

**Guest Speaker
Discussion Series**

*Organised thanks to the patronage
of the following companies :*

Air Liquide¹
Algoe²
ANRT
Arcelor
Areva²
Cabinet Regimbeau¹
Caisse des Dépôts et Consignations
CEA
Chaire "management de l'innovation"
de l'École polytechnique
Chambre de Commerce
et d'Industrie de Paris
CNRS
Conseil Supérieur de l'Ordre
des Experts Comptables
Danone
Deloitte & Touche
École des mines de Paris
EDF
Entreprise & Personnel
Fondation Charles Léopold Mayer
pour le Progrès de l'Homme
France Télécom
FVA Management
Groupe ESSEC
HRA Pharma
IDRH
Institut de l'Entreprise
La Poste
Lafarge
Ministère de l'Industrie,
direction générale des Entreprises
PSA Peugeot Citroën
Reims Management School
Renault
Royal Canin
Saint-Gobain
Schneider Electric Industrie
SNCF¹
Thales
Total
Unilog
Ylios

¹ For the "Technical resources
and innovation" seminar

² For the "Business life" seminar

(liste at september 1, 2006)

SUBTLE CHANGES IN THE BOARDROOM

by

Daniel LEBÈGUE

President

French Institute of Administrators
(*Institut français des administrateurs : IFA*)

Jean-Paul PICARD

President, general management, Deloitte

March 20th, 2006

Report by Jean Béhue Guetteville

Translation by Rachel Marlin

Overview

For the last twenty years, and without the public realising, the way in which boards of directors function has changed radically. As far as the structure of the board is concerned, we are a long way from the situation which Zola described in *L'argent* : the manager chose a few close friends and 'fourteen others who were less important, selected from among the most obedient and most decorative of shareholders', and where the auditors played a part which was 'as delicate as it was useless'. Independent administrators and auditors now play an active role in audit and compensation committees which may meet as often as ten times a year. They ensure that there are no regrettable incidents such as the latest ones which recently led to disaster. What is the new function of these boards and what are the consequences of this change in the governance of companies, and, in the near future, the governance of mutual insurance companies, and even co-operatives and associations ?

*The 'Association des Amis de l'École de Paris du management' organises discussions and distributes the minutes ;
these are the sole property of their authors.*

The Association can also distribute the comments arising from these documents.

INTRODUCTION : Michel BERRY

Zola's vision of boards of directors

Zola's novel *L'argent* portrays the strange actions of boards of directors, and the way in which they deal with important risks which companies face. It is the story of an adventurous charmer, Saccard, who sees the invention of the railway as the gold mines in the Middle East are discovered. He immediately dreams up extraordinary conquests : he imagines ways of charming everybody, from widows steeped in piety to investors, and independently wealthy people. He creates the Banque Universelle and with the implication that his company might even restore the authority of the Pope ! Things get off to a good start : pipe-dreams are realised and share-prices increase. Then, things get out of control : Saccard begins to manipulate share prices, and in the end his whole world collapses and he ends up in prison. This very contemporary story resembles what happened at Crédit Lyonnais, Enron and Vivendi Universal who had hopes of important global conquests. The similarity is so striking that a few financiers, to whom I showed the novel were astonished and said, « *it's just like that !* », thereby proving that the story is still relevant today.

And yet, at the time, Zola identified two important risks for the company : firstly, the unsatisfactory way in which boards of directors work. To prove this, the author described an environment which was the custom until recently in France, where the manager chose 'a few close friends and fourteen others who were less important, selected from among the most obedient and most decorative of shareholders'. Secondly, he caricatured the auditors who carried out a function which was 'as delicate as it was useless' and which undoubtedly consisted of saying at general meetings 'the accounts are true - period'.

However, contrary to the world of *L'argent*, scandals erupted. Laws were promulgated in the United States, reports were drawn up in France, work parties were created and the IFA (*Institut français des administrateurs* : French Institute of Administrators) was born. Experts in this sector say that the workings of these boards have changed greatly over the last few years, but this has not necessarily been apparent to outside observers. We have asked two experts to discuss this change ; Daniel Lebègue, who is not only the President of the IFA and present on a number of boards of directors, but is also the former managing director of the Caisse des dépôts (French public and investment organisation), and Jean-Paul Picard, President of general management at Deloitte who has a large experience of auditing and auditorship. We shall discuss the day-to-day work of these boards which devote much time in studying increasingly large texts, having increasingly frequent and longer meetings, and even forming audit and compensation committees. We will also discuss less frequent occurrences, for instance, when important companies launch important acquisitions or takeover bids : How does a board manage its discussions ? How do independent administrators get involved ? How does one appoint a CEO ?

