Archive of SID.ir

Petroleum Business Review

Research Article-Oil & Gas Economics & Management

Petroleum Business Review, Vol. 6, No. 2, pp. 33–44, April 2022

A Review of the Compliance of NIOC's Process of the Board of Directors Appointment with the Principles of Good Corporate Governance

Mahdieh Nejatollahi[a*], Reza Tajarlou[b], and Abdolhossein Shiravi[c]

[a] *Ph.D. Candidate, Faculty of Law, Tehran University, National Iranian Oil Company, Tehran, Iran, Email: m.nejatollahi@ut.ac.ir*

[b] *Associate Professor, Faculty of Law, Tehran University, Tehran, Iran*

[c] *Professor, Faculty of Law, Farabi College, University of Tehran, Iran*

ARTICLE INFO

Keywords:
Board of director
Good corporate governance
National Iranian oil company
The rule of law
Transparency

Received: 12 October 2021
Revised: 23 November 2021
Accepted: 29 November 2021

How To Cite:

Mahdieh Nejatollahi, Reza Tajarlou, and Abdolhossein Shiravi (A Review of the Compliance of NIOC's Process of the Board of Directors Appointment with the Principles of Good Corporate Governance); *Vol. 6, No. 2, pp. 33–47, April 2022*

DOI:10.22050/PBR.2021.308914.1232

ABSTRACT

Despite decades since its establishment, the National Iranian Oil Company (NIOC) has failed to gain the reputation of a prosperous international company. This failure may be due to different reasons. However, the director's role in a company's success is undeniable. Recruiting efficient directors and forming a strong board of directors are challenges addressed by the concept of good corporate governance; when the concept is divided into pieces, we can apply it to appoint directors. This research aims to scrutinize and describe the appointment process of the board of directors from an excellent corporate governance point of view, identifying the NIOC's advantages and disadvantages. The findings indicate that some indicators of good corporate governance, such as diversity of the board in specialization, are acceptable, while the minimum competencies criterion is at a fading level; there is also no sign of practicing independent managers criterion. First, hereto, the process is described in three sections: appointment entity, board qualifications, and nomination process, and following is brought its analysis using the descriptive–analytical method. In conclusion, suggestions are made regarding enhancing NIOC's good corporate governance standards regarding the board of directors' appointment.

* Corresponding Author

Archive of SID.ir

Archive of SID.ir

Petroleum Business Review, Vol. 6, No. 2, pp. 33–44, April 2022

1. Introduction

The National Iranian Oil Company (NIOC) has been in charge of the organization and policymaking for the oil industry's activities, including exploration, drilling, production, research, and development operations, as well as oil and gas exports in Iran since 1951. NIOC is viewed as one of the world's biggest oil companies, controlling enormous resources of hydrocarbon reservoirs; however, it is not a pioneer in the international oil industry sector. Total Energies and Shell Oil Co. are among the companies that have retained their top rank for more than one hundred years. These companies have not lost their position with the lapse of time. The NIOC's failures and the success of those companies in maintaining their supremacy may have different reasons, but the directors' role in directing the company cannot be neglected. This is because the directors can make tremendous changes through their decisions.

A company, whether large or small, is like a dynamic being. As an entity, this being is in constant motion and changes and reacts to ongoing changes. Dealing with such a dynamic being is the duty of the directors. The better and stronger the directors are and the more the sense of responsibility, the more successfully the company will grow. Thus, the importance of appointing a powerful, competent board of directors is known to everyone: how to appoint dynamic, efficient directors, whereby a powerful board of directors is challenging in response to which the concept of good governance comes to the surface. The breakdown of this concept leads us to apply it when appointing directors and assessing their performance.

The Organization for Economic Cooperation and Development (OECD) has drawn some guidelines for good performance; satisfying those guidelines can guarantee a healthy process of appointing directors. The research question is: "Does the directors' appointment process across NIOC comply with the good governance principles adopted by the state-owned companies of that organization?" In response to this question, this article examines the hypothesis that the managers' appointment process at NIOC does not comply with the principles of good corporate governance.

Forty years have passed since the Revolution, and around 24% of the public sector's directors will retire in the next five years (Harraghi and Darvishi, 2019; 53). It is, therefore, essential to have unified and organized professional and specialized standards for appointing the directors and consider the applicable international criteria for the replacement, election, and appointment of the directors. Thus, this article aims to describe and detail the directors' appointment process from the perspective of the good governance principles set forth by the Organization for Economic Cooperation and Development and other applicable instruments and procedures prevailing in different countries.

Most Persian research in this field, such as "Survey Impact of Good Corporate Governance (GCG) on Economic Value Added (EVA) of Tehran Stock Exchange" by Ahmadi and Mohammadi, addresses the concept of good governance and good corporate governance, which is different from the subject of this article; the article titled "The Presentation of a Model for the Appointment of the Professional Directors at the State Organizations", which is in the area of production management, does not approach the matter of the directors' appointment process partially. There are some other works like "Best Practice Guidelines for the Appointment of Directors" by the Mauritius Institute for Nonlegal Fields; they have addressed the matter from a general viewpoint without taking a given company into account, or at least they have not studied the NIOC as the subject of their investigations.

