

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

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ABSTRACT

Despite decades from its establishment, 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 role of the directors in the success of a company is undeniable. Recruiting efficient directors and subsequently 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 process of appointing directors. The purpose of this research is to scrutinize and describe the appointment process of board of directors from Good Corporate Governance point of view, identifying the NIOC's advantages and disadvantages thereof. The findings indicate that some indicators of Good Corporate Governance such as diversity of the board in specialization is acceptable, while the minimum competencies criterion is at fading level and there is no sign of practicing independent managers criterion. At first hereto, the process is described in three sections: appointment entity, board qualifications and nomination process and following is brought its analysis by using descriptive-analytic method. In conclusion, suggestions are made in regards with enhancing standards of NIOC Good Corporate Governance about board of directors' appointment.

Introduction

The National Iranian Oil Company (NIOC) has been in charge of the organization and policymaking for the activities of the oil industry, including exploration,

drilling, production, research, and development operations as well as oil and gas exports in Iran since 1951. Controlling huge resources of hydrocarbon reservoirs, NIOC is viewed as one of the biggest oil companies in the world; however, it is not a pioneer in

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international oil industry sector. Total Energies and Shell Oil Co. are among 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 role that the directors play in directing the company cannot be neglected. This is because the directors can make astonishing changes through their decisions.

A company – no matter large or small, is like a dynamic being. As an entity, this being is in constant motion and change, and reacts to the 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. So the importance of appointing powerful competent board of directors is known to everyone. How to appoint dynamic efficient directors, whereby a powerful board of directors is a challenge in response to which the concept of Good Governance comes to surface. The break-down of this concept leads us to apply it when appointing directors and assessing their performance.

The Organization for Economic Co-operation and Development (OECD) has drawn some guidelines for the concept of the good performance; the satisfaction of those guidelines can guarantee the healthy process of the appointment of the directors. The question of the research at hand 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 starts with examining the hypothesis of "the managers appointment process at NIOC does not comply with the principles of the Good Corporate Governance."

Forty years have already passed from the Revolution and some 24% of the public sector's directors will retire in the coming five years (Harraghi and Darvishi, 2019; 53). It is, therefore, essential to have unified and organized professional and specialized standards for the appointment of the directors and consider the applicable international criteria for the replacement, election and appointment of the directors. Thus the objective of this article is to describe and detail the directors' appointment process from the perspective of the Good Governance principles set forth by the Organization for Economic Co-operation and Development (OECD) and other applicable instruments and procedures prevailing in different countries.

The most of Persian researches in this field, such as "Survey Impact of Good Corporate Governance (GCG) on Economic Value Added (EVA) of Tehran Stock Exchange" coauthored by Ahmadi and Mohammadi, address the concept of the Good Governance and Good Corporate Governance, which is different from the subject of this article; or the article titled "The Presentation of a Model for the Appointment of the Professional Directors at the State Organizations", which is authored in the area of production management, does not approach the matter of the directors' appointment process partially. There are some other articles like "Best Practice Guidelines for the Appointment of Directors" authored in English by Mauritius Institute for non-legal fields; they have addressed the matter from a general viewpoint without taking a given company into account or at least, they did not study the NIOC as the subject of their investigations.

In this research, firstly, the concept of the Good Governance and its principles will be explained 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; and 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.

1. Definition of good corporate governance and its principles

The literal meaning of the term "corporate governance" refers to the concepts of structuring and corporate control (Siladi, 2006:112). The corporate governance history dates back to the era when 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 a corporate governance system. The conflict of interests, which is construed as representation, results from two major reasons; 1) the presence of different objectives and preferences, and 2) the lack of a comprehensive knowledge of other measures and preferences (Ludwiga & Sassen, 2022: 38).



The board of directors plays a major role in the corporate governance of the State-owned Companies (SOEs) and acts as an intermediary between the governments as a shareholder and the company, together with its executive directors (OECD, 2008:7). There is no precise definition of the Good Corporate Governance and there is a consensus on the indicators and principles of such Governance and its consequences. It is mostly defined as a communication system comprising from a structure and process which leads to a sustainable development and a promoted social asset (Omidvar, 2008:43).

