Administration of the Present Company Law of Ghana. Accra: Government Printing Department.

Gower, L. C. B. (1992). *Principles of Modern Company Law*. 5th ed. London: Sweet and Maxwell.

Internal Revenue Service Act 2000 (Act 592). Accra: Government Printer, Assembly Press.

Interpretation Act 1960 (C. A. 4). Accra: Government Printer.

Mills, J. E. A. (1993). Company Law and Practice: The Businessman and the Lawyer. In S. Y. Binpong-Buta, (ed.) *Ghana Bar Association Lectures on Continuing Legal Education 1993-1994*. Accra: Ghana Bar Association, 1997, pp. 97-124.

Tucker, E. W. and Henkel, J. W. (1992). *The Legal and Ethical Environment of Business*. Homewood, IL: Irwin.

Benjamin Mordedzi is a Lecturer in Accounting Studies Education at the College of Technology Education, University of Education, Winneba. His interests are varied, including accounting studies education, policy analysis, as well as entrepreneurship education. He has authored six refereed articles, two on teaching and learning in business education, one on educational administration, and three on technical and vocational education and training.

Benjamin Mordedzi
Department of Accounting Studies
University of Education, Winneba
P. O. Box 127
Kumasi – Ghana
Tel. No. 0244 209 095/0208 413 846

Business is a combination of war and sport.

André Maurois

CONVERGENCE OF CORPORATE GOVERNANCE SYSTEMS: A CRITICAL REVIEW

Kofi B. Kukubor

Abstract

The apparent convergence of international systems of corporate governance has become important to developing countries. It is gradually being accepted that formal convergence is taking place at ownership and board structure levels. Corporate behaviour seems to be converging at functional levels. The convergence at these levels is powerfully being driven by internationalisation of equity markets, regulatory mechanisms, and international investors' desire for corporate governance systems which are best fit for corporate efficiency, and shareholders' wealth and corporate value maximisation. In 2001, participants at the West Africa Regional Conference on Corporate Governance recommended, among other things, that "there is the need to customize international corporate governance principles to suit the challenges of the African sub-region" so as to attract foreign direct investment. This paper reviews this recommendation by examining the historical evolutions of the two traditional corporate governance systems, and the factors driving towards convergence. In addition the present state of corporate governance practice in Ghana is examined. It is argued that, the existing regulatory mechanisms should be reviewed and strengthened to adequately respond to global corporate governance practices (law and enforcement). It would be prudent to promote and allow market forces to evolve to best practice rather than customization.

Introduction

Corporate governance has recently assumed high level academic and business status. It has also triggered legal arguments in Ghana and the international community as well. The reason is that it concerns how shareholders' (indeed all stakeholders') investments in firms are being

managed by corporate boards and executives. Fundamental economic changes, such as the creation of a single European market, the renewed interest for international investment, the financial crisis in Asia, and conspicuous corporate scandals such as Enron, Polypeck, Parmalat, Schneider, Metallgesellschaft and recently Daiwoo, to mention a few, have drawn attention to the weaknesses in the corporate governance systems. This has resulted in the question of which corporate governance system is best fit for corporate efficiency and shareholders wealth or corporate value maximisation. As global competition for investment capital intensifies, it is not only countries that can boast of strong and investor-protective corporate governance structures that would gain a competitive advantage, but countries perceived to have adopted the best corporate governance systems would also gain it.

Understanding Corporate Governance

The meaning of corporate governance is diverse and sometimes controversial, depending on the corporate system the person is inclined to. The definition of corporate governance is either centred on shareholder or stakeholder orientation. Some schools of thought have argued that corporate governance must concern matters between shareholders and management; others are of the view that it is an issue that concerns all people (stakeholders) having some relationship with or interest (direct or indirect) in the firm.

Hopt (2002) encapsulated the necessary ingredients of corporate governance in the following terms:

"Corporate governance relates to the internal organisation and the power structure of the firm; the functioning of the board of directors in the one-tier and two-tier systems; the ownership structure of the firm; and the interrelationships among management, board, shareholders, and other stakeholders, in particular the company's workforce and its creditors."