This research will explain the concept of good governance and its principles using a descriptive-analytical method. Then, the directors' appointment process will be examined in three separate sections, i.e., the appointment entity, the board of directors' qualifications, and the nomination process; an analysis of the process will be provided for each section in terms of the principles of the good governance in the guidelines of the OECD. In the end, some suggestions will be offered for improving the good governance standards and promoting them for NIOC's process of directors' appointment.

2. Definition of good corporate governance and its principles

Corporate governance refers to structuring and control (Siladi, 2006:112). The corporate governance history dates back to the era when the administration was separate from ownership, during which an entity called the board of directors gained the power to make decisions and pave the ground for the formation of the joint-stock companies as a distinct group from the shareholders (Bainbridge, 2008:45). In other words, the conflict of interests of the participants (beneficiaries) within the corporate structure disclosed the necessity of

Archive of SID.ir

Archive of SID.ir

a corporate governance system. The conflict of interests, construed as a representation, results from two primary reasons; 1) different objectives and preferences, and 2) the lack of comprehensive knowledge of other measures and preferences (Ludwiga and Sassen, 2022: 38).

The board of directors plays a significant role in the corporate governance of state-owned companies (SOEs). It acts as an intermediary between the government as a shareholder and the company, together with its executive directors (OECD, 2008:7). There is no precise definition of good corporate governance, and there is a consensus on the indicators and principles of such governance and its consequences. It is mainly defined as a communication system comprising a structure and process that leads to sustainable development and a promoted social asset (Omidvar, 2008:43).

Due to the wide range of the subjects of good governance, different international instruments have been intended to cover a specific aspect of this concept, emphasizing good governance indicators. For example, the members of the Organization for Economic Cooperation and Development have published the "Corporate Governance Guideline" (G20/OECD, 2015) as recommendations to the states. The OECD corporate governance guideline was last updated in 2015, under the "Corporate Governance Guideline for State-owned Enterprises" (OECD, 2015). Considering that the NIOC is the only state-owned company among the statistical population of the present research, this research has been written based on that guideline and other associated instruments. Four critical principles for good corporate governance are as follows.

2.1. Transparency

Transparency is a principle through which all people can stay informed of all trade decisions and transactions affecting their lives and decision-making procedures. Thus, the public directors' and employees' behavior should be observable, predictable, and understandable (Christopher, 2009:233). Transparency significantly affects an individual's sense of responsibility and the observation of the non-discrimination principle.

2.2. Accountability and responsibility

Generally, this includes the processes by which the citizens hold the authorities accountable for their behavior and performance (Darvish, 2002:353). Accountability is a sense of responsibility to which an individual commits himself/herself to explain his/her conducts to others (Tajarlou and Ghorbani, 2016:107). The principles of fairness and meritocracy come together with this principle.

2.3. The rule of law

A principle means all acts and decisions are within the purview of the law. Regarding this principle, the negation of ad hoc legislations, cumbersome administrative procedures, and laws that distract the supervisory units are also discussed.

2.4. Prevention of corruption

The directors' appointment processes require that fair competition and education laws be enforced powerfully. The undue influences of political personalities and institutions and high-ranking officials may endanger the health of any trend. Thus, appropriate practices must be established, including the separation of responsibilities, group decision-making process, the prevention of the disunity of the responsibilities network and the lack of coordination, and the protection of the workers involved in the directors' assessment process, in order to prevent their demotion or dismissal if they defy the exerted influences and, eventually, to file legal action at any competent, independent authorities (Tajarlou and Babaei, 2017: 47–48). As a result, in this regard, the principles of the negation of collusion and compromise, the negation of undue influence and authority, the negation of using the prevailing economic situation, the principles of competition, and the presence and supervision of a specialized authority to deal with the matter are also discussed.

All four abovementioned principles are equally important (Gompers and Metrick, 2003: 107–155). What follows deals with the application of these principles in the process of appointing the members of the board of directors of NIOC.

3. The appointment process of the board of directors of NIOC

As regards the responsibilities of the board of directors of state-owned enterprises (SOE), the "Corporate Governance Guideline for State-owned Enterprises" stipulates that the boards of SOEs should have the necessary authority, competencies, and objectivity to carry out their functions of strategic guidance and monitoring of management. They should act with integrity, be held accountable for their actions, and be appointed to run the enterprise according to clear guidelines (OECD, 2015: 26,27). This instrument is silent when it comes to the appointment of the directors,

Archive of SID.ir

Archive of SID.ir

the managing director, and the members of the board of directors, and it suffices to mention the general terms of the *necessary competencies* and the transparency and accountability principles. The guideline's silence on the middle-level directors, i.e., the directors who are not the members of the board of directors, and its use of the term *strategic guidance* indicate that the instrument's focus is on *leading* instead of the administration. In this respect, it should be noted that one of the essential issues in organizational management and governance is the identification of the differences between the two concepts of *leading (management)* and *administration*. Most directors implement the policies set by others while leading is the process, activity, study, or performance of the organizational duties, which directs the organization toward the predefined objectives (Danaei Fard, 2010:43). In other words, the leaders draw the policies. Since the boards of directors and the managing director have a leading role, the guidelines are silent about other management positions. Parts of the reports "The Professional Board of Directors of the State-Owned Enterprises: Taking a Look at the National Practices" (Oecd, 2018) and "The Ownership and Governance of the State-Owned Enterprises: A Summary of the National Measures" (OECD, 2018) have addressed the issue of the board of directors' appointment process.