TALK : Daniel LEBÈGUE and Jean-Paul PICARD

Administrator : the recognition of a function

Daniel Lebègue : I think it is the first time that the École de Paris has invited an administrator to talk about his work. I view this as a sign of the times. In France, until a few years ago, an administrator neither had any legal existence nor any social status. He did not have any well-defined responsibilities. Admittedly, there is a law with respect to commercial companies, but it defines the functions of boards of directors in a very general way : for example 'the board of directors has very wide-ranging powers to administer the company'. Furthermore, when we created the IFA three years ago, I discovered, to my great surprise, that in our country, which has a million associations, there was neither a professional association nor a list of company administrators.

Luckily over the past ten years, the governance of companies has made inroads into our legal system, our way of thinking and our practices. In France, the COB (*Commission des opérations de bourse* : Stock Exchange watchdog body, the SERC) and the AMF (*Autorité des marchés financiers* : body overseeing the financial markets) drew up regulations, and the law concerning financial security was approved in 2003. However, most importantly, recommendations were published by the AFG (*Association française de gestion* : French management association), the IFA or via the Viénot-Bouton report, which determined good professional practices. All these texts strongly affirm the functions of boards of directors in large countries based on market economies. In important countries which function with market economies, these can be summarised as follows : the board of directors has a strategic function, determining company strategy and the control of that strategy. The board of directors has an accounting and financial function to ensure the reliability of the accounts which the company publishes and the quality of the financial information which is given to shareholders and the market. It appoints the executive managers, assesses their work and fixes their salaries. It oversees quality control within companies, in other words, the way in which the company manages risk, and the means taken by the company to conform to laws and regulations. After all is said and done, the board of administrators ensures that the company develops good practices which conform to the law and to a code of ethics.

The advantage of the 'soft law'

It is noteworthy that in France and Europe the change for the better in our boards is mainly the result of self-regulation of the professionals, in contrast to the United States. There are two legal ways of constructing and reinforcing the governance of companies. On the one hand, there is a European model which puts a great deal of emphasis on the 'soft law' (in other words, good practices) and on incentives for those involved : this is referred to as a 'principle based system'. On the other hand, there is an American system which, contrary to the liberal image which its economy portrays is based on the 'hard law', in other words, the rules : this is known as a 'rule based system'. To convince oneself of this, one only has to look at the example of the Sarbanes-Oxley Law, (the name is taken from the two Congressmen who presented this law to Congress in 2002). It is many pages long and includes several hundred articles. It lays down very precise rules which are very rigorously applied, even on a criminal level. In the United States, one can see the growing criticism of its formalities and the rigidity of its procedures. This is why I think that the European system, which is more flexible, more pragmatic and gives people a greater sense of responsibility on a daily basis, is the better system.

The real work of the administrator

As a result of such developments, one can see many changes in the way the boards of directors of our important quoted companies function. This applies particularly to the workload of the administrators whose function is to exercise real responsibility from now on. There are a number of subcommittees within the boards of the CAC 40 (the forty most

important French companies quoted on the Paris Stock Exchange). These include audit committees, compensation committees, nominations committees (which in certain cases merges with the former), and often strategic committees. I have some experience with audit committees having presided on four. They meet about eight times a year and the meetings usually last half a day, but occasionally for a whole day. An administrator who takes his position seriously would have to devote two full days per month to this work – in other words, twenty-five days each year –, preparing various files, committee meetings and board meetings. This amount of time can be compared with the United Kingdom where it is thought that administrators may spend two months of full-time work per board each year in common with Scandinavia, the US or Canada.