Due to the wide range of the subjects of the Good Governance, different international instruments have been intended to cover a specific aspect of this concept, with an emphasis on the Good Governance indicators. For example, the members of the Organization for Economic Co-operation and Development (OECD) 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 title 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 major principles for the Good Corporate Governance are:

1.1. Transparency

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

1.2. Accountability and responsibility

In a general sense, this includes the processes by means of which the citizens hold the authorities accountable for their behavior and performance (Darvish, 2002:353). The accountability is a kind of sense of responsibility on which an individual commits himself/herself to give an explanation for his/her conducts to others (Tajarlou and Ghorbani, 2016:107). Together with this principle come the principles of fairness and meritocracy.

1.3. Rule of law

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

1.4. Prevention of corruption

The directors' appointment processes require that the law of fair competition and education is enforced powerfully. The undue influences of the political personalities and institution, and the high-ranking officials may endanger the health of any trend. Thus it is necessary that appropriate practices 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, 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 a 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 the use of dominant economic situation and the principles of competition, the presence and supervision of a specialized authority to deal with the matter are also discussed.

All the four principles mentioned above are equally important (Gompers & 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.

2. The board of directors' appointment process of NIOC

As regards the responsibilities of the board of directors of the state-owned enterprises (SOE), the "Corporate Governance Guideline for State-owned Enterprises" provides: 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 and be held accountable for their actions, and should be appointed for running the enterprise in accordance with a clear guideline (OECD, 2015: 26&27). This instrument is silent when it comes to the appointment of the directors, the managing director, and

the members of the board of directors and it suffices to mention a 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 "the 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 the organizational management and governance is the identification of the differences between the two concepts of "leading (management)" and "administration". Most of the directors implement the policies set by others while "leading" is the process or activity or study, or the performance of the organizational duties, which directs the organization towards the pre-defined 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 is 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, Ownership and ..., 2018) have addressed the issue of the board of directors' appointment process.

In this research, the process of the appointment of the members of the board of directors of NIOC is examined in three separate sections (i.e. appointing authority, qualifications, and nomination process).

2.1. 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 are applied by the state-owned enterprises 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 non-commercial priorities. In countries like China, where a centralized state enterprise ownership function is applied by the state-owned companies, 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 Organization recommends that the important decisions about the appointment of the board of directors are adopted through the consensus of a group bigger than one single 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 also 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 the I.R. Iran. The Iranian Oil Minister is the president of the General Assembly. The General Assembly has the required qualification for taking 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 order of the appointment of the members of the board of directors is issued by the oil minister for a 4-year term.

The composition of the Assembly members is associated with NIOC's decision made outside NIOC, in the sense that it makes the process of decision making in consonance 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 would 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 with respect to the rule of law, since the General Assembly comprises of the ministers of the different ministries and, actually, they do not have enough time for discussing the matter of the appointment of the board members, the group decision is violated and, 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 and, as a



result, the members of the board of directors are replaced with the replacement of the Oil Minister. The concentration of the power in the hands of a single person results in corruption and this, in turn, impairs the sense of responsibility and accountability.

2.2. The qualifications of the members of board of directors

The special 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 an operational one, which means the 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 the application of the management techniques. The decisions of the oil industry directors result in various consequences, including the financial, human, environmental, political, and cultural outcomes and this is why the diversity of specialization among the members of 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 a transparency should include the regulations on the disqualification of the former directors and the number of the government's representatives in the board of directors as well as the various skills and characteristics that the directors are required to acquire. Except for Egypt, all countries in the world have declared that they have established some minimum requirements for the appointment of the board of directors, among which education and specialization are considered the common criteria. In China, according to the Regulation of State-owned Assets of Enterprises, all directors are required to have professional knowledge, competency and good character (OECD, Ownership and etc., 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 member of the board of directors. This requirement violates the principle of the equitable treatment and prevents the membership of the followers of other religions in the board of directors, depriving the company from their professional experience and specialization as the members of the board of directors. Unfortunately, the professional specialty as a yardstick has been undervalued with the introduction of the two other requirements, i.e. the reliability and trustworthiness, giving way to the "commitment" as the top criterion. Considering the commercial nature of NIOC, it is better to give priority to "specialty" over "commitment". In the Guideline and the procedures adopted by other countries, "specialty" has been given more weight in terms of its meaning and implications. On the other hand, reliability and trustworthiness are non-objective 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 *good character* should not be introduced in a way that they are used as an excuse for overlooking the "Transparency" as a criterion.