Theory and Importance of the Firm

To fully comprehend the importance of corporate governance, it is fundamentally necessary to understand why firms exist in the first place. According to Coase R, (1937) firms exist so as to minimise costs. Coase considered these costs as, the cost of negotiating and concluding contract for each exchange on the market. By establishing a company and allowing entrepreneur to direct resources, marketing costs are saved. An organisation is therefore viewed as a product of a series of organisational innovations intended to economise transaction costs. Thus, reduction in transaction costs provides moral justification for firms to exist on the basis that transaction cost economisation is socially valued, and the corporation serves affirmative economic purpose. Pettet (2001) states that the transaction cost theory encapsulates the main tenets of the economic analysis of corporation law; that corporation law exists invariably to reduce transaction costs.

In addition, a firm has no power of fiat, or disciplinary action different from ordinary market contracting between two people. The relationship between the owner of a company and its employees is that of agency relationship. Agency relationship emerges where one or more persons contract another person(s) to perform a service on their behalf which is accompanied with delegation of decision making authority. In consequence, separation of ownership and control arise. Attempt to align the interests of the agent to that of the principal gives rise to agency costs. Jensen M & Meckling (1976) categorised these costs into:

(i) monitoring expenditure, by the principal,

(ii) bonding expenditure by the agent, and

(iii) residual loss.

Property rights theory is of the view that, contracts are incomplete in relation to the use of assets. The question of which party has the right to decide the gaps in the contract was therefore answered as the owner (shareholder) of the asset since he has the residual control rights. These theories are not

comprehensive. They have their criticisms. However, they are useful in understanding the concept of corporate law. However, finding solution to the agency problem has led to different corporate governance systems.

The Corporate Governance Systems

Anglo-American

Shareholder/Contractual Orientation

The objective of the firm is to maximise profit for shareholders' wealth. However, the managers of the firm may pursue other contrary objectives such as maximising their own salaries, particular investment project, etc. The contractual theory elevates the shareholder to the single most important regulator over management. This theory arguably gives much power to shareholders to make decisions that affect management. Posner (1977) states that separation of ownership and control is efficient and indeed inescapable, given that for most shareholders the opportunity costs of active participation in the management of the firm would be prohibitively high. Nevertheless, reliance only on shareholders for corporate control is increasingly being recognised as not a solution to the divergence of interest between management and shareholders. It has been argued that this theory is not an efficient governance mechanism. One other weakness against the primacy of the shareholder control is the detriment caused to minority shareholders.

Contractual and free market theories are underpinned by market forces for corporate control. Hostile takeover is considered by 'contractarian' theory as an important device for reducing monitoring costs. The takeover bid is said to have produced a beneficial by-product, which serves as an incentive for managers to operate in a way that will ensure that shareholders wealth is maximised. However, Cheffins B, (1997) argued that, the contractual theory in creating its own efficient policing in the free market is not necessarily viewed to be credible, as it does not operate systematically. Law Society of Scotland's memorandum on the 13th Directive on Takeovers, 1989, further states that the selection of takeover targets is not accurately correlated with levels of performance and there is no evidence that takeovers improve company performance and share value.

Outsider System

This system is a typical Anglo-America style of corporate governance. It is characterised by relatively widely dispersed share ownership and high turnover. There is also a portfolio orientation among shareholders with delegation to management to rely on their own discretions to operate the firm. This means that ownership and management are effectively separated. In addition, the outsider system promotes good rates of return on shareholders' investments and deep trading facilitates greater shareholder liquidity. Shareholders can also reduce there risk through diversification. Management is provided with greater flexibility as to the type and source of capital in the market system. This results in developing an enabling environment for management entrepreneurship. In the Business Week of 25 January, 1999, the increased investment and development of the United States of America's (USA's) technology industry was argued to have been the product of this corporate governance system. Furthermore, the difficulty in information asymmetries has been argued to have yielded benefits such as immunity of shareholders and outside directors to management capture and guarantees of objective analysis of management information.

However, this system has been argued to have negative impact on long term capital investment necessary for international competitiveness. One other weakness of the outsider system is that, widely dispersed shareholders prevent collective action which inhibits close monitoring of management performance. The lack of close monitoring leads to managers pursuing their own agenda to the detriment of shareholder value. For example, managers build large empires by investing in uncompetitive returns, and sacrificing shareholder value even as they cause the firm to

apparently expand. Corporate scandals that occurred in Enron, Polypeck and Parmalat are some typical examples to this effect. The market system attempts to address these deficiencies through hostile takeovers and derivative lawsuits against management self-dealing. The USA is legally inclined towards derivative action for breach of fiduciary duty whereas, the United Kingdom (UK) provides little or no incentive to such plaintiffs, but has a more robust takeover market.

