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GOOD CORPORATE GOVERNANCE. BEST PRACTICE TOOL TO SAFEGUARD THE NON-PROFIT COMPANIES FROM ABUSING FOR FUNDING TERRORISM. THE CASE OF JORDAN

Raghad Al-Shareedah[1]

ABSZTRAKT ■ Ez a tanulmány az egyik legjobb nemzetközi gyakorlatra összpontosít, amely a nonprofit szektort a terrorista visszaélésektől védi: a jó vállalatirányítási intézkedésekre a jordániai kontextusban. Jordánia jelentős előrelépést tett a nonprofit szektor védelmében a terrorizmusfinanszírozási célúvisszaélésekkel szemben, mind a jogszabályok, mind a technikai reformok terén. Azonban ez a fejlődés nem lehet teljes a vállalatirányítási elvek elfogadása nélkül. A jordániai jogszabályok szerint a vállalatirányítási szabályok végrehajtása kötelező az 500 000 jordániai dínárt meghaladó jegyzett tőkével rendelkező magán részvénytársaságokra, valamint a nyilvános részvénytársaságokra, de nem kötelező a korlátolt felelősségű társaságokra. Az ilyen megfelelőség alapvető fontosságú a globális terrorizmus elleni harcban, és egyben lépést jelent az NPC szektor integritásának megőrzése felé.

ABSTRACT ■ This paper will concentrate on one of the International best practices to safeguard the nonprofit industry from terrorist misuse: good corporate governance measures within the Jordanian context. Jordan has made a very well-noticed advancement in the issue of protecting the non-profit sector from abusing for funding terrorism, in terms of legislation and technical reforms. Still, such progress cannot be completed without adopting corporate governance principles. According to Jordan's legislation, implementing corporate governance rules is binding to registered Private Shareholding companies with subscribed capital exceeding JOD. 500000 and registered Public Shareholding but non-binding for Limited Liability Companies. Such compliance is essential to the worldwide war on terror and a step toward maintaining the NPC sector's integrity.

1. Why Non-Profit Companies?

A typical aspect of many non-profit theories is their focus on the service-providing functions of non-profit organizations, while often overlooking their

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role in redistribution. Simplifying somewhat, there are two potential public policy approaches to addressing social inequalities: (1) the welfare state model, where the government controls and manages welfare redistribution; and (2) the non-profit-based model, which involves a large network of private organizations heavily backed by the government, along with additional services provided by the government.[2]

The non-profit sector is a major employer and serves as an effective tool for mobilizing public resources. They play a significant role in social development across all areas and provide various services and conduct research in vital fields such as health, education, scientific advancement, and local development. They are considered part of civil society, which includes a range of voluntary, civil, and social organizations that complement the legislative, administrative, and judicial authorities supported by the government. NGOs offer people of all ages diverse perspectives and opportunities to express their views, highlight community problems, and unite those with shared convictions to achieve common goals through volunteering, discussion, dialogue, and good deeds.[3]

The financial and economic sustainability of the non-profit sector relies on a system that ensures the continuous and efficient acquisition and utilization of resources through strategic planning. This planning outlines the organization's objectives, the methods to achieve them, and evaluates the current performance of these organizations and their ability to adapt to changing circumstances.[4]

FATF's concentration on the Non-Profit Organizations (NPOs) sector lies on several reasons as they might frequently operate with minimal or no governmental supervision, such as in the aspects of registration, record-keeping, reporting, and monitoring. The creation of NPOs may involve few formalities, such as lacking prerequisites for skills or starting capital, and may not mandate background checks for employees. Exploiting these characteristics, terrorist organizations have capitalized on the vulnerability of NPOs, infiltrating the sector and misusing their funds and operations to camouflage or facilitate terrorist activities.[5]

2 Éva Kuti: The Possible Role of the Non-Profit Sector in Hungary. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 1/1990, 26–40. 26. http://www.jstor.org/stable/27927272. Accessed 18 July 2024.

3 Ismail Al Zyoud: The Role of Non-Governmental Organizations in Development of Jordanian Society. *Dirasat: Human and Social Sciences*, 1/2019.

4 RASHEED TI-JO, CSOs and NGOs. Ways of Financial Sustainability. Rasheed TI-JO Research Series: Third Sector. Vol.2. 2020.

5 FATF, IX Special Recommendations. Paris, 2001. . https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf.coredownload.pdf.

As stated in the interpretive note accompanying recommendation (8), terrorists and terrorist groups may utilize certain non-profit companies (NPCs) within the sector for purposes such as fundraising, facilitating the movement of funds, providing logistical assistance, recruiting individuals for terrorist activities, or otherwise supporting terrorist organizations and their operations. This exploitation not only enables terrorist actions but also undermines donor trust and jeopardizes the fundamental integrity of NPCs.