In addition, at least two-thirds of the total main 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, alternatively, a Bachelor's Degree in one of the specialized engineering and technology fields; B) Having at least fifteen years of work experience in the oil industry, including five years of work in management positions. Besides, the composition of the members of the board of directors should allow for the diversity of specialization mentioned in the Row (A) above. 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 did not have managerial experience anywhere in the oil industry and outside, and yet they were appointed to the board of directors or some of the managing directors of NIOC, having no experience in the oil industry, have 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.

On the other hand, it seems that with the progress of science, having a Bachelor's Degree is not sufficient for taking management positions, and it would be better if upper academic degrees are considered as a requirement for these positions.

Article 28 of the Articles of Association Act stipulates that all main and alternate members of the board of directors must be natural persons and a 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, concerning the criterion *experience*² 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. However, these circulars have considered the criterion *experience* from the viewpoint of time and have categorized the state-owned companies into eight separate groups while establishing such tangible factors as the lapse of time and a certain record of work experience as the requirements for the positions of the board of directors and the managing director. Hence, the three criteria of the *good character, professional knowledge* and *work experience* have been considered by the Articles of Association Act. However, there is a discrepancy between the two afore-said instruments with respect to the definition and meaning of these three criteria. The good character as an indicator is in contradiction with the principles of the equitable treatment, the prevention of corruption, and transparency, which is due to the use of intangible biased characteristics.

The criterion *Professional Knowledge* has been applied appropriately by taking into consideration the matter of specialty at the time of determining the board of director's composition. However, taking into consideration the importance and position of NIOC, the educational requirements for the board of directors has been applied at a low level and this, in turn, impairs the principle of responsibility and meritocracy.

The criterion *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, and the members of the board of directors not having the required 15-year work record. This has been followed by impairment the principles of transparency, responsibility, meritocracy, competition, the prevention of undue influence.

2.3. Board of directors nomination process

In this section, four aspects of the composition of the board of directors are examined, which are: nomination methods, the ways of improving the disclosure of nomination processes, the assurance of respect to the shareholders' rights, and the election of independent directors.

2.3.1. Methods of the members board of directors' nomination for their positions

It is necessary that a methodical framework of nomination be applied and supervised by a governmental body. According to the Guideline, the nomination methods are as follows:

1. Case election method; A method in which an approach is adopted based on skills, experience, and personal characteristics and all directors are elected with the help of the advisers outside the company, such the directors recruitment agencies, and of 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 in the board of directors may form an introductions committee, along with other governance committees such as the strategy committee, rewards committee, evaluations committee, audit, and risk management committee (OECD, 2009: 60-64). Some countries like Korea, Malaysia, Thailand, and Swede have also taken actions in this regard. Presently, both states of Morocco and Egypt are contemplating on the formation of specialized committees for enhancing legal supervisory frameworks for the election of the members

² prior work experience/record



of the board of directors. For instance, one of the circulars which were issued in 2016 provides "all state-owned holding companies should form a nomination committee alongside other committees" (OECD, 2018:19&18).

One of the highly important resolutions passed by the 11th government in management development is Resolution No. 206/93/560 dated 26/11/2014 (Governmental Resolution), with a title of "a program for training future directors of the executive bodies". Among the key objectives of this resolution are:

1. Promotion of the merits and competences of the national directors
2. Realization of knowledge-orientation, meritocracy, and Islamic professionalism with respect to the directors' appointment and their promotions, and
3. Identification of the qualified employees in order to appoint them in the professional management positions, with a fair and competitive approach

A management unit has been launched at the Center for Directors Development of NIOC (Center) under the Resolution No. 1755/201/29343 dated 18/09/2011 of NIOC's board of directors (Resolution), with the aim of standardizing 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 above-mentioned Governmental Resolution.

According to Paragraph (4) of the afore-said Resolution, 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 and the necessities for the employee improvement and development as well as their achieved progress are registered in a databank, which is formed by Center and made accessible to the relevant units. The Resolution is silent on the evaluative test performance and, thus, Center has been assigned with the task of determining the type of test 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' competences are:

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 1-9, in which scores from 4 to 9 denote acceptability and lower scores are brushed aside.

