuations and to meet the expectations of the IOSCO principles pertaining to good governance of stock markets. This claim is also built upon the assumption that financial markets can also be perceived as a tool of common or public interest and that the Kuwaiti stock market regulation is better implemented if it is in line with the macro-regulation at the international level since financial markets are becoming more and more interrelated, especially after the revolutionary developments of the means of communications.

Delegating stock market regulation to administrative and finance experts can be justified by the fact that any failure of a financial institution may lead to a financial or an economic crisis that would undoubtedly have its ramifications on all the sections of the society. Despite this argument, such a delegation raises the question of legitimacy of financial expertise as a mode of governance given that financial experts make decisions that profoundly affect the interests of the whole society. Financial expertise as a mode of governance leads to a purely technical vision of the normative subjects and results in an unjustified eviction of civil society from the regulatory process of stock markets; whereas, good governance of stock markets would imply the involvement of stakeholders according to the objectives of sustainable development and social legitimacy within a continuous process of negotiation.

In addition to the technical difficulties of stock market regulation, the animation of the negotiations between different partiesmay face the risk of lobbying where each group defends its interests that are not necessarily along with the public interest; hence, it would be more beneficial to involve a neutral party

(28) It is to be noted that the MCA board is constituted of five (5) full time commissioners that shall be Kuwaiti natural individuals and have experience or are specialized in fields related to the functions of the Authority.

to animate the discussions and to strike a balance between public interest and individual and group interests; this woulds pur integrity and impartiality and would eventually enlarge the consensus platform on a mode of governance. The involvement of scientists, specializing in different disciplines, especially in finances, could respond to this requirement because they are in better position to explain and simplify the overly technical language and to lessen the excessive use of acronyms; this would facilitate the involvement of different sections of the society that are not necessarily finance experts, but can enrich the debate from diverse perspectives. Legal experts can also be solicited to benefit from their expertise, especially when it comes to a comprehensive review of existing legal material and improving it to be up to the international standards; their expertise can also be useful in order to mediate between conflicting views and intereststo try to find consensus grounds.Furthermore, the implication of scientists in the composition of the CMA would enrich its composition by a competent, honest and impartial component.

The French experience, in this regard, can be a source of inspiration. As it has been mentioned before, one the organs of the French regulatory body (the AMF), namely the Scientific Council, aims to bring together scientists and professionals in order to carry out research on specific themes and provide the AMF with financial reflections that would have an impact on the regulation process [(29)].

IV. Some Ramifications of stock market democratic governance on sustainable development of the society

The involvement of adequate civil society actors in the composition of stock market regulatory bodies would have a multifaceted generous impact on the democratic governance of this vital field.

The necessary legal framework, within which the financial market operates in Kuwait, exists and functions, but according to the IOSCO's afore mentioned report, the tax system, the bankruptcy law, the court system and the accounting device need to be improved. The democratic governance of the CMA would provide diverse perspectives on how to improve those

(29) AUTORITE DES MARCHES FINANICERS. Conseil scientifique, [online] <http://www.amf-france.org/L-AMF/Conseil-scientifique.html> (page consulted on Novembre 23rd, 2016, 12 :30)

devices. Involvingall stakeholders of Kuwaiti Stock market in the regulatory process and providing training programs for them, especially by scientists and specialized professionals, would unleash their diverse potential in the direction of providing a secure, fair and transparent climate to investors within the framework of the sustainable development of the society.

Enhancing the democratic governance of regulatory bodies would bridge the schism between the financial world and the other sectors, especially the economic sector which is the real creator of wealth. This proposed perception of stock market regulation would entail many concrete results that serve not only good governance of stock market, but also the whole society's sustainable development. The involvement of civil society in stock market regulatory bodies would participate in:

a. elaborating appropriate formulas to strike a balance between the sources of public expenditure and the demands of economic growth;

b. establishing transparent tax systems;

c. mitigating the risks of financial and economic crises.

a. Balancing fiscal policies and economic growth

The wide spectrum of civil society, if involved within the stock market regulatory process, would participate in the development of fiscal policies that can have a generous contribution in balancing the requirements of public expenditure and economic growth.

In many countries, taxation constitutes a major source of government revenue which primarily aims to achieve and maintain economic growth. Though it is an important vector that guides fiscal policies, economic growth is not an absolute value; other parameters intervene in the process of elaborating fiscal policies such as equity in distributing the weight of the tax burden on taxpayers, protection and expansion of the middle class, encouraging private spending to achieve the socially desired level, protection of environment ...