1.1. Non-Profit Companies Definition

For the implementation of recommendation (8), FATF adopted a definition applied to the legal entities or arrangements primarily involved in raising or disbursing funds for charitable, religious, cultural, educational, social, fraternal purposes, or other forms of "good works" (referred to as the "FATF definition").[6]

Such a definition does not encompass the entire spectrum of not-for-profit entities. They vary in their susceptibility to terrorism financing abuse based on their types, activities, or characteristics, with the majority likely presenting a low risk.

All member states to FATF shall specify all companies that fall under the definition of FATF and use all related information to specify the types and characteristics that may expose the non-profit companies for abuse due to the nature of businesses, the nature of threats, and how the terrorists' abuse of non-profit companies shall be defined.

FATF's definition applies to non-profit companies (NPC) under the supervision of the Companies Control Department (CCD) in Jordan. Only companies carrying out businesses in the health sector, education sector, microfinance, investment promotion, training, or any other objective in the form of limited liability or private shareholding general partnership, or limited partnership company are registered in the records of CCD.

Nevertheless, the Jordanian legislator did not provide a specific definition for non-profit companies according to the Companies Law No. (22) of 1997 and its amendments, the Non-Profit companies can be defined according to article (2), paragraph (B) of non-profit company's regulation No. (73) for the year (2010) as companies, which do not aim to achieve any profit and if it has achieved any returns, it is not permissible to distribute it to any of the companies or its shareholders.[7]

6 FATF, BPP-Combating the Terrorist Financing Abuse of Non-Profit Organisation. Paris, 2023.

7 Companies law and its amendments, 22, 1997. https://ccd.gov.jo/EBV4.0/Root_Storage/AR/r_Folder_/%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%A7%D9%84%D8%B4%D8%B1%D9%83%D8%A7%D8%AA_%D9%85%D8%B9%D8%AF%D9%84.pdf.

1.2. Non-Profit Companies in Jordan

In Jordan, NGOs play a crucial role in supporting the government's developmental efforts, especially for disadvantaged groups of the population. Such firms may exist in various structures, such as a sole proprietorship (including personal charitable donations), an unincorporated association, a corporation, a foundation (characterized by its funding from a founder and organized as a trusteeship), or a condominium.

According to department of statistics in Jordan for the year 2016, this sector constitutes 1% in the GDP as sectoral contribution to the Jordanian Economy.[8]

The Companies Law No. (22) of 1997 and its amendments allow, under Article (7/d), the registration of non-profit companies including, General Partnership, Limited Partnership, Limited Liability and Private Shareholding companies to carry out health, education, microfinance, investment promotion, and training, and other objectives aimed at community development, or any related purpose approved by the Controller.[9]

The law also regulates general provisions related to registration, management, holding meetings, obtaining financing, liquidation, and more. Furthermore, the Regulation of Non-Profit Companies No. (73) of (2010) lays out detailed rules for such companies' establishment, the conditions under which they may operate, and other related matters such as supervision and oversight, the methods and procedures for obtaining aid and donations, their sources of funding, the method of spending, liquidation procedures, and the handling of their funds upon liquidation.

It also outlines the data these companies must submit to the Companies Control Department, as well as the conditions and procedures for transforming them into or from profit companies.[10]

2. Mechanisms of Misusing Non-Profit Companies to Fund Terrorism

Terrorist organizations to conceal or support their terrorist activities have been able to exploit the characteristics the Non-Profit organizations enjoy such as gaining public trust and having substantial sources of revenue. Additionally, some non-profit organizations have a global presence that provides a framework to conduct their businesses locally and internationally, often in or near areas most susceptible to terrorist activity.

8 Jordan Economic Growth Plan 2018 – 2022-the economic policy council, Amman-Jordan.
9 Governance guidelines for non-profit companies, 2021.
10 Ibid.

A set of factors that may create vulnerabilities, increasing the exposure of non-profit organizations to the risks of terrorist financing including but not limited to geographical expansion, the nature of businesses and non-compliance with corporate governance principles, etc.

2.1. Geographical Threats

The more an organization expands the scope of its activities, beneficiaries, and geographical locations through which it gathers, retains, transfers, and delivers financial or material resources, the greater the risk of exploitation. Organizations that work intensively in multiple activities and across wide geographical areas, especially when material or financial resources cross regions lacking oversight and governance or when they operate in conflict zones, are particularly vulnerable. [11]

2.2. The Nature of Companies' Activities

There is a relationship between the nature of activities carried out by an organization and the risks of terrorism financing. Non-profit organizations that engage in service activities, specifically "humanitarian aid organizations", which provide services such as housing, poverty alleviation, education, or healthcare, are more susceptible to the risks of terrorism financing. However, the level of exposure to these risks varies. Organizations operating near or within areas where terrorist groups are present are at higher risk compared to others. Additionally, organizations working in vulnerable and exploitable communities (such as refugees, for example) are at greater risk of terrorism financing, as they become targets that terrorist groups seek to exploit or control.[12]

2.3. Non-Compliance with Corporate Governance Principles

The absence of adopting sound governance rules and strong financial management weaken the organization or company and increase its exposure to exploitation to terrorism financing. Non-profit organizations should be established according to a formal document governing their framework (such as the Articles of Association,

11 The Register of Associations, the Companies Control Department, the Anti-Money Laundering and Counter-Terrorism Financing Unit. How to safeguard your organizations from the risks of terrorism funding, 2022.

