

UNCITRAL Model Law Development of Arbitration Framework for EPC Disclosure of Travaux Préparatoires using Political Expediency of Tax Planning

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Abstract—Corporate Governance is a conceptual framework of business designs intended to illustrate the various activities of a company towards fulfilling its profit goals as private stakeholder and contributing to public interests for social obligation of sustainable development. Disclosure of corporate social responsibility is the central mechanism of corporate governance. Based on stakeholder theory, corporate governance strongly influences corporate social responsibility disclosure to enhance the relationship of stakeholders and its business community. Tax aggressiveness is utilized by board director and its members to lessen tax contribution which is contrary to the government sector goals of maximizing tax impositions for public welfare and safety. Unlawful behavior on tax aggressiveness is known as tax evasion while tax avoidance is not a violation and serves as a loophole to the taxation system. UNCITRAL model law is a legal arbitration concept of making “commercial” expand to other comparable jurisdiction of international trade. The European Patent Commission is the legal authority that delineates medical policies from patented products. Travaux préparatoires is a design practice within legal context of restricted jurisdiction for commercial exercise of strict liability. This paper aims to develop arbitration framework based on stakeholder theory of corporate governance to explain the correlation of tax planning with patented products and medical processes involving therapeutic, surgical, and veterinary policies. Therefore, tax evasion is not apparent criminal behavior and tax planning on medical policies and patented drugs must have a separate strategic means of increasing monetary success for tax avoidance to be clearly managed by the company.

Keywords—corporate governance, corporate social responsibility, tax aggressiveness, tax avoidance, tax evasion, travaux préparatoires

I. INTRODUCTION

Corporate Governance is crucial in maintaining the systematic framework of a company for strengthening its authoritative liability to shareholder in terms of corporate goals in compliance with their code of conduct. It is important to discuss conceptual issues encountered within the directed organizational functions of business ethics resulting to controlled shareholders. Hence, good governance is the art of exhibiting its optimum control in executing its corporate code of conduct for troubleshooting the problems encountered by the company.

The practice of corporate governance influences company value by leading their shares to multiples of high stock price and lessening the anticipated capital expenditures of equity. It is effective to conduct harmonious alignment in management ownership associated with controlling the interest of the corporate system. Thus, corporate governance is an organizational system designed to practice business ethics related to its structural, procedural, and cultural mechanisms. Majority of countries under developing economies manifest the essence of corporate governance in relation to firm value increment. Hence, every country has their own distinct

corporate value for comparison to others pertaining to their corporate governance of sustainable development [1].

The intended design of business activities strongly focuses on philanthropic concerns affecting society, investors, and their immediate community to fulfill the goals and resolving ethical issues addressed on trilogy of corporate governance. Managerial tools are integral actions made by the firm to execute their corporate code of conduct in resolving issues concerning stakeholders and management to maintain sustainable development on various resources. Hence, corporate governance serves as the key framework to address and resolve problems pertaining to company behaviors of its management and stakeholders, such as the business community, employees, and shareholders, particularly case-related issues on legal ethics of corporate crimes. Thus, research discussions pertaining to the scope of corporate governance had shown significant correlations with social responsibility of its management to their company profit [2].

Corporate social responsibility (CSR) is a cultural notion of company standard and principles aiming to produce an incremental interest of stakeholders resulting to positive social and economic impact of the company. Hence, its liability can be defined as fulfilling the philanthropic means of business ethics to conduct its business transactions towards economic profit of the firm and its community in majority of the time. Therefore, it establishes a strong relationship between management and its community to execute the philanthropic and trustworthy communication of business ethics to advocate sustainable development towards economic success. Hence, the integration of corporate social responsibility marks a distinction between charity and its established goal of economic success based on philanthropic compliance of global commerce. Therefore, it is a discipline of corporate governance to handle the needs of environmental authorities and organizations for compliance of philanthropic goals beyond commercial transactions and create strategic integral actions for sustainable development of innovation and advancements to promote public welfare and safety.

Based on European Commission, corporate social responsibility is the legal basis of the business community to handle unintended outcomes of business operations. Furthermore, the World Business Council for Sustainable Development (WBCSD) and United Nations Industrial Development Organization (UNIDO) explained it as their foundational system to welcome problems concerning their consumers, community, natural resources, and corporate management and mitigate it using the core principles established by the company as its justifying ground of complying its liability to public safety of economic

growth, in compliance of the Triple-Bottom-Line Approach of the CSR as the entrusted discipline to conduct and promote the sustainable development of corporate governance. Hence, CSR tremendously contributes to lessen poverty decline as observed in its economic impact of positive strategic market success as apparent to its firm value [3].