An anecdote describes this change very well. In 1983, when I started my first term of office as an administrator, the president of the company, Ambroise Roux, greeted me and said to me ‘a good board meeting should not take more than an hour, so, I am counting on you not to ask too many questions’. At this time, accounts were filed once a year and only between thirty and forty minutes per year were spent examining them. Currently, I receive a file which is two hundred pages long three days before a committee meeting, or four hundred pages long if the company is quoted both on the Paris and the New York stock exchanges.

A supervisory role

I will now discuss the fundamental work of an administrator. Ten years ago, an administrator could still learn from the press about a number of important decisions, such as those taken in the case of the Crédit Lyonnais, France Télécom or Vivendi Universal. There is also the case of un-quoted companies and administrators of the Caisses d’Épargne and the Banques Populaires which only met two days before a press release was made. Nowadays in companies which I know, a president who takes an important decision, (for example in terms of investment or acquisition) regarding a file already examined by the strategic committee with a view to a collegial decision, and without beforehand having submitted it to the board of directors runs the risk of being sanctioned and fired by the aforementioned board. No board will now accept being put in an impossible position with respect to a company’s strategic project.

One should not forget that in France the board of directors examines the accounts, files them and carries the responsibility for them in relation to the shareholders and the market. The administrator scrutinises the liquid assets, the debts and the commitments and contingent liabilities of the company. This was not required five years ago in official documents. And yet, one is aware of the risks which may result if these guarantees are given to a third party. Finally, and this was unthinkable ten years ago, the board analyses all the risks of the company whether they be financial, fiscal, legal, operational and even environmental. The ethics committee spends a great deal of time in this area and this is normal practice.

In the case of the audit committees, one should mention that relations between the internal and official (ie. external) auditors have radically changed in the space of ten years. Today we meet these official auditors face-to-face so that we hear all their queries concerning the management of the accounts, the management of risks or the audit system of the company. Personally, I make sure I have the same sort of relationship with the internal auditors, whom I expect to be totally transparent with respect to the audit committee and the board of directors. The auditors should hide nothing from the board so that the board can carry out its supervisory role correctly.

The change in the role of the administrator

Another notable change concerns the qualities necessary to be a company administrator, with, in the first instance, the need to be conscientious. As an example, the average attendance rate at the five board meetings on which I sat in 2005 was 88 %. This is very different from the board meetings which Zola described where the administrators only came for lunch. Furthermore, and very wisely, the legislator has limited the number of terms of office for each

administrator to five. We go further than this at the IFA, since we insist that the president or the executive managing director of an important quoted company should not have more than two mandates outside his company.

Administrators are also expected to work in a professional way but this should not prevent them from carrying out other activities. If accounting rules change, as was the case in France and Europe last year with the change-over to the International Financial Reporting Standards (IFRS), every administrator should set himself the task of learning about this new accounting frame of reference.

Finally, there is the much talked-about 'administrator independence'. This should not prevent administrators from helping the president with his duties ; they should be able to act as if they were an independent checking body, with freedom of judgment and speech. With regards to the CAC 40, currently more than 50 % of their administrators are independent as defined in the Bouton-Viénot report. Therefore, there are an increasing number of specific skills in the accounting, legal, technological or human resources areas. One can therefore understand that a board which works appropriately is an open board, and it incorporates its various talents and behaves independently in discussions while at the same time ensuring complete loyalty to the company. If ever there is a major disagreement on strategy or management, the administrator should obviously leave the board. Having said this, the board is a united college which operates confidentially.

IFA's recommendations

In contrast to these changes, the administrator's level of remuneration remains modest : on average forty thousand Euros per annum of director's fees for the CAC 40 companies. At the IFA, we are seeking an improvement in the taxation of directors' fees which in France, where there are no tax allowances, is very heavy. We encourage administrators to take out insurance for legal risks. We insist that administrators follow training programmes regularly. In the United Kingdom, quoted companies offer their administrators annual training sessions. We also suggest that the board is periodically audited. Finally, we hope that when boards have a turnover of personnel, that they grant a more significant place to women who only represent 6 % of all administrators in France. This is clearly a disturbing figure.

Governance and company performances

The subjects to be discussed in 2006 are going to be interesting since under the Breton Law boards of directors will determine all the elements of remuneration some of which are subject to a vote in the shareholders' general assembly, such as benefits on leaving the board or the pension system. Therefore we are going to have a transparent and collegiate system where the board will be responsible but will be controlled by shareholders. The same operation should then take place with respect to the appointment of managers and administrators, since appointments do not operate on a system of co-option, even internally. I quote Serge Tchuruk who said publicly, as do few presidents, 'it is not up to me to choose my successor, it is the job of the board of directors.' These are the rules and the practices in all countries which have good company governance.

