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SLO—Needed by Corporations but not Required by Law

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Abstract: ***The Social License to Operate initially originated in the mining industry. As economic activity has expanded, the concept has been enriched and different types have flourished. In the background of economic globalization, companies are having a deeper and deeper impact on all aspects of society and should also assume more social responsibility. Social license to operate is also a part of corporate social responsibility. This article analyzes the importance of social license to operate from different perspectives and why it has not yet been incorporated into the law.***

Keywords: Social License to Operate; Stakeholders; Director's duties.

1. INTRODUCTION

There are many types of Social License to Operate (SLOs), such as the pyramid model, the three strand model and the triangle model[1], however, there is no consensus on the concept of SLO in society, and it is difficult for us to clearly say what SLO is. The Business Roundtable signed the "Statement on the Purpose of a Corporation" on August 19, 2019, emphasizing that in addition to fulfilling fundamental commitments for all stakeholders, companies should undertake corporate social responsibilities[2]; this demonstrates that the concept of Corporate Social Responsibility (CSR) is gaining support and acceptance in the global business environment. Some companies are adopting a model, the SLO, as part of their CSR strategy[3]. Therefore, when we say that corporations need a social license to operate, to a certain extent, it means that corporations need to consider stakeholders and take social responsibilities in the operation process. Stakeholders are to a corporation what water is to a boat. When the waves are smooth, water can carry a boat to sail, but it can also tip it over if the boat does not handle the wind and waves properly. This article consists of two parts: The first part will analyze why companies should consider stakeholders from three aspects: corporate interests, directors' responsibilities and corporate governance. The second part analyzes why the law does not require corporations to need a social license to operate from two aspects: the conflict of interest among stakeholders and the flexibility of the content of SLO.

2. WHY DO CORPORATIONS NEED TO CONSIDER THEIR STAKEHOLDERS AND BE SOCIALLY RESPONSIBLE THROUGH SLO?

2.1 From the Perspective of Corporate Interests

Milton Friedman believes that "there is one and only one social responsibility of business-to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception fraud"[4]. The corporation's profit is the common profit of many subjects. If company executives take the corporation's money to undertake social responsibility, they are spending the money of other entities[5]. By doing so, the corporate executive would be undermining the interests of the shareholders. However, this is not entirely the case. The company does spend some of its money to undertake social responsibility, but this expenditure is like "fishing bait", which can be used to catch "big fish" for the shareholders, that is to say, to make more money for them. Shell and Chevron Texaco's efforts to gain community consent for their plans to extract natural gas off the coast of Palawan, the Philippines, could save Shell as much as $72 million in project delays, equivalent to its community consent costs 1,200% return"[6]. Therefore, it is actually in the company's interest for companies to take social responsibility.

On the other hand, the interests and values of shareholders in a company are diverse. Some shareholders hold shares for a short period, and they only care about the price of the shares and not about the company's operations. Some shareholders wish to hold the company's shares for decades and are very concerned about the company's long-term future. The first type of shareholder may only care about investment and returns, while the second type of shareholder is willing to sacrifice some short-term profits to allow the company to operate ethically and socially responsibly. If it is considered that the company's social responsibility is only for the company's owners to seek profit maximization[7], it will damage the interests of the second type of shareholders to a certain extent. Protecting the interests of shareholders is not contradictory to or in conflict with corporate social responsibility and consideration of stakeholders. Consideration of stakeholders and social responsibility are conducive to the company's long-term success and shareholders' long-term benefit.

2.2 From the Perspective of Director's Duties

Directors have the duty to discharge their duties with the degree of care and diligence and to act in good faith in the interests of the company[8]. However, the law does not explain what exactly is meant by the interests of the company[9]. In practice, it is beneficial for directors to consider stakeholders other than shareholders to fulfil their duties and responsibilities as directors. The Bhopal gas in India was a severe disaster. MIC is a deadly chemical. Due to cost-cutting and substandard operations, serious environmental pollution has been caused. Management concealed information that they were denying victims access to medical protection items. According to NGO reports, this led to symptoms of MIC poisoning in 50-70% of the exposed population. In this case, the company and its director should be held criminally liable under Indian law[10]. However, this tragedy could have been avoided if directors had been more responsible for the stakeholders who may have been affected by the company's production. Although the law does not explicitly require directors to consider stakeholders, decisions made after considering stakeholders overlap considerably with decisions made by the director to fulfil the duty. Failure to consider stakeholders causing damage can sometimes result in directors breaching their duty of diligence. In other words, directors consider stakeholders' interests other than shareholders, which is beneficial for directors to perform their duties and responsibilities. In many cases, considering stakeholders' interests is more beneficial to the company's profitability[11].

2.3 From the Perspective of Corporate Governance

SLO needs to protect stakeholders, so who will protect them? It seems that scholars have emphasized more that the protection of these interests depends on the company's self-consciousness and the company's moral obligation. However, the law's pursuit of fairness and justice requires that such protection does not depend solely on the moral obligations of these companies and that such protection must gain its proper place in the basic configuration of corporate power. Corporate social governance enables stakeholders' interests to be responded to in corporate governance.