All the above aspects of public life require the involvement of the directly concerned people to have a comprehensive view that underlies the choice of adequate fiscal policies. Therefore, tax systems differ from country to country according to policy priorities and contribute, consequently, to differences in economic performance since fiscal instruments, utilized to generate revenue, influence decisions pertaining to production, consumption, savings and investment.

For instance, if we consider four sources of tax: corporate profits, personal income, consumption and property, empirical studies argue that taxes on corporate profits are the most harmful to growth, followed by taxes on personal income then consumption taxes, while recurrent taxes on immovable property are less harmful (Arnold, 2008).

These findings depend on the national and international economic and financial environment, but if we try to imagine where the heavier weight of taxes would be put, especially in the G.C.C. countries, one can argue that taxes on immovable property may even increase growth because owners would feel that their properties should generate incomes that at least cover these taxes, which would encourage investment and enhance innovation and wealth creation. Moreover, extra taxes on unused immovable properties incite their investment to create wealth and jobs. Consumption taxes can also be conceived, within certain limits, as encouraging saving and stimulating investment and wealth creation, which would have a positive impact in curbing the trend of turning into a purely consumer oriented society.

Contrarily, an exaggerated weight of taxes on personal income would yield shrinking of employment and deter entrepreneurial activity; Gentry and Hubbard argue that “since the extra tax that applies to high profits is greater than the tax saving produced by losses, this effectively reduces the strength of the risk-sharing effect” (Gentry and Hubbard, 2000) [(30)]. Similarly, the weight of taxes on corporate profits is inversely proportional with job creation, domestic and foreign investment, especially in innovative fields that require fiscal incentives to thrive; it is also inversely proportional with the socially desired level of private spending. Likewise, a heavy rate of taxes on profits from trading on stock exchange is inversely proportional to economic growth because it discourages the acquisition of assets and their placement where they are most productive.

It shall be noted that in Kuwait, the income tax on the profits of foreign

(30) It is to be pointed out that in the GCC countries salaries are tax free which enhances entrepreneurial activities and also consumption.

companies has been reduced from 55% to 15% and the exemption of these companies from taxes on profits from trading on Kuwait Stock Exchange, whether made directly or through portfolios or investment funds, had a significant impact in attracting foreign investments to Kuwait as well as in increasing the trading volume in the market(31).

Though attractive for foreign and domestic investment, the consultancy of the interested parties in developing tax policies would yield innovative approaches and generate generous solutions that are adapted to the current context because Kuwait is still not up to the rest of GCC countries as concerns foreign investment attraction.

b. Establishing tax systems based on transparency

As it has been explained in the previous sub-section (a), the involvement of the different stakeholders in the stock market regulatory process would have a positive impact on balancing taxes and economic growth. Once the required tax burden is defined to cover public expenditure, in consideration of social sustainable development, a transparent tax structure is to be designed to link taxation with real economic activity. Transparency helps spread the feeling of fairness among tax payers and consolidates fair competition between companies.

In search of the highest profits, some companies try to minimize their tax burden by taking advantage of the national tax framework loopholes and the tax asymmetries between different States to transfer their profits to those with low or zero taxation. These practices would encourage unfair competition

(31) Kuwait Stock Exchange. Foreign Investor, 2011 [Online] <http://www.kse.com.kw/EN/AboutKSE/Pages/ForeignInvestor.aspx>(page consulted on December 25th, 2015, 16:00).According to the Income Tax Decree, the Kuwaiti Ministry of Finance (MoF) has issued a letter to companies listed on the Kuwait Stock Exchange, emphasizing the importance of enforcing income tax on each incorporated entity conducting a trade or business in the State of Kuwait, wherever it is incorporated. GLOBAL TAX ALERT. Kuwait Government introduces new= =initiatives to enforce tax compliance by entities listed on Kuwait Stock Exchange, 18 septeber, 2015 [Online] <http://www.ey.com/Publication/vwLUAssets/Kuwait_Government_introduces_new_initiatives_to_enforce_tax_compliance_by_entities_listed_on_Kuwait_Stock_Exchange/$FILE/2015G_CM5776_KW%20Gov%20introduces%20new%20initiatives%20to%20enforce%20tax%20compliance%20by%20entities%20listed%20on%20KW%20Stock%20Exchange.pdf> (page consulted on December 25th, 2015, 15:00).

between companies and would undermine fairness among taxpayers, especially between individuals and companies.