Finally, I would like to stress the fact that it is important to have active and competent administrators since this is the way to improve management efficiency and security. When management, which is a difficult job, is controlled as it should be by the board, one knows that in the medium term the company will improve its economic and financial performances since it will manage its risks better. This is true regardless of individual entrepreneurial genius. An entrepreneur who takes a decision on his own without consulting others, and by excluding himself from any form of control, will make a bad decision one day : the history of companies and capitalism proves this. Good governance is therefore a means of optimising management and the economic performance of the company, in particular regarding its shareholders.

Good group governance

Jean-Paul Picard : Deloitte was already in existence for fifty years before Zola wrote his novel *L'Argent*. As a firm, this gives us an advantage in observing important changes in the economic world during the last one hundred and seventy years. I am going to talk from the point of view not only as a practising auditor but also as the French president and member of the global executive of a group which has a strong board of directors and which employs one hundred and thirty thousand people, four thousand of whom are in France.

Over the past five years, we have gone from a comfortable world in which all the powers were given to the president by a board consisting of his close acquaintances who had financial interests in the company, to a world where there is a marked separation between the executive and the supervisory function. I was personally struck by the number of French groups who opted for a system comprising both a supervisory board and a board of directors. However, it is noticeable that this tendency is spreading. At Deloitte's, we adopted this principle two years ago by appointing a president of the board of directors and a president of general management. In fact, companies which have not opted for such a separation of roles are confronted with a certain number of essential questions concerning the rigorous supervision of their group : what is the best system of governance which preserves the interests of the shareholders ? Whose interests do the administrators represent ? Is it only the shareholders or, on a broader scale, the interests of the employees, clients, partners, or stake-holders ? How can one be sure that strategic decisions taken by the management were carefully thought out in the interest of the company and that they were motivated by clear objectives which aimed to improve the performance of the company ? Different precepts of laws have attempted and still attempt to answer all these questions.

The signs of the improvement

Systems of governance have significantly improved over the last ten years and I think there are three reasons for this. Firstly, the Enron and Worldcom scandals had very serious repercussions on the markets because it was realised that the malfunction in company governance could have important consequences on company performance, development or even its existence. Secondly, managers and boards of directors understood the need for transparency in the way in which they carried out their business, managed their risks, and maintained the reputation of their company. Boards of directors saw their power and their role reinforced with respect to company management. Lastly, the role of regulators has increased. We have moved from a system of self-regulation to a system of intense regulation. There are still differences between Europe and America because American rules are stricter and more detailed than the European ones. However, it is notable that with the adoption of the law concerning financial security, France has certainly adopted the most restrictive and detailed laws in Europe. Therefore, one might expect a harmonisation of the rules of governance on a European level. In fact, the eighth directive ought to present a basis of laws common to European countries in terms of economic and financial transparency.

Shareholders and the evolution of governance

Another change concerns the shareholders whose power has increased so that they play the driving role in the promotion of better governance. This was not the case when Zola wrote *L'argent*, and would have been unthinkable five years ago. However, now that they are better informed, shareholders have the chance to take a more active part in the way the company works, and in the selection of management, as was the case for Eurotunnel or Havas.

In fact, the shareholders' growing influence on the governance system comes from changes in shareholding structures. Firstly, it should be noted that American and English pension funds brought a certain dynamism and demand for transparency. One can see a more important commitment by institutional investors who are proving to be more active than they were ten years ago. This phenomenon, which was new in Europe, will become more prominent in the future. At the same time, shareholders have become more international, reflecting the

globalisation of companies. It is noticeable that half the shareholders of CAC 40 companies are foreign. The consequences are very important with regards to the attitude of shareholders towards their governance. Finally, one has started to see the emergence of companies or associations of individual or minority shareholders playing a key role in terms of resolutions. Undoubtedly, the arrival of class actions in France, in the wake of those which took place in the United States, will emphasise the tendency.