In this research, the appointment process of the board of directors of NIOC is examined in three separate sections: appointing authority, qualifications, and nomination process.

3.1. The board of directors' appointment entity

In every country, the appointment of the board of directors of a state-owned enterprise is considered a government responsibility. The processes which the state-owned enterprises apply for introducing and appointing the members of the board of directors of the state-owned companies are influenced by the extent of the professionalization and decentralization of its enterprise ownership function and the size of the state's ownership stake in an SOE, as well as the balance between the commercial and noncommercial priorities. In countries like China, where state-owned companies apply a centralized state enterprise ownership function, for example, through a state enterprise ownership unit, the members of the board of directors of the state-owned enterprises are appointed directly by these ownership units. In some countries like Malaysia and Vietnam, where the ownership is more decentralized, the central state function and sectorial ministries often share responsibility for board nominations. In this regard, the OECD recommends that essential decisions about appointing the board of directors are adopted through the consensus of a group more significant than one minister (OECD, 2018: 13–29).

In Iran, the ownership function of the government is not centralized across the country, and the ownership units are different depending on each case study. The general assembly of NIOC, a state-owned entity, can be accepted as the ownership unit. According to Articles (8), (10), and (28) of the Articles of Association Act of NIOC and Articles (4) and (5) of the Oil Ministry's Missions and Authorities Act, the general assembly comprising of a few ministers and the head of the State Management and Planning Organization, is formed as a shareholder representing the government of Iran. The Iranian oil minister is the president of the general assembly. The general assembly has the required qualification for making decisions about all affairs of the NIOC, including the appointment or re-appointment of the members of the board of directors before the expiry of their tenure on the oil minister's recommendation, the determination of the directors' salary and fringe benefits, as well as their dismissal. The oil minister issues the order to appoint board members of directors for four years.

The composition of the assembly members is associated with NIOC's decisions outside NIOC, making the decision-making process consonant with national macro-scale objectives. Therefore, with the president being removed from the assembly and replaced with the Minister of Petroleum along with other ministers, the board's bargaining power would remain at the same level, in which case, there will be the possibility of a decision-making process lasting longer or facing a challenge because of board's equal power.

Although the appointment entity acts transparently concerning the rule of law since the general assembly comprises the ministers of the different ministries and they do not have enough time to discuss the matter of the appointment of the board members, the group decision is violated; thus, the oil minister finds the opportunity to play the most influential role in determining the qualifications and authorities of the general assembly, and the balance of power changes in favor of the oil minister; as a result, the members of the board of directors are replaced with the replacement of the oil minister. Concentrating the power in a single person's hands results in corruption, which, in turn, impairs the sense of responsibility and accountability.

Archive of SID.ir

Archive of SID.ir

3.2. The qualifications of the members of the board of directors

The unique conditions prevailing in the oil industry should be considered when assessing the qualifications of the members of the board of directors. The organizational nature of the oil industry is operational, which indicates that engineering know-how takes the top role in executing a chain of operations ranging from oil exploration to production operations. However, the duties of the oil industry directors during the term of their management role are mostly limited to such tasks as planning, organizing, managing human resources, leading, coordinating, managing financial resources, and giving responses. The performance of such duties highlights the importance of applying management techniques. The decisions of the oil industry directors result in various consequences, including financial, human, environmental, political, and cultural outcomes, which is why the diversity of specialization among the board of directors is essential.

The guideline emphasizes that the transparency of the rules governing the composition of the board of directors should be guaranteed. Such transparency should include the regulations on the disqualification of former directors, the number of the government's representatives on the board of directors, and the various skills and characteristics that the directors are required to acquire. Except for Egypt, all countries have declared that they have established some minimum requirements for appointing the board of directors, among which education and specialization are considered the standard criteria. According to the Regulation of State-owned Assets of Enterprises in China, all directors must have professional knowledge, competency, and good character (OECD, Ownership, 2018:64–70).