12 Ibid.

a constitution, or internal regulations) that defines their purposes, structure, reporting practices, and compliance with local laws. Additionally, it is crucial that board members have a deep understanding of the organization's goals and act in its best interests. The board of directors should maintain oversight of the organization by implementing robust financial and human resource policies, meeting regularly, and closely monitoring activities.[13]

Moreover, establishing robust financial controls and procedures is essential to prevent non-profit organizations from financial misconduct and misuse of resources and funds. For example, the board of directors approves the annual budget and implements a process for monitoring the use of funds. Non-profit organizations must maintain sufficient and complete financial records of revenues, expenditures, and financial transactions throughout their operations, including the final use of funds. They should clearly define program objectives when raising funds and ensure that the funds are used as intended. Additionally, information about the activities carried out should be made available to the public, and the organization may establish criteria for determining whether to accept or reject donations.[14]

3. Corporate Governance as a Best Practice Tool to Safeguard the Non-Profit Companies from Exploitation for the Purposes of Funding Terrorism

To prevent terrorists or criminals from exploiting the non-profit organizations, it is important for these organizations to have strong financial controls and to be transparent in their activities. It is advisable for non-profit organizations to conduct regular reviews of their internal controls, policies, procedures, key programs, and partnerships to protect themselves from actual or perceived misuse or support of terrorism. One of the practices that can be followed to mitigate the risks of terrorist financing is implementing corporate governance principles.

3.1. What is Corporate Governance?

The literature on corporate governance has included numerous definitions of the subject, and there has not yet been a consensus on a specific definition.

[13] Ibid.
[14] Ibid.

However, despite the variety of definitions, they all adhere to the basic principles that governance involves: a set of procedures, norms, policies, and laws that influence the way a company is managed transparently, monitor its management, and impose a fair balance among the parties involved in the company's operations.[15]

According to the Cadbury Report (1992), corporate governance is defined as the system through which companies are directed and controlled. It entails balancing the interests of various stakeholders, including shareholders, management, customers, suppliers, financiers, government, and the community.[16]

Corporate governance broadly refers to how a firm's key components are structured, coordinated, and motivated to achieve common objectives and adapt to change. It primarily involves defining and distributing decision-making authority and control within the firm, determining who makes which decisions. This, in turn, affects how residual income is allocated. Decision-making power involves rights (such as property rights) and responsibilities, which can be established through contracts or other means (e.g., reputation, tradition, or coercion). Effective governance must go beyond decision-making to also address motivations, incentives, organization, coordination of stakeholders, and the process of managing change.[17] Corporate governance focuses on whether the leaders of a company are held accountable for how they exercise their powers and how risks are managed.[18]

The primary areas addressed by corporate governance codes include the role and responsibilities of the board of directors and ensuring they are properly executed. The B.O.D. shall have a clear understanding of their duties, fulfilling these responsibilities, and providing effective leadership for the company. The board must be accountable to its shareholders and transparent with investors. Governance focuses on key areas involving risk management, internal control, financial reporting, narrative reporting and auditing.

In Jordan's corporate governance rules for Shareholdings and Limited Liability Companies for the year 2012, corporate governance is defined as a system by which a company is managed and overseen. The governance framework defines

15 Mohamed Jaffer – Syed Sohail: "Corporate governance issues in Family owned Enterprises." Published by CIPE, available on this site www.cipe.org(blog.p2.).

16 Cadbury Committee, 1992.

17 Bruno Dallago: Corporate Governance and Governance Paradigms. *Journal of Economics and Business*, 2/2002, 173–196. 174-175.

18 https://portal.abuad.edu.ng/lecturer/documents/1538629670Concept_of_Corporate_Governance.pdf.

the distribution of responsibilities and roles among the various participants in the company as the shareholders, the B.O.D., the management and the stakeholders.

3.2. Corporate Governance Principles

Recommendation (8) set out by FATF states that *"Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk based approach, to such non-profit organisations to protect them from terrorist financing abuse, including: (a) by terrorist organisations posing as legitimate entities; (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations."*[19]

One of the OECD principles is ensuring the basis for an effective corporate governance framework and this can be ensured through supervisory, regulatory, and enforcement authorities, which must possess the authority, autonomy, integrity, resources, and capacity to carry out their duties in a professional and objective manner. Their decisions should be timely, transparent, and thoroughly explained.[20]

This autonomy should be paired with high ethical standards and accountability mechanisms, ensuring decisions are timely, transparent, and open to public and judicial scrutiny. As the number of corporate events and disclosures grows, the resources of supervisory, regulatory, and enforcement authorities may become strained, increasing the need for fully qualified staff to provide effective oversight and investigative capacity, which will require sufficient funding. Many jurisdictions address this by imposing levies on supervised entities as a means to ensure financial independence from government funding while maintaining transparency in how these fees are determined. Attracting staff on competitive terms is also crucial to enhancing the quality and independence of supervision and enforcement.