II. METHODS

The Government sector utilizes the tax contribution to facilitate sustainable development of advocating public welfare and safety. As specified in article 23A of the 3rd Amendment Act of the 1945 Constitution, the tax impositions are vital instruments for the nation to fund the improvements of its people which are deemed to be compulsory as legal regulations of enhancing economic success of its society. Hence, taxes are enforceable obligations, as well as compliance for constitutional promotion of monetary freedom, of improving the welfare of its people by functional fulfillment of revenue redistribution.

However, corporate taxes are perceived as a barrier or impediment of diminishing the income of the company. Hence, the private business sectors do not always acknowledge the levied tax of the government and tend to pay the tax sector the lowest possible revenue the public society may receive from them. Hence, the distinct interests of the business companies caused conflicts with the goals of the government in exercising the revenue distribution with the same constitutional compliance of advocating public welfare and safety, since commercial transactions perceive taxes as a burden due to apparent net income reduction due to personal interests of the owner of welcoming prosperity in his own constitutional expense of making successful earnings per annum within his business jurisdiction.

Aggressive tax performances are exhibitions of carrying out tax savings and non-compliance behavior concerning regulations in taxes. Majority of business companies benefit from regulatory loopholes as tax burden removal to generate company savings. Hence, tax aggressiveness of companies is legally and technically considered as a lack of violation in tax regulations [4].

The act of tax evasion shows differences in tax liability removal of government taxes and its deferred commercial profit challenges versus public revenues as cost minimization. Thus, tax evasion must be clearly explained to draw distinction with tax avoidance as the former is an apparent performance of tax evasion and the latter is defined as tax avoidance. For legal compliance of the constitutional arrangement and its amendments, tax

planning is effective to uphold the tax law as pre-emptive doctrine of the constitution. Unfortunately, tax avoidance from revenue aggressiveness has no known violative actions against the law, while tax evasion can be persecuted for criminal liabilities [5].

The United Nations Convention on Contracts for the International Sale of Goods (CISG) has resolved dissimilarities observed in culture, language, and legal operation for the global provision of widely recognizing contract process in relation to selling of goods. This convention highly augments the potential ability of international trade to expand the interpretation and application of contract law in harmony with its ultimate design as efficiency must be directly associated with the sale of goods [6].

In 1981, the Working Group created and drafted model law for International Contract Practices. Subsequently, after a 21-day diplomatic conference on 1985, United Nations Commission on International Trade Law (UNCITRAL) adopted a new model law system designed to be applied limitedly to arbitrations concerning international commercial transactions. Thus, there is a strong demand to employ commercial laws to its utmost extent beyond a particular territory. It is apparent that commercial laws vary technically per jurisdiction, thus, legal principles must be exercised to apply those mechanisms to disputed limitations since the practice of law should be made comparable to other regions.

Based on Article 1(3), international arbitration is considered in the specified matter of conditions, such as business places of parties involved, and their contract performance are not within the same jurisdiction or country. Meanwhile, Article 1(1) defines on its explanatory footnote that “commercial” in nature must be broadly interpreted to cover all aspects of transactions to emphasize the fulfillment of economic goals in relation to business ethics [7].

The European Patent Convention (EPC) emphasized the value of innovative research to pharmaceutical firms. Unfortunately, policy justifications removed patent protection involving mitigations based on medical research methods. Based on article 53(c) EPC 20002, its exclusion pertains to therapeutic and surgical methods of human and animal treatment, as well as its diagnostic practices. Hence, the products used for medical treatment are not considered as exclusions to remove their patent protection, as specified in their official declaration of therapeutic compositions. Hence, these substances used to heal people has restrained its patent rights over medical treatment justified policy exclusions, in such a way that refusing to acknowledge its second-use patents would result in

innovation denial against its appropriate reward. Moreover, United Kingdom, Netherlands, and Denmark expressed paragraph 2(d) replacement at Article 50 with Article 52, under paragraph 5, stating that no provisions must be deemed as removing patent protection, consisting of its declared therapeutic substance intended as a treatment design away from making policies on medical, surgical, and diagnostic practices. Hence, United Kingdom clearly draws a line between product patentability and second-use design [8].