Likewise, according to Article (29) of the Articles of Association of NIOC Act, all members of the board of directors should meet other requirements and conditions set forth by the applicable laws and regulations, in addition to the requirements of being a Muslim, reliable, and trustworthy. Thus, it remains unknown why, despite the 19th and 20th Principles of the Constitution, being a follower of Islam has been established as a requirement to be a board of directors' member. This requirement violates the principle of equitable treatment and prevents the membership of followers of other religions in the board of directors, depriving the company of their professional experience and specialization as a board of directors' members. Unfortunately, the professional specialty as a yardstick has been undervalued with the introduction of the two other requirements, i.e., reliability and trustworthiness, giving way to *commitment* as the top criterion. Considering the commercial nature of NIOC, prioritizing *specialty* over *commitment* is better. In the guidelines and the procedures adopted by other countries, the specialty has been given more weight regarding its meaning and implications. On the other hand, reliability and trustworthiness are nonobjective and immeasurable criteria, and emphasis on the intangible characteristics leaves the hidden hands free to exert influence or potentially can make the appointment of board members difficult and with refereeing errors. Thus, the clauses referring to the requirement of *good character* should not be introduced so that they are used as an excuse for overlooking *transparency* as a criterion.

In addition, at least two-thirds of the total primary and alternate members of the board of directors should have the following conditions:

A) Having at least a Master's Degree in management or finance, law, or economics or a Bachelor's Degree in one of the specialized engineering and technology fields;

B) Having at least 15 years of work experience in the oil industry, including 5 years in management positions.

Further, the board of directors' composition should allow for the diversity of specialization mentioned in A. Since clauses (a) and (b) are reserved for only two-thirds of board directors, it is always possible that for the remaining one-third, people with no managerial or educational background are considered, which has occurred in practice and opened the doors for corruption; as seen, some of the current board members of NIOC have not had managerial experience anywhere in the oil industry and outside, and yet they were appointed to the board of directors. Some of the managing directors of NIOC, having no experience in the oil industry, have also been appointed. Unless we think that the legislator has been thinking of protecting the rights of those employees of NIOC who have sufficient managerial capacity to qualify for board membership through many years of working in NIOC and gaining experience despite not having higher degrees, it seems that with the progress of science, having a Bachelor's Degree is not sufficient for taking management positions. It is better if upper academic degrees are considered a requirement for these positions.

Article 28 of the Articles of Association Act stipulates that all primary and alternate members of the board of directors must be natural persons, and a

Archive of SID.ir

Archive of SID.ir

procedure must be established for the election of the alternate members. This implies that the criterion *character* should be taken into consideration, and the board of directors' positions should be based on the natural people. In addition, there are some binding circulars, such as Resolution No. 579095 dated 21/06/2016 of the Supreme Administrative Council and Circular No. 1901/1426 dated 31/03/2003 of the State Administrative and Employment Affairs Organization concerning the criterion *experience*[2]. However, these circulars have considered the *experience criterion* from the time viewpoint. They have categorized the state-owned companies into eight separate groups while establishing such tangible factors as the lapse of time and a particular record of work experience as the requirements for the board of directors and managing director positions. Hence, the three criteria of *good character*, *professional knowledge,* and *work experience* have been considered by the Articles of Association Act. However, there is a discrepancy between the two instruments described above concerning the definition and meaning of these three criteria. Good character as an indicator contradicts the principles of equitable treatment, the prevention of corruption, and transparency due to the use of intangible biased characteristics.

The criterion of *professional knowledge* has been applied appropriately by considering the matter of specialty when determining the board of directors' composition. However, considering the importance and position of NIOC, the educational requirements for the board of directors have been applied at a low level, which impairs the principle of responsibility and meritocracy.

The criterion of *work experience* as a requirement has been established correctly in terms of duration (15 years) and workplace (NIOC). However, the requirement that two-thirds of the members of the board of directors should meet these two criteria has resulted in the appointment of the managing directors of NIOC with no prior experience in the oil industry in practice; furthermore, the members of the board of directors do not have the required 15-year work record. The impairment of the principles of transparency, responsibility, meritocracy, competition, and the prevention of undue influence has followed this.

3.3. Board of directors' nomination process

This section examines four aspects of the composition of the board of directors: nomination methods, improving the disclosure of nomination processes, the assurance of respect to the shareholders' rights, and the election of independent directors.

3.3.1. Methods of the board of directors' nomination for their positions

A methodical nomination framework must be applied and supervised by a governmental body. According to the guidelines, the nomination methods are as follows:

1. Case selection method: An approach is adopted based on skills, experience, and personal characteristics, and all directors are elected with the help of advisers outside the company, such as the director's recruitment agencies and the incumbent directors.
2. Establishing nomination committees or the *directors' association*. In China, the ownership unit has created a system of directors whose qualifications are regularly assessed. The potential candidates may join the system only after their assessment by an occupational competence assessment committee. Once there is a vacancy in the board of directors, SASAC may elect a director from the system of directors according to the specific needs of the board of directors. The public holding companies and the board of directors may form an introductions committee and other governance committees such as the strategy, rewards, evaluations, audit, and risk management committees (OECD, 2009: 60–64). Some countries like Korea, Malaysia, Thailand, and Swede have acted in this regard. Presently, both Morocco and Egypt are contemplating forming specialized committees for enhancing legal supervisory frameworks for the election of the board of directors. For instance, one of the circulars issued in 2016 provides that all state-owned holding companies should form a nomination committee alongside other committees (OECD, 2018:19,18).