On Jordan's level, the adoption of a risk-based approach is also required and for the purposes of conducting the said approach, a team was formed in 2022 in

19 FATF, Combating the abuse of Non-Profit organizations (recommendation 8). Paris, 2015. https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf.

20 OECD, G20/OECD Principles of Corporate Governance 2023. OECD Publishing, Paris, 2023. https://doi.org/10.1787/ed750b30-en.

order to define the threats and vulnerabilities of exposing to risks of misusing to fund terrorists to all legal persons. At the same time the approach targeting non-profit companies was prepared in 2022 by a committee that was formed to classify the non-profit organizations to certain characteristics resulting from intensive investigation to the sector concluded with the level of vulnerability threats facing the companies, which is low.

The committee did consider the following criteria to steer the authority responsible for supervising the Non-Profit Companies when identifying which of them is exposed to risks which of them has a level that is high, medium or low and help them to set up effective frameworks:

1. Does the company operate in areas with high unemployment rates?
2. Does the company operate in areas with high poverty rates?
3. Does the company operate in areas prone to natural disasters?
4. The extent of the organization's activities within the Kingdom. As previously mentioned, geographical expansion within the Kingdom is a factor that increases risks, especially if the expansion includes border areas or areas that host refugee communities.
5. The extent of the organization's activities outside the Kingdom. Expansion outside the Kingdom is considered a factor that increases risks, especially if the areas involved are conflict zones where terrorist groups are present or in control.

The level of corporate governance in the Non-Profit companies in Jordan is above average as the instructions are non-binding for Limited liability but binding for Shareholdings Companies. Moreover, they might frequently operate with minimal or no governmental supervision in terms of their election of committees carrying out the roles of defining risks and assessing them and setting up strategies to mitigate these risks. Furthermore, the lack of obliging the staff to abide by the companies' controls and hold them accountable of misconduct. In Non-Profit Companies, implementing an internal control system and risk management framework is crucial for any Company integrity strategy. These systems play a key role in minimizing the risk of abuse, while also ensuring that governments operate efficiently to deliver programs that benefit citizens. Moreover, such policies and processes promote value for money and support effective decision-making. When well-established, they enable governments to balance enforcement with preventive, risk-based approaches.[21]

[21] OECD, Risk management. In: *OECD Public Integrity Handbook*. OECD Publishing, Paris, 2020. https://doi.org/10.1787/ebbed075-en.

Another principle set out by OECD is sustainability and resilience, which can be achieved when the Boards assess whether the company's capital structure is compatible with its strategic goals and its associated risk appetite to ensure it is resilient to different scenarios. Moreover, the corporate governance framework should ensure that boards thoroughly consider material sustainability risks and opportunities as they carry out their key responsibilities in reviewing, monitoring, and guiding governance practices, disclosures, strategies, risk management, and internal control systems, including those related to climate-related physical and transition risks.

Here comes the importance of the Board of Directors which is another corporate governance principle of the OECD. The Board of Directors have a significant role together with the shareholders and the management to fulfill legal duties that obligate them to act in their best interests.

Corporate governance refers to relationships between a company's management, its board of directors, shareholders, and other stakeholders. It establishes and defines the responsibilities of the company's managers and executives toward these stakeholders.[22]

The board plays a critical role in ensuring that effective governance and internal controls are in place to enhance the reliability and credibility of sustainability-related disclosures. They should carry out certain key functions to provide a strong internal control and risk management system, including reviewing and assessing risk management policies and procedures, establishing the company's risk appetite and culture, and overseeing its risk management, including internal controls. This involves monitoring responsibilities for managing risks, defining the types and levels of risk the company is willing to accept in pursuing its goals, and managing risks arising from its operations and relationships. The board's oversight offers essential guidance to management for handling risks to align with the company's desired risk profile.

In carrying out these functions, the board should ensure that material sustainability issues are addressed. To enhance resilience, boards should also ensure that their risk management frameworks have adequate processes for managing significant risks.

Effective management of terrorist financing risks necessitates proper governance arrangements and in particular, the board of directors are required to approve and oversee policies for risk management, and compliance. The board should have a clear understanding of the information related to financing terrorism risk assessments which should be communicated to them in a timely,

[22] ABOU-EL-FOTOUH H. (N.D.), Importance Of Corporate Governance For SMEs, 2010.

complete, understandable, and accurate manner to enable conscious decision-making.