The influence of North American legislation

In France, we audit approximately 40 % of the important French companies. I would like to draw on this experience and discuss the influence of American legislation in France. Currently, 30 % of the CAC 40 companies are quoted on Wall Street : they represent 50 % of the value of the CAC 40 companies. These companies, quoted in the United States, conform to American legislation such as the Sarbanes-Oxley Law. This law specifically outlines the responsibilities and obligations of governance, including severe and even penal sanctions. It also requires the implementation of a strict internal control system. However, a good internal control system needs a good system of governance, a board of directors and specialised committees which function correctly. The question now is what is the saturation point of regulation, something which appears to have been reached in the United States and probably in France. We should be more aware of this phenomenon, since, because of their size, French companies quoted in the United States influence all the other companies which are not quoted.

Making administrators more professional

It must be borne in mind that in order to strengthen the role of the boards, one has to make the administrators, who should be independent and competent, more professional. The number of independent administrators on the boards of CAC 40 companies increased from 6 % in 1996 to nearly 50 % in 2005. This is an important change. As far as the competence of administrators is concerned, my experience and observation show that this area has no easy answers. This is simply because bankers are often considered to be informed, non-independent professionals, and because company managers who operate in the same sector often experience conflicts of interest. Ultimately, there remain a limited number of potential candidates who have difficulty in understanding company data. For example, trying to find people today who are independent and who are familiar with the US or IFRS accounting standards is not easy. Consequently it is crucial to train administrators.

Another solution is to make the boards more international, since by increasing the numbers on the boards, there is more likelihood of finding good administrators. Currently, 30 % of administrators of CAC 40 companies are foreign. I find this a good thing because a Spaniard, an Englishman, a German and an American do not necessarily analyse things in the same way as a Frenchman. This then allows administrators to 'cross-fertilise' good practices, firstly on a European level and then on a global level, and to become more open-minded.

A progressive and subtle revolution

Relationships between auditors, financial managers, administrators and managers have changed dramatically with the appearance of specialised committees and in particular audit committees. All CAC 40 companies now have such committees which work in a very professional manner. Consequently they have kept strictly to their role regarding questions such as value tests (the so-called 'impairment tests') or the changeover from French standards to IFRS standards. Many more problems might have been encountered but in the end it was rather a calm revolution. One should also mention that the boards themselves are accountable for their work. In fact many boards do not hesitate to carry out self-evaluations or sometimes ask external consultants to intervene. This is particularly interesting and undoubtedly reflects a change in thinking.

In conclusion, I would say that boards of directors and shareholders are experiencing a subtle revolution because it is progressive. This revolution is now well established in company management and aims to improve transparency and risk management. Indeed, no system of governance will ever be able to prevent bandits or bankruptcy in this lowly world. However, we may be able to limit their number which is a responsibility for all of us in our capacity as auditors and administrators.

DISCUSSION

The choice of administrators

Question : *Who appoints the administrators and how is this done ?*

Daniel Lebègue : Contrary to what took place about ten years ago when the main source of potential candidates was the president's address book, it is now the general assembly of shareholders who appoint the administrators on the basis of suggestions made by the board of directors generally via the nominations committee. However, we may also resort to head-hunters.

Jean-Paul Picard : Administrators should be people who are respected by the investors, the rating companies and the banks. Some should also possess specific qualifications, for example, the president of the audit committee who, in the eyes of American legislation, needs to demonstrate that he is qualified in financial and accounting matters. Therefore, it would be difficult for an important company to employ bogus administrators.

Q. : *Can you envisage sexual equality on boards of directors ?*

D. L. : At the IFA, we encourage companies to create boards comprising 20 % of women over the next five years. Actually we have a mixed discussion group, chaired by Agnès Touraine, whose main aim is to promote good practices on boards. We think that the mere fact of talking about it may help to change things. The day when Michel Pébereau (president of the BNP Paribas board of directors) is able to announce to Monsieur Bouton, president of the board of directors of the Société Générale which contains only one woman, *'there are three women on my board of directors'*, it is certain that this will change things at the Société Générale. One should also point out that the women present in this mixed discussion group insist on adopting a very professional approach to their recruitment and training.