One of the critical resolutions passed by the 11th government in management development is Resolution No. 206/93/560 dated 26/11/2014 (Governmental Resolution), titled "A Program for Training Future Directors of the Executive Bodies". Among the key objectives of this resolution are the following:

1. Promotion of the merits and competencies of the national directors;

[2] Prior work experience/record

Archive of SID.ir

Archive of SID.ir

2. Realization of knowledge orientation, meritocracy, and Islamic professionalism concerning the directors' appointment and their promotions;
3. Identify qualified employees to appoint them to professional management positions with a fair and competitive approach.

A management unit has been launched at the Center for Directors Development of NIOC (referred to as Center) under Resolution No. 1755/201/29343 dated 18/09/2011 of NIOC's board of directors (Resolution) to standardize the current rules and criteria, institutionalizing the assessment and evaluation process, protecting and supervising the work progress trend, developing human assets, and identifying potentially talented people to take management and supervisory jobs; these are all in line with the implementation of the abovementioned governmental resolution.

According to Paragraph (4) of the Resolution described above, the following order of priority will be applied for the employee introduction and evaluation process:

1. Employed distinct workforce;
2. Other employees, as may be recommended by the relevant (organizational) unit;
3. Volunteering employees.

Based on Paragraph (6), the results of the performed competence assessments, the necessities for employee improvement and development, and their achieved progress are registered in a databank formed by the Center and made accessible to the relevant units. The resolution is silent on the evaluative test performance, and thus, the Center has been assigned to determine the test type and the assessment procedure. Based on personal experience, interviews with its Center's staff, and a questionnaire prepared by the Center, the most important criteria in assessing the directors' competencies are the following:

Futurism and strategic thoughts, organization commitment and affiliation, responsibility, supervision and control, communication skills, goal orientation, analytical thinking, planning, diligence and determination, flexibility, being knowledgeable and capable, courage, and having occupational motive and low expectations

This system applies an evaluation score scale of one to nine, in which scores from four to nine denote acceptability, and lower scores are brushed aside.

The above criteria are evaluated in a series of tests. There are many similarities between these tests and the talent assessment tests for the doctorate program; the other part includes personal interviews and group activities to which the highest score is allocated. According to the above, there are no transparent criteria because the whole assessment process is confidential, and merely the outcome of the test is announced to the employee and the relevant management. On the other hand, there is no available clear rule concerning the assessment process and use of the assessment results, which, in turn, impairs the rule of law. The management teams nominate their chosen people for the vacant posts and introduce them for assessment, overlooking the negative scores given by the Center.

The prevention of undue influence criterion is assigned the highest negative score. This is because the balance of power among the bodies involved in the directors' appointment process does not favor the Center, and the brilliant scores obtained by the employees in the assessment process cannot be used as a springboard by the infamous or disfavored employees.

All the bodies involved in the process must stay accountable for their decisions and conducts and disseminate information in this respect, and the Center and other people should not be held accountable. This damages the rule of equity and meritocracy. On the other hand, the programs of the Center have been limited to the assessment of the employees so far, and there is no plan for empowering or enhancing the sense of responsibility among the talented people chosen through these tests, which contradicts the criteria of responsibility and empowerment programs for implementing the assigned roles. It seems that the policy of the Center for directors' development of NIOC has been based on a *director-making* approach instead of a *leader-making* one. This situation must be changed so that *leader-making* is introduced as a paradigm for developing the oil industry's administrative abilities. It is recommended that the Center put the strategy for identifying and developing directors of the oil industry as a fundamental priority on its agenda. Above all, although, according to Paragraph (3), the resolution embraces all the available posts at NIOC, the assessment of the directors in charge leading such a large complex has been omitted from that Center. Hence, NIOC applies an ad hoc method for electing the board of directors' members by proceeding with Article 28. Given the circumstances, the winner of the position on the board of directors in NIOC has developed more efficient political ties.

Archive of SID.ir

Archive of SID.ir

According to the case approach, since the nomination process, nominees' designation manner, and the number of nominees is unknown, the criteria for transparency and the rule of law suffer. Similarly, since there is no defined legal process for supervision purposes, the level of the appointment entity's accountability decreases, and the possibility of undue influence and collusion increases due to the lack of a specialized competition among the nominees and its replacement with a competition for the political ties and leverage. Moreover, the lack of authority to deal with the objections and disputes connected with the nomination and board of directors' appointment processes impairs the corruption prevention principle.

3.3.2. Methods of improving disclosure of the board of directors' nomination process

Employing eligible board members of directors should be assured based on the official competence assessment rules. These rules may include making recommendations per se, voting ministerial nominees in or out of their office, forming nomination committees, and final ministerial decisions. The improvement in the requirements for enhancing the disclosure and transparency of the data relating to the nomination of the board of directors and the elections procedure may be helpful in this regard, including the public announcement of the vacancy for a job, the disclosure of the information on the identity and number of the nominees, and the mandatory disclosure of the election results.

