The Significance of Social License to Operate for Corporations and the Challenges in Legal construction

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Abstract: *Social license to operate (SLO) places greater demands on corporations and corporate governance, providing challenges as well as opportunities for corporations. It offers a method to achieve good governance at a practical level. The underlying theory of SLO is stakeholder theory and corporate social responsibility (CSR). The vitally important aim of SLO is to protect stakeholders' interests, which provides a way for corporations to take social responsibility simultaneously. Companies need a social license because they should also take on other obligations in addition to earning profits, namely social responsibility. In the long term, striving for a social license also benefits corporations to achieve good corporate governance. An excellent social license can help corporations maximize their value and benefit all stakeholders. However, the uncertainty of the scope of SLO and the conflicts among different stakeholders make SLO difficult at the practice level. SLO is part of a pluralistic social governance structure and should be used in conjunction with other regulatory instruments, including legal and political licenses. The legislation of SLO should be done with caution.*
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Introduction

The concept of social license was first introduced in the Australian mining industry, which refers to obtaining a social license from the environmental stakeholder community in addition to administrative permission from the public authorities. With the development of Corporate Social Responsibility (CSR) theory and corporate governance objectives, the scope of social license has been expanded. Its subjects of rights have been extended from environmental stakeholders to a wide range of stakeholder groups in the company's operations. Under the perspective of corporate governance, SLO is characterized by the diversity of rights subjects beyond compliance obligations and the dynamic nature of licensing. Meanwhile, the compatibility of SLO with modern corporate governance makes it an effective tool for achieving corporate governance objectives.

The definition of SLO

Social license to operate (SLO) originated in the 1990s when environmental stakeholders protested and demonstrated against projects that had already been granted a legal license. Neighboring communities are concerned that these projects with legal licenses will still cause damage to the environment and the commu-

nities. While not directly threatening the project's legality, this spontaneous resistance posed a significant challenge to corporate reputation, share prices and sustainability. In response, the concept of SLO was created, and since it was first introduced at a World Bank Conference in 1997, the concept has been used in a wide range of industries.

Although the term "social license to operate" has been proposed for a long time, there is still no consensus on the definition of it. Scholars tend to interpret SLO from various perspectives. There are several mainstream perceptions of SLO: First, SLO relates to a mutual relationship between the corporations' developing projects with potential environmental impact and the environmental stakeholder. SLO is an attitude of environmental stakeholders towards projects. Obtaining a social license means the community accepts or approves of the corporation's actions in the area. Lucy Mercer-Mapstone L argues that SLO is a constant and unstable level of acceptance by stakeholders. SLO may be revoked at any stage of a project cycle, and this variation depends on stakeholder attitudes. Second, SLO is an implicit and unwritten contract. Claire Richert suggests that SLO is an implicit contract, the unwritten nature of which makes its content challenging to be quantified. However, compliance with SLO may help companies to minimize the social and political risks they face in their operations. Third, SLO is a system of rights. Qi Jiangang interprets the SLO system from the perspective of administrative law, he argues that SLO can be described as a system of rights, which can also be referred to as "SLO rights". SLO is essentially emerging rights that refer to specific claims or qualifications that the stakeholders affected by the project have over the corporations and the administrative authorities with administrative licensing responsibilities over the project. Fourth, SLO is a public expectation of companies and a way for companies to take on social responsibility. An OECD official defined SLO as the public's expectation that a company will "do the right thing". The ASX Corporate Governance Council (ASXCG) suggested revising the ASX Corporate Governance Principles to recognize the essential significance of a listed entity's social license to operate and the necessity for it to act lawfully, ethically, and socially responsible for keeping that license.

Characteristics of SLO

Despite the definitional ambiguity of SLO, it still has some recognized characteristics of SLO, which exist in three main dimensions: extension of the subject of rights, the obligation to go beyond compliance and the dynamic nature of licensing.

Extension of the subject of rights

There is a tendency to broaden the scope of the application of SLO. Jim Cooney first brought SLO to the mining industry, and the scope of SLO began to expand from the narrow sense of 'environmental stakeholders' to a broad range of 'stakeholders'. The commentary to the ASX Principles of Corporate Governance - Principle 3 states the need for the entity to preserve and protect its reputation and standing in the community and with key stakeholders, such as customers, employees, suppliers, creditors, lawmakers and regulators. Diverse stakeholder groups constitute the multiple rights holders of the SLO system in the context of corporate governance. They are also the complex objects of social responsibility and fulfilment of SLO obligations for enterprises.