The above criteria are evaluated in a series of tests. There are a lot of similarities between a part of these tests and the talent assessment tests for the doctorate program and the other part includes personal interviews and group activities to which the highest score is allocated. According to what was said above, there are no transparent criteria, because the whole process of assessment 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 with respect to the assessment process and use of the assessment results, which, in turn, impairs the rule of law. In fact, the management teams nominate their own chosen people for the vacant posts and introduce them for assessment, overlooking the negative scores given by the Center.

The criterion "the prevention of undue influence" 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 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.

It is important that all the bodies involved in the process stay accountable to their decision and conducts, and disseminate information in this respect and Center and other people should not be held accountable. This damages the rule of equity and meritocracy, etc. On the other hand, the programs of 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 clearly 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

"leader-making" one. It is necessary that this situation be changed fundamentally, so that "leader-making" is introduced as a paradigm for developing the oil industry's administrative abilities. It is recommended that Center put "the strategy for identifying and developing directors of 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 members of the board of directors by proceeding with the sham Article 28. Given the circumstances, the winner of the position of the board of directors in NIOC is who has developed more efficient political ties.

According to the case approach, since the nomination process, nominees' designation manner, and the number of the nominees are 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. Besides, the lack of an authority to deal with the objections and disputes connected with the nomination and board of directors' appointment processes impairs the corruption prevention principle.

2.3.2. Methods of improving disclosure of board of directors nomination process

The assurance of employing eligible members of the board of directors should be carried out based on the official competence assessment rules. These rules may include the processes of making recommendation, recommendations per se, voting ministerial nominees in or out of their office, forming nomination committees, and the final ministerial decisions. The improvement of 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 useful in this regard, including the public announcement of the vacancy for 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 the nomination of the members of the board of directors has not been mentioned in the Articles of Association Act of NIOC and, as said 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, rather they are nominated and appointed by political ties and this weakens the principals of transparency, accountability, the rule of law and the criterion of professional knowledge. However, the General Assembly would be regarded as representative of the government and the people and is considered as proprietor; that is, the General Assembly as 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 important criterion for change and appointment of the board of directors should be NIOC's annual financial statements, meaning that the members of the board should change in the event of profit reduction or loss. In practice, we can see there is no such a 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 its approval or rejection by a majority vote, although according to Article 24 of the Articles of Association Act, ballots are cast openly in the meeting of the General Assembly unless the General Assembly approves secret ballots. However, this voting is not disclosed anywhere and, thus, it is not exposed to the public scrutiny. Consequently, due to the lack of proper solutions for the disclosure of the board of directors' nomination processes, the principle of transparency remains defective.

2.3.3. 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 placing limitations on the number of the positions of the board of directors and/or by approving the gender and minority groups. The Guideline recommends that the decision-making bodies, alongside the non-government shareholders (minority shareholder) 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 are attended by non-



government shareholders (Min, 2013:19). Unfortunately, the employee representatives and/or the private sector representatives and/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 completely silent on this matter. However, this silence does not prevent the presence of these people in 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 among 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 members of the board of directors to take measures and decisions that are harmful to the interests of the minority shareholders or NIOC's social responsibility. The presence of these independent representatives causes the balance of power and their absence may pose serious challenges to the principle of control and supervision.

2.3.4. Designation of independent director

With the vast commercialization of the state-owned companies, it is recommended that the independent director and people with sufficient relevant professional experience are 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 the independent directors are among the members of the board of directors of the state-owned companies. Like similar regulations of the private companies in India, Korea, Thailand, and Swede, it is likely the large state-owned enterprises are required to designate a certain number of independent directors as the members of the board of directors. However, in most of the studied countries, there are little legal procedures (including the laws or regulations) concerning the employee representatives and the minority groups' representatives. In china, the composition of the board of directors is mentioned in the Articles of Association of the companies and all economic firms whose majority ownership is held by the government are obligated to have independent directors elected through assembly of shareholders. At the same time, the incumbent officials or those directly tied to the executive bodies cannot be

appointed as directors (Hengfei & 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 members of the board of directors preferably be people from outside the state-owned companies or the executive directors of these sectors. As for Malaysia, the board of directors is mostly comprised of the former ministers, retired specialists or the governmental officials who are primarily introduced by the ministries (OECD, 2018:19&20).