The procedure for nominating the board of directors' members has not been mentioned in the Articles of Association Act of NIOC. As noted earlier, although a system has been established by the center for directors' development of NIOC (Center) for identifying professional directors, the members of the board of directors do not go through this system. Instead, they are nominated and appointed by political ties, which weakens the principles of transparency, accountability, the rule of law, and the professional knowledge criterion. However, the general assembly would be regarded as the representative of the government and the people and is considered a proprietor; that is, the general assembly, as a proprietor, should not expect anything but to maintain and raise the property. Therefore, the general assembly should act without political interference. In addition, the most crucial criterion for change and appointment of the board of directors should be NIOC's annual financial statements, meaning that the board members should change in the event of profit reduction or loss. In practice, we can see there is no such procedure in NIOC, people take other managerial positions after being removed from the board of directors, and this violating domino continues to exist.

In practice, the nomination of the board of directors occurs on the recommendation of the oil minister only, which is presented to the general assembly for approval or rejection by a majority vote. However, according to Article 24 of the Articles of Association Act, ballots are cast openly in the general assembly meeting unless it approves secret ballots. However, this voting is not disclosed anywhere, and thus, it is not exposed to public scrutiny. Consequently, transparency remains defective due to the lack of proper solutions for disclosing the board of directors' nomination processes.

3.3.3. Assurance of the consideration of the shareholders' rights and other civil representatives in electing the members of the board of directors

The composition of the board of directors can be limited and balanced by limiting the number of positions on the board of directors or by approving the gender and minority groups. The guideline recommends that the decision-making bodies, alongside the nongovernment shareholders (minority shareholders) or the employee representatives participate in the directors' appointment process by exerting a consensus voting system or allocating voting rights in a balanced way. In some countries, the nomination committees are formed in the annual ordinary general assembly (AGM), which is attended by nongovernment shareholders (Min, 2013:19). Unfortunately, the employee representatives or the private sector representatives, or other people representing the public interest have been given no seat in the board of directors of NIOC, and the Articles of Association Act is entirely silent on this matter. However, this silence does not prevent the presence of these people on the board of directors of NIOC, and the general assembly may welcome them to the board of directors.

The true purpose of the presence of these civil representatives and employee representatives on the board of directors is to include the burden of supervision and transparency so that they, as an independent group, could prevent the deviation of the government's representative from the interests of the minority groups and the public. This is because the political leverage and pressures may force the government's representatives, as the board of directors' members, to take measures and decisions that harm the interests of the minority shareholders or NIOC's social responsibility. The

Archive of SID.ir

Archive of SID.ir

presence of these independent representatives causes the balance of power, and their absence may pose severe challenges to the principle of control and supervision.

3.3.4. Designation of independent director

With the vast commercialization of state-owned companies, independent directors and people with sufficient relevant professional experience are recommended to be given more roles. In most studied countries mentioned in the OECD report, a combination of the directors representing the government, other people in charge of protecting the public interests, and independent directors are among the members of the board of directors of state-owned companies. Like similar regulations of the private companies in India, Korea, Thailand, and Swede, large state-owned enterprises are likely required to designate a certain number of independent directors as members of the board of directors. However, in most studied countries, there are few legal procedures (including the laws or regulations) concerning the employee and minority groups' representatives. In China, the composition of the board of directors is mentioned in the Articles of Association of companies. All financial firms whose majority ownership is held by the government are obligated to have independent directors elected through the assembly of shareholders. At the same time, the incumbent officials or those directly tied to the executive bodies cannot be appointed as directors (Hengfei and Jigao 2020:137–140). There is no officially established requirement for the presence of a certain number of independent directors in Egypt and Malaysia. However, in Egypt, the directives relating to the corporate governance of the state-owned companies recommend that the board of directors' members preferably be people outside the state-owned companies or the executive directors of these sectors. As for Malaysia, the board of directors mainly comprises former ministers, retired specialists, or government officials primarily introduced by the ministries (OECD, 2018:19,20).

The absence of independent directors violates the principles of partnership and central consensus. According to the above statements, an independent director is not an employee representative, government official, or the incumbent executive director of the company. As mentioned earlier, the make-up of the board of directors of NIOC is merely comprised of the government's representatives, which adds to the political nature of the board of directors' positions gradually over time. In NIOC, the requirement for independent directors is not observed, and such a requirement has not been stipulated in the Articles of Association Act. Although the Articles of Association Act's silence does not prevent the general assembly from appointing independent directors as members of the board of directors, it is recommended that according to the principles of commercialization, along with the advanced countries, the independent directors be nominated and added to the board of directors through the recommendation of the employees' community or a Parliamentary Act. To this end, it is also recommended that at least two posts, with equal voting rights, be cited in the Articles of Association Act, and there be nomination and introduction committees for other positions of the board of directors as well as the directors' information system to recommend directors based on their abilities and competences. This is because the presence of independent directors enhances transparency.