Stakeholders can use the supervision power of the media or public opinion to promote corporate governing bodies or managers to make decisions beneficial to stakeholders. In addition to this, NGOs are also playing an increasingly important role in this process. In March 2010, the environmental group Greenpeace launched a boycott of Nestlé on social media over the deforestation and loss of habitat for orangutans and other species due to palm oil sourced from Indonesian supplier Sinar Mas. This led to a boycott of all Nestlé products by many people[12]. The Internet and diverse media have facilitated the exchange of information. Nestlé is a multinational company with a business scope covering many regions worldwide. If Nestlé does not consider stakeholders, not only will it be boycotted and opposed by the region where it is located, but also the risk of this business reputation will spill over to other areas, which may lead to boycotts by consumers around the world. Subsequently, Nestlé's senior operations manager Mr Lopez indicated that it would suspend the purchase of palm oil from Sinar Mas. In May, Nestlé joined the Roundtable on Sustainable Palm Oil and pledged to use all certified sustainable palm oil by 2015[13].

Given the limited level of technology and productivity in the past, the impact of the company's actions on the public, especially the substantial damage, was limited and did not attract the attention and interest of the public. However, with the acceleration of economic globalization and digitization and the systematization of the global layout of multinational companies, the corporate stakeholders' fate is increasingly being significantly affected by modern corporations. If the company's damage to the public interest is more beneficial to the company's actual controller or the management's interests, they often refuse to make corrections and adjustments and go further and further down the wrong road. At this time, the external forces caused by the company's damage to the social and public interests have indirectly affected the company's governance. For corporate governance, social governance is a part of corporate governance. If a relatively perfect indirect corporate social governance mechanism is formed outside the company, the deficiencies of the direct corporate governance mechanism can be made up for this, and the corporate governance will be better.

3. WHY DOES THE LAW NOT REQUIRE AN SLO?

3.1 Internal Conflicts of Interest Among Stakeholders

Before ecological damage and environmental pollution came to the forefront, the consideration of an SLO might have been more about what the company would do in terms of employment, promoting economic development, and taking up land and social resources. However, as times have changed, different stakeholder considerations within the same community within an SLO can sometimes conflict. For example, in the case of Topfond pharmaceutical company[14], the company was operating at a high level of profitability but was also polluting the local environment. Some stakeholders believe that the company will provide a large number of jobs and ease the pressure on employment, and some believe that the company will contribute to the development of the local economy. However, some other stakeholders would like to see the company shut down because they live near the company and suffer from its odour emissions. The problem with stakeholderism is that there is no way to balance the interests of the various stakeholders. In other words, when the interests of different stakeholders conflict, it is not clear which of their interests should take precedence[15]. The introduction of SLO into the law makes it difficult for the law to regulate and measure this because each enterprise has different characteristics in the struggle of internal stakeholders in the process of obtaining SLO, and the law cannot fully cover it.

3.2 The Specific Content of SLO is Uncertain

There is no clear and widely accepted definition of what an SLO is, and the specific content of an SLO changes with the times. Different communities have different levels of requirements for companies. Foxconn Group is a company whose primary business is the assembly of electronic products; t his type of company has a minimal environmental impact on the community environment and does not compete with the resources on which the local population depends. Instead, it can provide a large number of jobs for the local population and, therefore, can easily obtain an SLO. It is more difficult for companies with a high environmental impact, such as mining and food producers, to obtain an SLO. The process of a company obtaining an SLO can reflect the needs and claims of different stakeholders promptly. The law is stable and has a degree of delay. If SLOs are introduced into the law, the application of SLOs may become rigid, which will bring difficulties to the company's operation. By not introducing SLO into the law, it can give better play to its advantages so that it and the legal system can work together to improve corporate governance and promote enterprises to better take social responsibilities.

4. CONCLUSION

This essay mainly analyses the importance of companies considering stakeholders and taking social responsibility. The first part of the article starts from three aspects. Firstly, it analyses the need to consider stakeholders from the perspective that considering stakeholders is more conducive to the long-term development of the company and better balances the interests of different shareholders. Then, it takes the legal provisions on directors' duties as the starting point and discusses the consistency between directors' responsibilities and consideration of stakeholders. It concludes with an analysis of the shortcomings of internal corporate governance that the social forces created by stakeholders can improve. The second part of the article analyses why SLOs have not been introduced into law, both in terms of the existence of conflicts of interest between stakeholders and the uncertainty of the content of SLOs. By analysing these elements, the importance of companies considering their stakeholders can be made more explicit. However, this article is deficient in its understanding of the literature and journals, as well as its lack of further analysis of the specific content of SLOs. Future research could incorporate more cases of companies and stakeholders for a more in-depth analysis.

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