The principles of partnership and central consensus are violated by the absence of independent directors. According to the above statements, an independent director is the one who is not an employee representative, government official, and/or the incumbent executive director of the company. As said earlier, the make-up of the board of directors of NIOC are merely comprised of the government's representatives, which adds to the political nature of the board of directors' positions gradually in the course of time. In NIOC, the requirement for having independent directors is not observed and such a requirement has not been stipulated in the Articles of Association Act too. Although the Articles of Association Act's silence does not prevent the General Assembly from appointing the independent directors as the 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 and/or a Parliamentary Act. To this end, it is also recommended that at least two posts, with equal voting right, 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 the transparency.

As an unwritten law, the officials of the Legal Affairs Department, Integrated Planning Department, and the Financial Affairs Department have always been appointed as the main members of the board of directors of NIOC. The minimum requirement for the directors' independence is avoiding the employment of the current incumbent officials of NIOC, which has not been observed. The members of the board of directors change along the replacement of the directors of these

departments. This issue that those members of the board of directors themselves assume the responsibility of departments and executive managements 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. Whereas all members of the board perform their administrative duties under the supervision of the managing director, the board of the directors is stripped of the possibility of supervising the managing director and inquiring him. On the one hand, since the managing director is appointed by the Assembly, the members of the board would feel inferior, which inexorably overshadows their control and supervision duties. On the other hand, the members of the board are subordinates the ministry, as they are entitled to consider the company's benefits or public interests less commonly than transient interests of a department or ministry. Besides, NIOC's auditors and inspectors are also 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 or inspectors and/or other staff and dismiss them from the project or completely fire them from NIOC. Therefore, one cannot expect that the board of the directors of the state-owned companies' performance will be scrutinized by internal supervisory units.

The purpose of the separation between the roles as "the board of director's membership" and other "executive management" roles and also the presence of the independent directors in the board of directors is the improvement of the supervision and transparency, and the prevention of corruption. The occupation of two positions by one single person facilitates the exertion of undue influence, In other words, improving governance is achieved through the battle with corruption in NIOC where huge amount of financial resources are exchanged and great economic activities are performed. Such corruptions ranging from tampering the accounts of raw material purchase to bribery and illegal goods and money transfer all can be committed in NIOC. It is where the independent board of directors can have better performance than the situation where the managing director oversees the board of directors. On the contrary, the separation of 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 decisions of the board of directors are also monitored by the professional directors of NIOC.

3. Conclusion

The commercialization of the state-owned companies in the recent decade and the rising expectations of better performance by these companies have urged the governments to take steps for the election of independent professional board of directors and for holding them harmless from political interventions as far as possible. In this regard, the present research was conducted in order to examine NIOC's board of directions election process and find answers to the research question in three chapters (i.e. the appointment entity, competences, and 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 turns the page in favor of the oil minister when it comes to election among a few ministers. Regarding the *competences 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 a 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 competences loses its strength a little bit. Since two-third 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 keeps the door open for corruption and undue influence. As for *the board of directors' nomination process*, the Articles of Association of NIOC Act and other related regulations are silent and, as said earlier, although a system has been established by the Center for Directors Development of NIOC for identifying professional directors, the members of the board of directors do not go through this system in reality, rather they are nominated and appointed by political ties and this weakens the criteria of the transparency, the accountability, the rule of law, and the specialized professional competence. Also, the independent directors' absence from the board of directors is the biggest 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, as far as it relates to the nomination and election process, the current procedure for the appointment of the board of directors is away from the principles of Good Governance and, thus, the research



hypothesis is rejected because some indicators of the Good Governance, such as diversity of specialties of board members are observed in an acceptable level at the time of electing the members of the board of directors, but the requirement for the minimum qualifications has lower importance, and the criterion "independent directors" is missing.

In the end, it is recommended that in order to improve the leading and management capacities in the Iranian oil industry sector, NIOC's the Center for Directors Development of NIOC releases its plans for training leaders of the oil industry to the public and the managing director, and the members of the board of directors be appointed through assessment by the established system, and the membership of the managing director or the board of directors in NIOC are avoided.

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