J.-P. P. : This is a subject which is very close to my heart. A company which is lucky enough to have a variety of members, young and not so young, men and women, French and foreign, and with different social and religious backgrounds, is a winner in the long-term since it is more likely to find innovative solutions. At Deloitte's, we are in this position and we try to make sure that we diversify our thirty thousand annual recruits as much as we can on a global level. However, despite the procedures which we have implemented, we have only managed to achieve 18% female associates .

Governance at the heart of the decision

Q. : *Are there two reports, the official one which is bland enough to avoid creating turmoil in the business world, and another one which is unofficial ?*

D. L. : Reports of meetings held by quoted companies, particularly those quoted on the New York stock exchange, are detailed and have to cite discussions and the decisions taken by the board. An administrator may ask that his personal opinion be included in the report. This report is then submitted for approval to the board of directors and it is available to be consulted by regulators, controllers, auditors and possibly magistrates.

J.-P. P. : There is only one report as a result of the board meeting. It must not be forgotten that the reports from important quoted companies are likely to be transmitted to the AMF (Autorité des Marchés Financiers) or the SEC (the United States' Securities and Exchange Commission). If there were more than one report, you can imagine the civil and criminal consequences for the administrators.

Q. : *A physicist might say that increasing the number of people involved in decision making tends to reduce temperature and pressure to the mean. Does this extraordinary caution which these new rules impose on managers not inevitably dull their creativity ?*

D. L. : I remember in the 1960s when management arrived in France, people said 'Yet another American invention ; it'll pass.' However, forty years later, everyone likes to pretend he is a manager. Governance is the same : in the beginning, it involved a small number of very important people with diffused shareholding for whom these few cautious rules were intended. Gradually the movement influenced economic and social life. This is why the IFA now welcomes family-run businesses, small and medium-sized businesses, public companies, co-operative mutual insurance companies or associations which want to work in a more professional manner. On a global level, the 155th Code of Governance has just been published to include the Chinese and the Russians who have rewritten their company law regulations. Finally, the state is the only place where this process has not yet happened. Does this slow down innovation or the growth process ? There have never been so many mergers and acquisition projects.

J.-P. P. : This is a question which often arises in France, but not in other countries. Some time ago, in an international study, presidents were asked the question 'What do you value most in your job ?' The Americans replied 'teamwork'. In France, the answer was taking a decision alone... I come from an environment where debate is pushed to the limit since we are a partnership, in other words, it is all the associates who elect the entire management of the firm and I have to answer to the board of directors and to all the Deloitte associates throughout the world. If one looks at our competitors who have the same structure, personally I think that this helps managers by spurring them on and forcing them to justify their decisions.

Q. : *These new rules of governance seem to generate new risks, in particular for financial analysis. Therefore, it is increasingly difficult to differentiate information from 'outside noise' Furthermore, there is a standardisation of company strategy in the form of 'me too'.*

J.-P. P. : Information has undergone a quantitative and qualitative leap in the past few years and it would be a shame to limit the supply of information to analysts and shareholders. The main problem is that there is an increasing gap between the expectations of analysts in terms of projected information, whether it be financial or not, and a company tendency to limit information in order to preserve its responsibility.

D. L. : It is up to analysts and shareholders to ask companies and their boards to produce relevant information. It is true that general assemblies spend a great deal of time producing things other than strategic information. As for the sheep-like strategy of companies, it is debatable whether this stems from the fact that a company in the first instance thinks about the way in which the market and financial analysts are going to react, especially in the case of risky decisions.

The independence of the administrators in question

Q. : *You have emphasised the independence factor : is this simply a recommendation or a law ?*

D. L. : Independence is not a law but a recommendation resulting from the Viénot-Bouton report drawn up in 2002. 'The administrator who is free of all interests in relation to the company of which he is neither an employee, nor a supplier, nor a banker, nor linked by any family ties, nor linked to any important share-holder of the company, is independent.' It is

then the duty of each company to list in its annual report its independent administrators for whom the company takes responsibility for their qualifications.

J.-P. P. : I should point out that the responsibility of administrators is less than that of the auditors. Currently, there is discussion within the profession regarding the ethics code in which one article forbids auditors to be close to companies. But how should 'proximity' be defined ? Another article in the code states that auditors are not allowed to have accounts in the banks where they are auditors. This poses other obvious technical problems, in view of the concentration within the banking sector.