Internal control and risk management encompass a variety of measures designed to prevent, detect, and address misuse. These measures include policies, practices and procedures that guide management and staff in safeguarding integrity by properly assessing risks and developing controls based on those risks. Equally important are the mechanisms to address corruption and breaches of integrity standards within an integrated internal control system.[23]

To support the board in overseeing risk management, some companies have established a risk committee or expanded the role of the audit committee, in response to regulatory requirements or evolving risk landscapes. The OECD's due diligence standards on responsible business conduct can also assist companies in identifying and addressing environmental and social risks and impacts from their operations and supply chains.[24]

4. The Role of the Board of Directors concerning Jordanian Legislation

One of the responsibilities of the Boards is oversight and accountability which should be clear. Emanating from OECD corporate governance principles, the boards need to consider forming specialized committees to assist them in executing their functions, particularly an audit committee or an equivalent body to oversee disclosure, internal controls, and audit-related matters. Other committees, such as those focused on remuneration, nomination, or risk management, may also support the board depending on the company's size, structure, complexity, and risk profile. The mandate, composition, and procedures of these committees should be clearly defined and disclosed by the board, which retains ultimate responsibility for the decisions made.[25]

For companies where the size, structure, sector, or development level justifies this, the use of committees can enhance the board's effectiveness by allowing a more focused approach to specific areas. The market needs to have a clear understanding of each committee's mandate, scope, working procedures, and composition. This transparency is crucial in jurisdictions where independent audit committees are required to oversee external auditor relationships. Audit committees should also monitor the effectiveness and integrity of the internal control system, which may include the internal audit function.

23 OECD 2020.

24 OECD 2023.

25 Ibid.

Many jurisdictions have binding rules for independent audit committees and recommend nomination and remuneration committees on a “comply or explain” basis. While risk committees are often mandated for financial sector companies, some jurisdictions also regulate risk management for non-financial companies, either assigning this responsibility to the audit committee or to a dedicated risk committee. Separating audit and risk committee functions can be beneficial to address a broader range of risks and prevent the overload on the audit committee, allowing more time for managing risk issues.

The decision to establish additional committees should be at the company’s discretion, tailored to the needs of the board. Some boards have created sustainability committees to advise on social and environmental risks, opportunities, goals, and strategies, including climate-related issues. Others have formed committees to handle digital security risks and digital transformation. Ad hoc or special committees may also be set up for specific needs or corporate transactions. Disclosure does not need to cover committees dealing with confidential commercial matters. Established committees should have access to necessary information, adequate funding, and the ability to consult external experts.[26]

In Jordan, companies are typically organized under a one-tier board system. The average board size is (7) members for limited liability, whereas for private shareholding, the number of members is specified in the article and memorandum of association.

Listed companies as Public Shareholding companies and non-listed companies as private shareholding companies registered with a capital exceeding JOD 500,000 are required to establish an audit committee composed of independent members with knowledge and experience in finance and accounting and another committee as remunerations as stipulated in article (6,7,8) of the Shareholding companies’ governance instructions for the year 2024. Article (9) of the said instructions states that the mentioned companies can form other committees and shall define their mandates and the duration of their term. These fiduciary duties will be undermined if they are not required from the Limited Liability companies and most of the registered non-profit companies are of this type.

5. Implications of Adopting Corporate Governance Principles

Past corporate governance scandals (such as when Enron filed for bankruptcy in 2001 after manipulating its accounts, and WorldCom, which collapsed in 2002,

[26] Ibid.

admitted to accounting fraud, leading to the conviction and imprisonment of its CEO and Risk management and internal control ensured that the company operates within acceptable risk levels. Directors must implement an internal control system to ensure that the company's resources are used appropriately and its assets are safeguarded.[27]

Well-crafted corporate governance policies are instrumental in supporting broader economic goals and delivering three key public policy benefits. First, they assist companies in securing financing, especially from capital markets, which in turn drives innovation, productivity, and entrepreneurship, contributing to overall economic vitality. For investors, whether direct or indirect, good corporate governance provides confidence that they can engage in and benefit from the company's value creation on fair and equitable terms. Consequently, it influences the cost at which companies can obtain capital for growth.[28]

Well-crafted corporate governance policies provide a structure to safeguard investors, including households with savings invested in the market. By establishing procedures that enhance the transparency and accountability of board members and executives to shareholders, these policies help build trust in the markets, thereby facilitating corporate access to finance. A significant portion of the public invests in equity markets, either directly as retail investors or indirectly through pension and investment funds. Offering a system that ensures their rights are protected while allowing them to share in corporate value creation gives households access to investment opportunities that can potentially yield higher returns on their savings and retirement funds. As institutional investors increasingly allocate a large portion of their portfolios to foreign markets, investor protection policies should also extend to cross-border investments.[29]

Well-designed corporate governance policies contribute to the sustainability and resilience of corporations, which, in turn, can enhance the sustainability and resilience of the broader economy. Investors are increasingly considering not just companies' financial performance but also the financial risks and opportunities arising from broader economic, environmental, and societal challenges, as well as companies' resilience in managing those risks. In some regions, policymakers also focus on how companies' operations can help address these challenges. A robust corporate governance framework concerning sustainability issues can help companies recognize and respond to the interests of shareholders and other stakeholders, contributing to their long-term success. This framework

27 https://portal.abuad.edu.ng/lecturer/documents/1538629670Concept_of_Corporate_Governance.pdf.