The obligation to go beyond compliance

One of the distinctive features of SLO is that it requires companies to meet additional obligations beyond compliance. Traditionally, a company's compliance obligations only require it to comply with minimum legal obligations. In order to obtain a social license, companies need to balance the interests of various stakeholders and meet their needs to gain their approval. SLO is based not on legislative criteria but on how well a company and its operations fulfil the community's requirements, the general public and various constituent groups. Neil Gunningham's investigation of some pulp mills found that many had spent high amounts of money installing odor treatment systems that were not required by law in response to complaints from the community. It follows that companies can obtain a social license by taking on more than compliance obligations is a crucial feature of the SLO.

Dynamic nature of licensing

In addition, SLO is dynamic. The interactive relationship between corporations and stakeholders in SLO means that SLO is not a "one-shot deal". Stakeholder acceptance of a company's behavior is not static but often changes as the project progresses, its behavior changes and the degree of influence it has on stakeholders changes. A company can meet stakeholder expectations for a while does not mean that it will always be able to do so. According to Kieren Moffat, social license over time reflects the quality and strength of the relationship between an industry and a stakeholder group." This also signifies the dynamic nature of SLO. In summary, SLO has several characteristics, including broad scope, the obligation to go beyond compliance for corporations and its dynamic nature. Understanding these characteristics can help to make better use of SLO.

The significance of SLO for corporations

Based on stakeholder theory, the goal of corporate governance is no longer merely to maximize the company's short-term profits but to concentrate on social responsibility based on a long-term stance that focuses on the interests of stakeholder groups while expanding the company's business interests. The SLO system provides an effective path for corporations to take on social responsibility at a practical level while also maximizing the long-term business benefits for companies.

SLO is a way for companies to take on social responsibility

Although the question of "what is the purpose of a corporation" has been debated, it is undeniable that academics have increasingly challenged the traditional shareholder primacy theory. Lynn Stout argues that 'shareholder primacy' not only leads to poor shareholder returns but is also not an accurate description of the legal character of a company. She also believes that earning profits is not the company's only goal. Once profits are achieved, companies should focus on other goals, including future growth, managing risk and caring for investors, employees, customers and society. In this context, corporate social responsibility, based on stakeholder theory, has become more widely accepted, requiring corporate governance to abandon the traditional principle of "maximizing shareholders' interests" and to incorporate environmental and social governance

factors into investment decisions and business operations, taking into account the interests of stakeholders to the greatest extent possible. Company decision-makers should pay sufficient attention to stakeholders' rights, strengthen cooperation with stakeholders and strive to minimize the harm caused to stakeholders by the company's actions.

SLO and CRS have the same aim of protecting stakeholders. The basic model of SLO is that stakeholders approve or resist the company's behavior. Stakeholders are the subject of SLO and can protect themselves to the greatest extent possible from corporate misconduct by exercising their SLO's right. Furthermore, SLOs offer concrete ways for companies to take on social responsibility. SLO can be enforced through market regulation, and customers can pressure companies that do not comply with social license by boycotting them, increasing their economic costs. Companies that build up a good reputation through outstanding environmental performance can, in turn, obtain a price premium on their products or improve their position in the labor market.

SLO is beneficial in maximizing business benefits in the long term

Milton Friedman believes that there is only one social responsibility of a 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. 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. 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 ChevronTexaco'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. 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, 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.

In addition, SLO is not merely a system that adds rights to stakeholders and burdens companies beyond their compliance obligations. On the contrary, based on a long-term view, SLO can achieve a win-win outcome for both companies and stakeholders. Employees, as critical stakeholders, are one of the subjects of SLO. Taking the interests of employees into account and gaining recognition from them are forms of getting SLO for com-

panies. The company obtains recognition from its employees through a reasonable remuneration structure, a good benefits package and other relevant incentives. The process of gaining social recognition from the employees increases commitment, morale, motivation and identification with the company, thus increasing productivity and reducing employee dissatisfaction and the cost of frequent employee turnover.