In the Arabian Gulf region and in the Arab world, in general, the degree of transparency seems low(32). The cure can start from having enough information on tax asymmetries between States, especially between the country where companies are actually conducting a trade or business and the country where they transfer their profits. Afterwards, appropriate action can be taken to reduce artificial transfers of corporate profits, particularly via information exchange between cooperating States (GCC countries for instance) in order to detect abusive tax practices and to take opportune and adequate remedial measures.

c. Mitigating the risks of financial and economic crises

With the fascinating evolution of the means of communication in recent years, financial markets have become closely interrelated; the speed at which funds can move from one country to another and from one currency to another has become a significant challenge to managers of financial markets and regulatory bodies to keep pace with the evolution of financial markets and, more importantly, to detect the first signs of financial crises.

Researchers in the field of economy and finance are trying to develop early warning systems(33) that are capable of detecting economic variables at the origin of financial crises. These researches revolve around the ability to determine an economic model(34) according to which it would be possible to predict the preludes of financial crises in a certain country.

The International Monetary Fund (IMF) and other international financial institutions researches show that some economic models can be used to predict crises. The researches confirm that a combination of external and internal factors can serve financial crisis prediction. The external factors are

(32) Martin Harrison, Report on Taxation and the GCC States, Lancaster University, Management School, October 2010, pp. 4, 15, 16. [Online] <http://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/lums/golcer/i5.pdf> (page consulted on December 26th, 2015, 11:00).

(33) For detailed information on early warning systems of financial crises, see for example: Matthieu BUSSIERE and Marcel FRATZSCHER, Towards a New Early Warning System of Financial Crises, European Central Bank Working Paper Series, May 2002.

(34) Ibid., p. 9, 10.

mainly global economy slowdown, rising interest rates on the main currencies, particularly on the dollar and deterioration of exchange terms. The internal factors are mainly budget deficits and overvalued currencies(35).

Despite extensive research on predicting financial crises, further work is still needed to better understand their causes in a particular environment. The aforementioned researches could guide case studies and investigations that are needed to improve useful tools to detect early signs of financial tensions. However, early warning systems, designed by experts in finance and economics, are a tool among others; other facts of each studied case require to be scrutinized, such as policy changes, quality of corporate governance, quality of governance of regulatory bodies and the robustness of the regulatory frameworks.

The involvement of civil society in the development of these additional studies would synergize its potential with governmental efforts to develop an ad-hoc early warning system for each particular context such as the GCC zone.

IV. Conclusion

Stock markets are vital institutions in modern societies, but they can be major sources of severe financial crises that influence all sections of the society. The mode of governance of stock markets can determine the quality of their management, regulation and efficiency.

As regards Kuwait, different reports of international financial institutions indicate that the legal framework of the financial sector is not bad at all, but this does not mean that it need not to be improved nor does it guarantee that Kuwait would be safe from eventual financial crises.

Currently, management and regulation of stock markets are an exclusive field of finance experts, whether in Kuwait or in many other countries; therefore, the present research suggests a shift from technocratic to democratic governance of stock markets. The genius of the different stakeholders would synergize into a more legitimate and more efficient mode of governance that meets the expectations of the IOSCO's principles pertaining to good governance of stock markets. This bottom-up approach would create permanent channels of ongoing negotiations to keep pace with the swift evolutions of stock markets

(35) Ibid., p. 15.

all over the world.

The role of scientists is undeniable in this regard; economists and financial experts can simplify the overly technical language, animate discussions and mediate between individual and group interests which would enlarge the consensus platform on a relevant mode of governance; legal experts can also be solicited, especially when it comes to a comprehensive review of existing legal material and improving it.

The suggested mode of governance would also have many concrete results that serve the society's sustainable development. First, stakeholders can participate in conceiving fiscal policies that strike a balance between the requirements of public expenditure and economic growth and enlighten the vision of the legislature and the regulator through adequate and opportune reports, studies and propositions in order to elaborate efficient fiscal policies and tax instruments, multiply the channels of information sharing on tax asymmetries between States (GCC, for example), provide solid grounds to detect abusive tax practices and take pertinent countermeasures to spread the feeling of transparency, fairness and security among investors. Moreover, in order to devise better early warning systems of financial crises, usually designed by experts in finance and economics, the private sector and non-governmental organizations can provide additional researches and studies in order to adapt those systems to a particular context, such as the GCC zone.

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