28 OECD 2023.

29 Ibid.

should include the disclosure of reliable, consistent, and comparable material sustainability-related information, including data related to climate change. In some instances, jurisdictions may define sustainability-related disclosure and materiality in terms of standards that specify the information a reasonable shareholder needs to make informed investment or voting decisions.[30]

6. Status in Jordan

The operations of non-profit companies in Jordan are governed by legislative frameworks, specifically the Companies Law No.)22(of 1997 and its amendments, as well as the Regulation of Non-Profit Companies No. (73) of 2010. These frameworks can assist companies in implementing governance by relying on legal structures.

In Jordanian legislation, the third sector faces limitations on receiving financial support, with common funding sources including grants, donations, sponsorships, business support, and membership fees. Other sources of funding, such as subsidies and entrepreneurial activities, are restricted by the country's legal framework, and financial mechanisms like allowances, state service procurement, agreements, and government contracts are rarely practiced.

Non-profit companies are subject to continuous monitoring and evaluation of their work and the projects they implement, in addition to the fact that the necessary licensing procedures are carried out in partnership with several entities.[31]

For example, sources of obtaining funds to carry out activities in any areas by the Non-Profit Companies are vulnerable to exploitation to facilitate the movement of terrorists' funds. A non-profit entity is allowed to receive funding from non-Jordanians, but must obtain the approval of the Council of Ministers with a notification showing this donation or financing, its amount, method of receiving it, the purpose for which it will be spent, and any special conditions for it[32] according to article (7/d/4) of effective Jordan's Company law.

For that purpose, a Committee for Reviewing Foreign Funding Requests was formed to work with the Foreign Funding Unit at the Ministry of Planning and

30 Ibid.

31 https://www.alaraby.co.uk/economy/%D8%B6%D8%A8%D8%B7-%D8%AA%D9%85%D9%88%D9%8A%D9%84-%D8%A7%D9%84%D8%B4%D8%B1%D9%83%D8%A7%D8%AA-%D8%BA%D9%8A%D8%B1-%D8%A7%D9%84%D8%B1%D8%A8%D8%AD%D9%8A%D8%A9-%D9%81%D9%8A-%D8%A7%D9%84%D8%A3%D8%B1%D8%AF%D9%86.

32 Ibid.

International Cooperation of Jordan to improve the alignment of foreign funding projects with national priorities and the needs of impoverished areas. They also aim to streamline the approval process for receiving funding within specified timeframes, while enhancing mechanisms to evaluate and monitor funding to ensure it aligns with its goals and assesses its impact on targeted entities.

The government has introduced new amendments to the foreign funding acquisition process, aiming to expand its scope to include associations and cooperative unions and to make funding requests automatic. These amendments are intended to refine the process, ease procedures, and broaden its application to include associations, cooperative unions, and any requests submitted to the committee from the Prime Minister's Office.

New technical and financial criteria have been adopted to evaluate foreign funding requests in line with best international practices, aligning with national developmental priorities to ensure participation and integration between the government, civil society organizations and donor entities from friendly countries and the international community.

Such governmental measures implemented over the past few years have reduced distortions and imbalances in foreign funding for civil society organizations in Jordan. According to official estimates, the amount of foreign funding received by non-profit companies and associations has decreased to around $71 million annually.[33]

Furthermore, Article (9) of the mentioned law mandates that within three months of the start of a new fiscal year, these organizations must submit an annual report to the government regulatory body (the Companies Controller Department and the relevant Ministry). This report must include details of the activities carried out, a list of funding sources, a budget certified by the organization's authorized signatories, an audit report, and any additional information requested by the controller. The organization is also required to submit a business plan outlining expected activities for the year, along with detailed information on the financing sources for those projects and programs. Additionally, they must maintain records of meetings, decisions made, and evaluations of activities, including their revenues and expenditures.

According to the latest data released by the Ministry of Planning and International Cooperation, Foreign funding consistently raises objections, as it is viewed as there is a concern that some donors may have specific goals they aim to achieve through such funding.

[33] Ibid.