Q. : *Does the practice of salaried administrators not contradict the principle of administrator independence ?*

J.-P. P. : It is true that the salaried administrator poses a fundamental problem since, by definition, he is not independent in the sense of American legislation. German and French legislation call for his presence on the board. Provisions are made in the articles of the Sarbanes-Oxley law for this.

D. L. : This argument is inadequate to conclude that there should not be any salaried administrators, and at the IFA we think that it is good to include employees on the board. In the United Kingdom, where, as I have said, governance was the best, boards of directors are half executive administrators and half independent administrators, a fact which produces de facto a large number of salaried administrators. Admittedly, one can say that they are managers, but do they not also represent the company ?

Q. : *If administrators are increasingly independent, what is the point of differentiating between a president and a managing director ?*

D. L. : This distinction is the rule everywhere apart from the United States and France. In all the other important countries with market economies, the executive mission is entrusted to a managing director and not a president. It is common sense not to put the management and the control of a company into the same pair of hands. It is noticeable that in France, 40 % of important quoted companies have separated out these functions and this tendency is set to continue.

Q. : *One aspect of the Sarbanes-Oxley Law which presented the largest number of problems in our companies is the whistle-blowing procedure which is a method of informing. What role does internal auditing have in this procedure and what are its effects in terms of the action of the board of directors ?*

J.-P. P. : American regulations effectively force companies quoted in the United States to implement whistle-blowing procedures as far as fraud is concerned. The procedure imposed in France concerning finances follows this lead even if this procedure generates discussion about denunciation. It is a fact that the majority of large-scale frauds were not uncovered by these procedures.

The responsibility of administrators

Q. : *In what ways does the French system give people more sense of responsibility than the American system ?*

D. L. : What I just said had no legal impact : I think that the European system gives a greater sense of responsibility inasmuch as those involved define good practices themselves, then make them public and agree to be judged on their own recommendations. In the case of the Viénot-Bouton report, professionals met as a committee and drew up recommendations. Those involved are therefore at liberty not to apply these recommendations, but one has to explain this to the shareholders and the market. It is the principle of 'apply or explain oneself'. Thus, it gives a greater sense of responsibility than a system which consists of using

a law, and is much richer in terms of management or governance. The British hardly have any rules on governance and everything operates from the basis of 'soft law'.

J.-P. P. : I notice that today an American administrator no longer travels without his lawyer and I think that this has a direct impact on the way in which he assumes his responsibilities. We have not yet reached this point in France even though there is a tendency to resort to various attestations given by bankers to protect the administrator's responsibility when there are important operations.

Q. : *What is the responsibility of administrators and boards regarding environmental and social commitments of companies, given that they themselves are only judged by the shareholders ?*

D. L. : The behaviour on boards is very variable. In the United States, Delaware legislation states that the board of directors is the guarantor of the shareholders' interests, whereas in the French and European systems, in legal terms the administrator makes his decision alone according to the social interest of the company, which, in my view, goes beyond the shareholders. It is true that it is hard to find a balance between those actively involved, and it remains risky for a board to take decisions contrary to the expectations of the shareholders. One should also note that a project may involve interests other than those of the shareholders as in the case of the Suez-GDF merger.

J.-P. P. : On a purely technical level, there are precepts which require that annual reports provide environmental information and this information is validated in the overall reading of the report by the auditor. Furthermore, in the tradition of a certain number of Scandinavian countries, companies have started to publish environmental reports with indicators and aims. Currently, France is probably the market economy which certifies the greatest number of environmental reports by its auditors : this is not the case in the United States due to the risk of litigation.

Presentation of the speakers :

Daniel Lebègue : graduate of the Institut des Études Politiques (Lyon) and the École Nationale d'Administration. He was Treasury director, administrator and vice-president of BNP Paris, and then managing director of the Caisse des dépôts et consignations (French public and investment organisation). He is the president of the IFA (Institut français des administrateurs). He is an administrator for the Crédit Agricole S.A, Alcatel, Technip and Scor.

Jean-Paul Picard : president of general management, Deloitte France. He is a member of the world Executive and signatory auditor of several companies which are members of the CAC 40.

Translation by Rachel Marlin (rachelm@tiscali.fr)