As an unwritten law, the Legal Affairs Department, Integrated Planning Department, and Financial Affairs Department officials have permanently been appointed as the principal members of the board of directors of NIOC. The minimum requirement for the directors' independence is avoiding the employment of the incumbent officials of NIOC, which has not been observed. The board of director members change along with replacing the directors of these departments. This issue that those board of director members assume the responsibility of departments and executive management in NIOC has incorporated lawmaking tasks and the board of directors' supervision into the managing director's executive duties, thereby impairing and challenging his accountability to the board of directors. While all board members perform their administrative duties under the supervision of the managing director, the board of directors is stripped of the possibility of supervising the managing director and inquiring about him.

On the one hand, since the assembly appoints the managing director, the board members would feel inferior, which inexorably overshadows their control and supervision duties. On the other hand, the board members are subordinates to the ministry as they are entitled to consider the company's benefits or public interests less commonly than the transient interests of a department or ministry. Moreover, NIOC's auditors and inspectors are under the influence of the managing director and the members of the board because they are generally viewed as the government's trustees who can, in a way, entice auditors, inspectors, or other staff and dismiss them from the project or completely fire them from NIOC. Therefore, one cannot expect that internal

Archive of SID.ir

Archive of SID.ir

supervisory units will scrutinize the board of directors of the state-owned companies' performance.

The purpose of separating the roles of the board of director membership and other executive management roles and the presence of independent directors on the board of directors is to improve supervision and transparency and prevent corruption. The occupation of two positions by one single person facilitates the exertion of undue influence. In other words, governance is improved through the battle against corruption in NIOC, where considerable financial resources are exchanged and significant economic activities are performed. Such corruption, from tampering with the accounts of raw material purchases to bribery and illegal goods and money transfer, can all be committed in NIOC. It is where the independent board of directors can perform better than the managing director overseeing the board of directors. On the contrary, separating these two roles adds to the level of accountability and responsibility. In other words, all executive directors are held accountable to the members of the board of directors, and the professional directors of NIOC monitor the decisions of the board of directors.

4. Conclusions

The commercialization of state-owned companies in the recent decade and the rising expectations of better performance by these companies have urged the governments to elect an independent professional board of directors and hold them harmless from political interventions as far as possible. In this regard, the present research was conducted to examine the election process of NIOC's board of directors and find answers to the research question in three chapters: the appointment entity, competencies, and the board of directors' nomination process. The research concluded that the general assembly, as the ownership unit, acts as the board of directors' appointment entity in the company, and the oil minister's special authorities turn the page in favor of the oil minister when it comes to an election among a few ministers. Regarding the competencies of the board of directors, the factor of commitment is assigned a higher score compared to the factor of specialty based on such intangible characteristics as being Muslim, reliable, and trustworthy. On the other hand, although the requirement of diversified specialties is always observed to a satisfactory extent in determining the make-up of the board of directors, the requirement for the minimum competencies loses its strength slightly. Since two-thirds of the directors are required to have a Bachelor's Degree and prior work experience, it is always likely that some people lacking academic degrees or prior managerial experience take the seats, which makes corruption and undue influence possible. As for the board of directors' nomination process, the Articles of Association of NIOC Act and other related regulations are silent. However, the center has established a system for the directors' development of NIOC for identifying professional directors. The board of director members do not go through this system in reality. Instead, they are nominated and appointed by political ties, which weakens the criteria of transparency, accountability, the rule of law, and specialized professional competence. Further, the independent directors' absence from the board of directors is the most significant weakness because the principle of supervision is weakened by the unification of the executive management posts and the membership in the board of directors.

Therefore, regarding the nomination and election process, the current procedure for appointing the board of directors is far from the principles of good governance. Thus, the research hypothesis is rejected because some indicators of good governance, such as the diversity of specialties of board members, are observed at an acceptable level when electing the board of directors. However, the requirement for the minimum qualifications has lower importance, and the criterion of independent directors is missing.

Finally, it is recommended that the center for directors development of NIOC releases its plans for training leaders of the oil industry to the public and the managing director in order to improve the leadership and management capacities in the Iranian oil industry sector and the members of the board of directors are appointed through assessment by the established system. The membership of the managing director or the board of directors in NIOC is avoided.

References

Ahmadi, F., Mohammadi, E. (2016), "Survey Impact of Good Corporate Governance (GCG) on Economic Value Added (EVA) of Tehran Stock Exchange", Financial Research, Volume 18, Number 2; p. 235–250, (In Persian).

Ahmeda, A., Iwasaki, T., (2021), "Foreign ownership, appointment of independent directors, and firm value: Evidence from Japanese firms", Journal of International Accounting, Auditing and Taxation, Volume 43, June 2021, Article number 10040, Available online:

Archive of SID.ir

Archive of SID.ir

Bainbridge, S., (2008), "The New Corporate Governance in Theory and Practice", London, Oxford University Press.