According to the Ministry of Planning and International Cooperation website, the amount of foreign funding provided to associations, non-profit companies, unions, and cooperative societies that received Cabinet approval for the year (2024) reached approximately 25.4 million dinars during the first five months of this year, to implement (146) projects. The percentage of funding allocated to non-profit companies was 56%. In terms of the number of projects, 39 non-profit companies received funding amounting to 13.7 million dinars. The average amount of funding per project for non-profit companies reached 291,000 dinars.[34]

Article (12) of the legislation addresses the liquidation of the organization, stating that the Minister, upon the observer's recommendation, may instruct the organization to address the observer's notes regarding its activities within 30 days. Failing this, the Minister may refer the organization to the competent court for liquidation under certain conditions, including:

- violating the provisions of the law, this Regulation, or its articles of association;
- engaging in activities that do not align with its statutory goals;
- conducting activities that violate public order or moral standards.

Nevertheless, the shareholding corporate governance rules in Jordan are non-binding to the Limited Liability Companies, but they are binding to private shareholding and public shareholding whose subscribed capital exceeds 500,000 Jordanian dinars in accordance with the shareholding corporate governance for the year 2024 Issued pursuant to paragraph (a) of Article (151) of the Companies Law No. (22) of 1997 and its amendments.

Article (5/A and B) of the mentioned instructions stated that according to the duties of the board as outlined in the companies' law No. 22 of 1997 and its amendments and the company's bylaws, the board must develop internal regulations for the companies that govern financial, accounting, and administrative matters within the first four months of the fiscal year. These regulations should detail the board's duties, responsibilities, and relationship with senior executive management and required committees. Copies of these regulations must be provided to the department if requested by the Registrar and the regulations must approve policies and establish procedures, controls for internal auditing,

34 Foreign Funding Unit, Report of Foreign Funding Provided to Associations and Non-Profit Companies and Cooperative Associations and Unions, 2024. https://www.mop.gov.jo/ebv4.0/root_storage/ar/eb_list_page/%D9%85%D9%84%D8%AE%D8%B5_%D8%AA%D9%82%D8%B1%D9%8A%D8%B1_%D8%A7%D9%84%D8%AA%D9%85%D9%88%D9%8A%D9%84_%D8%A7%D9%84%D8%A3%D8%AC%D9%86%D8%A8%D9%8A_%D9%84%D9%84%D9%81%D8%AA%D8%B1%D8%A9_%D9%83%D8%A7%D9%86%D9%88%D9%86_%D8%A7%D9%84%D8%AB%D8%A7%D9%86%D9%8A-%D8%A3%D9%8A%D8%A7%D8%B1_2024.pdf.

and risk management, including frameworks for handling transactions with related parties and measures to prevent conflicts of interest, ensuring compliance with environmental and societal responsibilities.

Article (6/a) of the said instructions states that the board must establish a permanent committee from its members or external experts, one of whom is an auditor, which according to article (7/a [1-4]) must carry out duties including review and periodically assess the accounting practices followed by the company and the financial manager's evaluations to ensure the effectiveness of financial management, review the financial statements, ensure their accuracy, and provide recommendations to the board for their approval. Additionally, offer recommendations on financial disclosures, ensure the continuity of the external auditor's engagement, review the auditor's report and observations regarding the financial statements, and address all matters related to the external auditor's work, including their observations, suggestions, and reservations, follow up on the company management's responses and present recommendations to the board, examine internal control systems, review and discuss internal audit plans, and assess their effectiveness.

7. Conclusion

Stemming from the Non-profit company's contribution in complementing the role of government in providing assistance to those in need globally as they enjoy public trust, they are the most targeted firms abused by terrorists aiming to finance terrorism interests.[35] According to the Companies Control Department website, the number of companies registered within its record until 28/08/2024 is (4161) varied between general partnership, limited partnership, limited liability and private shareholding.

As the number of such companies highly increases each year, the law should step in under certain circumstances to protect them from exploitation by terrorists to execute illicit activities. There are currently no formal regulations governing corporate governance in Jordan, except the Shareholding companies' governance instructions for the year 2024, which are binding only for the private shareholding companies, other companies shall be subjects to financial and legal control and

[35] FATF, Transparency and Beneficial Ownership. Paris, 2014. https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-transparency-beneficial-ownership.pdf.coredownload.pdf.

compliance to governance rules. However, the Jordanian Companies Law does incorporate some principles of corporate governance within its articles.[36]

Although article (151) of company's law in force has been amended to oblige all public shareholding companies to comply with the governance principles, no other types of companies for such obligation were mentioned.

The instructions of shareholding corporate governance rules of 2024 are newly issued and still under experimental period and we can't figure out the results from applying such instructions to ensure the sufficient protection to the companies.

In my perspective, the absence of binding certain types of companies including, all companies with a capital of less than JOD 500,000 and the Non-Profit Companies in particular was one of the loopholes in the company act in force and such implementation requires amending the company law to include the obligatory implementation of good governance rules by the companies and ensuring compliance to these rules requires monitoring by a special unit with a mandate to effectively supervise, train, and do continuous assessment and adjustment.

The proposed law's provisions shall include all good governance rules, which can be achieved by appointing a Board of Directors with a high degree of understanding of the organization's goals and acting in their interest. The Board of Directors shall have the power to maintain and oversee the organization by establishing strong financial and human resources policies, meeting regularly, and monitoring activities closely.