In 1952, under art 28 of 1954 Hague Convention, using exercise of international law for universal jurisdiction, governmental authorities drafted the legal context of travaux préparatoires as conceptual design restricted within a framework under common criminal jurisdiction based on strict liability, thus, its purpose should not be used for a different consideration although imposed obligations are limited not to engage in universal territory of criminal offenses due to comparable incapacity of the U.S. constitution to make it an ordinary jurisdiction common to all of their federal states [9]. Hence, based on Article 1(5) of UNCITRAL Model Law, the advocacy of implementing uniformity to another territorial jurisdiction is restricted [10].

III. DISCUSSION

The principle of corporate governance must exhibit efficient company earnings using effective management practice in fulfilling the standards of company value as these determinants are crucial for competent monetary performance, hence, tax reductions should not be the sole focusing line on profit increment. Social responsibility is the center and plays a key role in promoting business communication to execute financial goals and public interests. Competencies involved in corporate management includes not only tax expense adjustments, but also, operational reduction costs such as administrative expenditures, extensive product designs, and expansive customer services. Hence, criminal offenses related to tax evasion are considered as violation towards inclination to tax minimization and up to the extent of net income increment. Moreover, the board director plays an important role in tax expense deceleration for corporate governance facilitation of company value, thus, the size and depth of organizational business system is associated with the mechanism efficiency of corporate governance.

Furthermore, corporate governance significantly affects tax aggressiveness based on its mechanism. Its principle is widely exercised to reduce tax expenses in a proficient means of exhibiting expertise in management, ingenuity in tax handling, and sincerity in economic purpose resulting

to monetary success of the organization while avoiding perpetrating tax evasion. According to tax law, deductibles are allowable items being applied to revenue expenses as expression of strategic tax aggressiveness. Hence, when there is tax reduction in operational costs, return of investment is higher than earnings are apparent for a fixed time duration. Thus, attacking tax aggressiveness strategically to lower down tax expenses may result to unwanted tax avoidance which can taint company image [11].

Corporate Governance is associated ideally with Corporate Social Responsibility Disclosure (CSR) in terms of stakeholder theory in aiming to improve the ties of stakeholders with public organizations for legitimacy of purpose. Business relationships are not restricted within the context of private firm in which employees, investors, and members of the board must be the only people to interact with, rather company reputation must be established public performance and disclosure as part of strategic means of increasing market profit. Hence, CSR must exhibit and meet public expectations as their strategic response to business community [12].

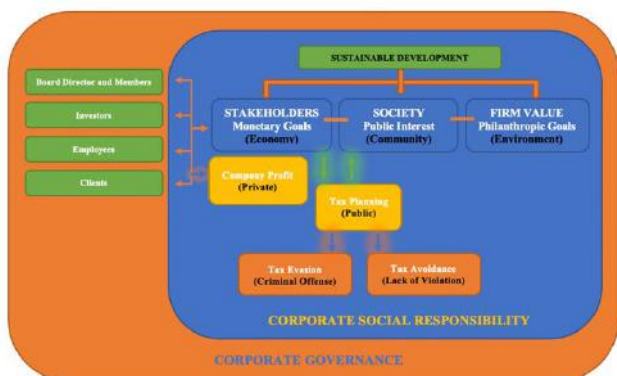


Fig. 1: Theoretical Framework on Stakeholder Theory

There are logical debates in favor and contrary to legal formalism approach and judicial activism arbitration. Addressing gaps on parliamentary system and its accompanied legislative amendments fulfills the formalist duty of exercising the constitutional powers of the government. The public must feel the presence of the justice system for security ties of statutory interpretation, specifically when values are emphasized for public safety as to gain rightful intuitive outcome. Statutory interpretation is a judicial activism process of developing the right answer based on presumptions, rules, extrinsic materials, and written laws. It is illustrated as a hermeneutical circle since engineering deeper thoughts based on provisional interpretations is inclined for a different and lucid understanding of an innovative

reasoning approach. Hence, using a mathematical principle, statutory interpretation is expressed as [13]:

