

French Capitalism: A Stakeholder Approach

France is historically favorable to the **stakeholder approach**, due in particular to:

- The (still) very significant presence of the **French State as a shareholder** of many major listed companies (ex: Orange, Renault, Air France,...) and the French State's **interventionism even when it isn't a shareholder**
- The presence of many **former public servants** within companies' managements and boards of directors

This leads to a **pervasive confusion between the company's natural purpose** (shareholder profit maximisation) and the **general interest** (employees' welfare, environment, etc.)



The Reinforcement of the Stakeholder Approach

This stakeholder-based approach has notably been reinforced by:

- The “**Loi Pacte**” of May 22, 2019 allowing businesses to adopt their own conception of the corporate interest with the faculty to include the company’s “purpose” (“*raison d’être*”) within the company’s status
- The “**Law on the duty of vigilance**” of March 27, 2017

The **absence of powerful investor lobbies** in France reflects the **lack of consideration for minority shareholders’ rights**, which are essential to instill good governance practices.

The **AFEP-MEDEF Code** was designed and drafted almost exclusively by former officers of listed companies (≠ investor-friendly UK Corporate Governance Code)



Consequences

This overemphasis of the **stakeholder approach** leads to dramatic consequences:

- **Lack (inexistence) of directors' accountability** (ex: Vivendi Case, July 7th, 2021, Paris Commercial Court - refusal by the Paris Commercial Court to consider an administrative offence established by the market authority as a valid ground for civil liability)
- **Difficulty of sanctioning breaches of fiduciary duties by managers before Commercial Courts** - Lawsuits for breaches of corporate duties by managers are brought before judicial courts in order to circumvent French Commercial Courts' shortcomings
- **No clear definition of fiduciary duties which causes high unpredictability** (ex: Veolia-Suez takeover bid, 2021 - Substantial latitude left to managers in implementing "poison pills")