Moreover, the Governance Principles shall be implemented by obliging all corporations regardless of type, structure, objectives, and capital to form committees including audit, risk management, remuneration, and corporate governance. Such committees shall have all rights to ensure the transparency and integrity of the company's business.

As formerly mentioned, to ensure the company's implementation of the good governance rules, it requires a special unit mandated by the law. The unit shall have two subsidiary divisions, one for supervising the works of the Non-Profit Companies to ensure their compliance with the company's law and good governance rules and the other division to prepare a training curriculum for corporate governance not only for the companies but also to the department's staff and evaluating their extent adoption of the measures and rules and preparing reports for advancement. Such amendments have to be included in both the

[36] Hetham Abu Karky – Hussien Suleiman AlHdaithat: Corporate Governance Approaches and Jordanian Companies Law. *Dirasat, Saharia and Law,* 1/2019.

company law which would be reflected in issuing a special regulation and also in the Company's Control Department structural chart.

The key players involved in initiating such amendment are the Cabinet, Minister of Industry, Trade and Supply, the General Control of Companies, and the Legislation and Opinion Bureau in Jordan. The reasoning for amending the company law is to serve the interests of Jordan, its economy, its financial system, to contribute to the safety and security of its citizens, and complete the implementation of measures approved by (FATF), to protect Jordan from a significant threat with potential adverse effects on foreign direct investment, international trade, and the inflow of foreign currency, to ensure the companies' compliance to company's law by existing a unit supervising their works, to help companies operate more efficiently, to improve access to capital, to mitigate risk and safeguard against mismanagement, to make companies more accountable and transparent to investors and give them the tools to respond to stakeholder concerns, to contribute to development by helping facilitate new investment, access to capital, and long term sustainability for firms, leading to economic growth and increased employment opportunities across markets.

The motivation behind proposing these changes is to penalize companies that don't comply with good governance regulations under Jordan's Penal Code. While some companies may argue that this will create extra burdens through increased scrutiny and sanctions, adhering to good governance actually enhances decision-making effectiveness, reporting accuracy, risk management awareness, and capital flow improvement. Additionally, it leads to a rise in the number of active firms, thereby bolstering sustainability efforts.

Bibliography

Éva Kuti: The Possible Role of the Non-Profit Sector in Hungary. *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, 1/1990, 26–40. 26. http://www.jstor.org/stable/27927272. Accessed 18 July 2024.

Ismail Al Zyoud: The Role of Non-Governmental Organizations in Development of Jordanian Society. *Dirasat: Human and Social Sciences*, 1/2019.

RASHEED TI-JO, CSOs and NGOs. Ways of Financial Sustainability. Rasheed TI-JO Research Series: Third Sector. Vol.2. 2020.

FATF, IX Special Recommendations. Paris, 2001. . https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf.coredownload.pdf.

FATF, BPP-Combating the Terrorist Financing Abuse of Non-Profit Organisation. Paris, 2023.

Companies law and its amendments, 22, 1997. https://ccd.gov.jo/EBV4.0/Root_Storage/AR/r_Folder_/%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%A7%D9%84%D8%B4%D8%B1%D9%83%D8%A7%D8% AA_%D9%85%D8%B9%D8%AF%D9%84.pdf.

Jordan Economic Growth Plan 2018 – 2022-the economic policy council, Amman-Jordan.

Governance guidelines for non-profit companies, 2021.

The Register of Associations, the Companies Control Department, the Anti-Money Laundering and Counter-Terrorism Financing Unit. How to safeguard your organizations from the risks of terrorism funding, 2022.

Mohamed Jaffer – Syed Sohail: "Corporate governance issues in Family owned Enterprises." Published by CIPE, available on this site www.cipe.org(blog.p2.).

Cadbury Committee, 1992.

Bruno Dallago: Corporate Governance and Governance Paradigms. *Journal of Economics and Business*, 2/2002, 173–196. 174-175.

FATF, Combating the abuse of Non-Profit organizations (recommendation 8). Paris, 2015. https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf.

OECD, G20/OECD Principles of Corporate Governance 2023. OECD Publishing, Paris, 2023. https://doi.org/10.1787/ed750b30-en.

OECD, Risk management. In: *OECD Public Integrity Handbook*. OECD Publishing, Paris, 2020. https://doi.org/10.1787/ebbed075-en.

ABOU-EL-FOTOUH H. (N.D.), Importance Of Corporate Governance For SMEs, 2010.

Hetham Abu Karky – Hussien Suleiman AlHdaithat: Corporate Governance Approaches and Jordanian Companies Law. *Dirasat, Saharia and Law*, 1/2019.

FATF, Transparency and Beneficial Ownership. Paris, 2014. https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-transparency-beneficial-ownership.pdf.coredownload.pdf.