Based on the given statutory interpretation formula:

$$ISSUE + RULES = OUTCOME \quad (1)$$

Hence:

$$RULES = \frac{\langle \frac{WORDS}{CONTEXT} \times PURPOSE \rangle - MAXIMS + PRESUMPTIONS}{EXTRINSIC MATERIALS = HISTORY + DEBATES + DICTIONARIES} \quad (2)$$

$$EXTRINSIC MATERIALS = \frac{\langle \frac{WORDS}{CONTEXT} \times PURPOSE \rangle - MAXIMS + PRESUMPTIONS}{RULES} \quad (3)$$

$$EXTRINSIC MATERIALS = \frac{\langle \frac{WORDS}{CONTEXT} \times PURPOSE \rangle}{RULES} - \frac{MAXIMS}{RULES} + \frac{PRESUMPTIONS}{RULES} \quad (4)$$

$$\frac{PRESUMPTIONS}{RULES} - EXTRINSIC MATERIALS = \frac{MAXIMS - \langle \frac{WORDS}{CONTEXT} \times PURPOSE \rangle}{RULES} \quad (5)$$

$$\frac{PRESUMPTIONS - EXTRINSIC MATERIALS}{RULES} = \frac{MAXIMS - \langle \frac{WORDS}{CONTEXT} \times PURPOSE \rangle}{RULES} \quad (6)$$

$$\frac{PRESUMPTIONS + \langle \frac{WORDS}{CONTEXT} \times PURPOSE \rangle}{RULES} = \frac{MAXIMS + EXTRINSIC MATERIALS}{RULES} \quad (7)$$

$$PRESUMPTIONS + \langle \frac{WORDS}{CONTEXT} \times PURPOSE \rangle = \frac{MAXIMS + EXTRINSIC MATERIALS}{RULES} \quad (8)$$

Thus, mathematical symbolic relationships for this equation are shown below:

$$\Lambda + \langle K \times \beta \rangle = \frac{\tau + \alpha}{\theta} \quad (9)$$

Where:

- Λ = UPPERCASE LAMBDA
- β = UPPERCASE BETA
- α = LOWERCASE ALPHA
- θ = LOWERCASE THETA
- K = UPPERCASE KAPPA
- τ = LOWERCASE TAU

Since:

$$\Lambda = \frac{\tau + \alpha}{\beta} \frac{\partial (K)}{\partial (\theta)} \quad (10)$$

Therefore, tax planning in relation to statutory interpretation pertaining to exhibit the relationship between medical policy and patented product is shown below:

$$TAX PLANNING = \frac{DISCLOSURE + EPC}{DRUG EFFECT} \frac{\partial (\frac{SUBSTANCE}{UCC})}{\partial (TRAVAUX PREPARATOIRES)} \quad (11)$$

Since:

$$\Lambda = \frac{\partial (K) / \beta}{\partial (\theta) / \tau + \alpha} \quad (12)$$

$$TAX PLANNING = \frac{\partial (\frac{SUBSTANCE}{UCC}) / DRUG EFFECT}{\partial (TRAVAUX PREPARATOIRES) / DISCLOSURE + EPC} \quad (13)$$

Therefore:

$$A = \frac{\partial \ln \beta}{\partial \ln \theta} \quad (14)$$

$$TAX PLANNING = \frac{\partial \ln DRUG EFFECT}{\partial \ln TRAVAUX PREPARATOIRES} \quad (15)$$

Since:

$$ISSUE + RULES = OUTCOME \quad (16)$$

$$ISSUE = RULES - OUTCOME \quad (17)$$

Therefore:

$$\Delta = A - X \quad (18)$$

$$POLICY = TAX PLANNING - PATENTED DRUG \quad (19)$$

Where:

$$X = \text{UPPERCASE CHI}$$

$$\Delta = \text{UPPERCASE DELTA}$$

Hence:

$$ISSUE + RULES = OUTCOME \quad (20)$$

$$TAX PLANNING = POLICY + PATENTED DRUG \quad (21)$$

IV. CONCLUSION

Corporate Governance is a commercial design organized to exhibit the mechanism of sustainable development created to maximize the company earnings while reducing costs of revenue distribution. Stakeholder theory illustrates a tremendous association between corporate governance and disclosure of corporate social responsibility in terms of performing its philanthropic role of making its utmost profit through establishment of business communication relationship with its stakeholders and participating to contribute towards public interests. Taxes are public funds created and maximized by the government sector for public welfare and safety, and its aggressiveness must be exercised by the company for strategic approach of profit increment away from tax avoidance while preventing tax evasion as criminal offense. UNCITRAL model law is a legal product context intended to make commercial transactions comparable to any other state or country by means of universality of international law concerning patented designs, while travaux preparatoires is a legal approach to medical processes making its policy systems work within a defined and limited jurisdiction. Therefore, engineering statutory interpretation for tax planning provided means of separating revenue distribution between medical policies and regulations, and utilization of patented products, hence, tax avoidance is cleared to separate profits made from medical policy services and patented product usage.

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