Bolourian,s., Angus, A., Alinaghian, L.,(2020), "The impact of corporate governance on corporate social responsibility at the board-level: A critical assessment", Journal of Cleaner Production, Volume 291, Article number 125752, Available online:

Christopher, H, (2009), "Transparency, The Key to Better Governance", London, Oxford, Oxford University Press.

Danaeifard, H., (2013), "Challenges of Public Management in Iran", Organization for the Study and Compilation of University Humanities Books (Samat), Center for Research and Development of Humanities, sixth edition, (In Persian).

Darvish, M. (2002), "Accountability in the Governmental Unites", Proceedings of the Conference on the Integrity of the Administrative System, p.352–369, (In Persian).

Gompers, P., Ishii, J. and Metrick, A., (2003), "Corporate Governance and Equity Prices" Quarterly Journal of Economics, 118 (1), p. 107–155.

Haraghi, M., Darvishi, A., (2018), The Presentation of a Model for the Appointment of the Professional Directors at the State Organizations", Quarterly Journal of the Study of Organizational Behavior, 8th year, No. 4, p 51–85 (In Persian).

Hengfei, L., Jigao, Z., (2020), " Tracing back to the source: Understanding the corporate governance of boards of directors in Chinese SOEs", China Journal of Accounting Research, Volume 13, Issue 2, June 2020, p. 129–145

http://dspace.lib.cranfield.ac.uk/handle/1826/16165

http://en.sasac.gov.cn/.

http://www.mop.ir

http://www.nioc.ir

http://www.petrochina.com

https://doi.org/10.1016/j.jclepro.2020.125752

https://petrobras.com

https://pubmed.ncbi.nlm.nih.gov/34607134/

https://rc.majlis.ir

https://research.chambertrust.ir

https://www.oecd.org

https://www.researchgate.net/publication/4925143_UK_Corporate_Governance_and_Takeover_Performance

https://www.sciencedirect.com/science/article/abs/pii/S0959652619325879

https://www.sciencedirect.com/science/article/abs/pii/S1061951821000264

Hughes, A., Cosh A., Guest, P., (2007), "UK Corporate governance and takeover performance", Centre for Business Research, Cambridge, University of Cambridge, Working Paper No. 357.

Ludwiga, P., Sassen, R., (2022), "Which internal corporate governance mechanisms drive corporate sustainability?", Journal of Environmental Management, Volume 301, 1 January 2022, Article number 113780, DOI: 10.1016/j.jenvman.2021.113780, Available online:

Mauritius Institute of Directors, (2019), "Best Practice Guidelines for the Appointment of Directors", London, publication No4.

Min, B., (2013), "Evaluation of board reforms: An examination of the appointment of outside director", Journal of the Japanese and International Economies, Volume 29, p. 21–43

Naciti, V., (2019), "Corporate governance and board of directors: The effect of a board composition on firm sustainability performance", Journal of Cleaner Production, Volume 237, Article number117727, Available online.

OECD (2009), State Owned Enterprises in China: Reviewing the Evidence, OECD publication.

OECD, (2002), "Governance for Sustainable Development: Five OECD Case Studies", OECD publication.

OECD, (2007), "Institutionalizing Sustainable Development" (OECD Sustainable Development Studies), OECD publication.

OECD, (2015), G20/OECD Principles of Corporate Governance, OECD publication.

OECD, (2015), Guidelines on Corporate Governance of State-Owned Enterprises, OECD publication.

Archive of SID.ir

Archive of SID.ir

OECD, (2018), Ownership and Governance of State-Owned Enterprises (A Compendium of National Practices), OECD publication.

OECD, (2018), Professionalizing Boards of Directors of State-Owned Enterprises, OECD publication.

Omidvar, A., (2008), "Twenty Practical Steps to Improve Corporate Governance and Responsibility", Center for the Promotion of Corporate Governance and Responsibility, Report 332, (In Persian).

Rahmani, A., (2008), "Corporate Governance and Risk Management in the Banking System", Proceedings of the Conference on Corporate Governance, (https://civilica.com/doc/437367) (In Persian).

Siladi, B. (2006) "The Role of Non-executive Directors in Corporate Governance: an Evaluation", Australia, Swinburne University of Technology.

Tajarlou, R., Babaei, Z (2017), "Study of the Principles of Integrity Promotion in the law of Tenders of Iran and the Organization for Economic Cooperation and Development (OECD)", Quarterly Journal of Energy Law Studies, Volume 3, Number 1, p.31–55, (In Persian).

Tajarlou, R., Ghorbani, B., Energy Law Studies, Volume 2, Number 1, p. 85–120, (In Persian).

Wang, Y., Jin, J., Yang, C., (2016), "Relations between the professional backgrounds of independent directors in state-owned enterprises and corporate performance", International Review of Economics and FinanceMarch, Volume 42, March 2016, p. 404–411

COPYRIGHTS
©2022 by the authors. Published by Petroleum University of Technology this article is an open access article terms and conditions of the distributed under the Creative Commons Attribution 4.0 International (CC BY 4.0) (https://creativecommons.org/licenses/by/4.0/)

Archive of SID.ir