Furthermore, compliance with SLO maximizes a company's reputational capital and helps it to manage risk. Reputational capital, built up by companies based on excellent environmental compliance practices, helps companies reduce the risks and uncertainties associated with social movements and gives them greater control over their destiny. From a business perspective, “this (SLO) is a form of risk management," says the company manager. The business becomes a responsible environmental manager to some extent instead of the enforcement authority because the risk of closing down the business due to environmental violations is not in the financial interest of it.

The challenge of the legal construction of SLO

While SLO is beneficial for protecting stakeholders' rights and helping companies achieve long-term profits; However, SLO is not a widely accepted legal concept. The ASX Principles of Corporate Governance is not mandatory as a "soft law", and its provisions on SLO are indirect. The legal construction of SLO still faces challenges of conceptual ambiguity, stakeholder conflicts and how to maintain its unique value in a pluralistic licensing system.

The content of SLO is uncertain

The ambiguity of the definition of SLO makes it difficult to be adopted by the law. The scope of SLO is unclear, which promotes the proliferation of conflicting claims to such a license and complicates the assessment of their legitimacy. Different stakeholder groups have varying levels of requirements for corporations. From the perspective of environmental law, SLO only refers to the consent of environmental stakeholders to an environmental project that has been legally licensed. However, based on stakeholder theory, the scope of SLO includes employees, consumers, suppliers, creditors, government, and all stakeholders in the public society. If only SLO is legislated in the environmental field, then the rights of stakeholders in a broad sense will be challenging to safeguard; however, if legislated SLO involves all stakeholders, then abuse of SLO rights may occur, leading to the excessive social responsibility of corporations and affecting their survival and development. Therefore, SLO must have a widely accepted concept and a relatively defined scope. On this basis, the different jurisdictions can effectively legislate SLO according to their realities.

Conflicts of interest between stakeholders

Several conflicts within the SLO system exist, specifically between the different stakeholders. For instance, directors face conflicting stakeholders when deciding whether to close a plant that is not very profitable but causes environmental pollution. The decision to close the plant is in the interests of the environmental stakeholders but undermines the rights of the employees as stakeholders; the choice to maintain the plant may result in the opposite situation. Such a contradiction illustrates how the ambiguity of the SLO system's scope

also affects the company's interests and stakeholders' rights. Stakeholders, the right holders in SLO relations, are a large group, and different members of this group have various claims on the enterprises' behaviour. Conflicts among stakeholders are inevitable, so it is necessary to improve the order of claiming of rights of different stakeholders. The conflicts of interest between stakeholders also reflect the lack of a clear definition and scope of SLO. Until the scope of SLO and the order of claiming rights are clarified by academics, legislating SLO may potentially exacerbate internal conflicts within stakeholder groups, thus affecting the effective functioning of SLO.

How to leverage the unique value of SLOs in a pluralistic licensing system

SLO is part of a pluralistic licensing system and has a complementary role to legal and political licenses. Sara Bice argues that a project often requires three types of licenses: political license, legal license, and social license. Social license complements political and legal license, and the content of social license may be transformed into political and legal license. Political and legal license content is often a prerequisite for social license. Based on this view, SLO is highly autonomous and complementary, which is the unique value as a particular part of a pluralistic licensing system. Social license is an "implicit contract" between the company and its stakeholders, which determines the SLO's high degree of arbitrariness and autonomy. The SLO's content, scope and extent should also be determined through consultation between the corporation and the stakeholders. If SLO were to be legislated and the public authority joined the relationship between the corporation and the stakeholders, SLO would inevitably become "another kind of legal license", which would threaten SLO's unique value in achieving its goals of effective corporate and public governance.

Conclusion

This essay reviewed the definition and characteristics of SLO. From the perspective of corporate governance law, it clarifies the importance of SLO to corporate social responsibility, protecting stakeholders' rights and interests, and achieving sustainable development and long-term profits for corporations. However, the legal construction of SLO still faces multiple challenges, which are due to the ambiguity of the concept and scope of SLO. This study has several limitations, including the lack of clarity on the definition and scope of SLO and the absence of a solution to the conflict of interest of stakeholders. Future research could aim to address these issues in order to make SLO studies better.

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