The outsider system is also characterised by stringent legal and regulatory constraints on equity holdings by commercial banks. This has resulted in low involvement in the capital market by the banks. This constraint however, has encouraged dispersed ownership. As stated by Coffee (1999) the outsider system has negatively contributed to short-term relationships between the financial institutions and the corporate sector. However, recent developments in the UK and the USA have seen a sharp increase in proportion of equity held by financial institutions. According to OECD report of February 1998, institutional investors have become the largest equity holders in both the UK and the USA. These changes however did not impact on institutional shareholder activism.

Continental Europe and Japan

Concession Theory

One other major theory that did not receive much attention in the Anglo-American is the concession theory. This theory is embedded in the public law concept. Dine J, (2000) states that, the state has the right to ensure that the company is properly operated according to notions of equity and fairness. Nolan R, (1998) bemoaned the fact that, in England, the relevant elements of public law has not been used to further the understanding of how the private law might control discretionary powers vested in the board of directors. Despite the fact that Forsyth C, (1996) critically examined and proposed the ultra vires doctrine by using Brown-Wilkinson formulae, the loud sounds from the drums of economic and legal 'contractualism' buried this theory and coerced judges and lawyers to shy away from the ultra vires doctrine

The company is viewed as a 'nexus of contracts.' Regulations are therefore be required to ensure that the market remains perfect. So long as the company is not viewed as an instrument of social policy and there remain imperfections in the market, there will be divergence of societal and company interests. Conversely, Friedman M, (1970) argued that businesses subject to 'social responsibility other than making maximum profit for shareholders' may be torn between the interests of shareholders and society.

Stakeholder Orientation

Corporations have responsibilities to other stakeholders (stakeholders may include employees, suppliers, customers, creditors, and other social constituencies) other than shareholders. Accordingly, it is imperative that shareholders take account of other stakeholders in order to promote the development of long-term relationships. The difficulty however is what impact stakeholders can have on the economic growth of the firm and how the firm can attain those wide and diverse objectives of stakeholders. This difficulty has led to a narrower definition of a stakeholder. Blair M, (1995) defined stakeholders as those who have contributed firm-specific assets to the firm. The new stakeholder approach is considered to be a natural extension of the shareholder model as it is consistent with both transaction costs and incomplete contract theories of the firm. However, one major problem with the stakeholder approach is finding the right mechanism that will draw out firm specific investments on the part of various stakeholders. It is therefore assumed that the shareholder model tends to provide a clear guideline in facilitating the measurement of corporate efficiency and performance.

Insider System

This system is characterised by concentrated ownership or voting power and multiplicity of

inter-firm relationships. It is common with Continental Europe notably Germany, and Japan. Familial control, especially in Germany, and cross shareholding in Japan at both horizontal and vertical levels are dominant features of the insider system. According to Fanto J, (1998) the largest blockholders in continental Europe are families and individuals followed by financial institutions. In Japan, 50 per cent of all listed companies belong to the "keiretsu." Tthe "keiretsu" owns at least a quarter of all issued share capital. Furthermore, as at 1999, 64 per cent of large firms in Germany own majority shares and in France, the rate is 59 per cent.

Cross shareholding in Japan is intended to secure business allies, secure funds during funds scarcity, and generate business stability. The majority blockholder has the incentive to both monitor and to influence decision making process. Collective action problem, which is common with outsider system, is minimised. There is a cheaper intervention in case of management failure due to coalesce of voting power in fewer hands. Similar to the market system, management board is left to plan and operate the business whiles supervisory board appoints and control the management board (two-tier board). The lessened information asymmetry enables investors to invest more patiently. Coupled with longer time horizon, it gives freedom to managers to invest in long term projects and further create firm-specific investments in human capital.

However, the internal agency cost in blockholder system constrains effective monitoring. The heightened oversight incentive has been argued not to have necessarily resulted in sharp oversight management investment policy. It has been further posited that too much influence over management often leads to lack of objectivity and freedom to make long term investment. These often end up in the pursuit of growth in market share rather than optimal rate of return on shareholder wealth. In addition, loyalty is extracted in the form of private benefit such as self dealing or insider trading. Furthermore, the legal regime under this system does not protect minority shareholder rights and therefore promote lax securities regulation.

Furthermore, the trading market is thin and less transparent. Firms therefore, encounter restricted range of alternatives in search for finance.

Some Historical Evolutions of Corporate Governance

Rent Seeking

Political coalition within a country may maintain an existing rule even if it seems apparently inefficient. History of hostile takeovers in the US and UK has not been accepted well in Continental Europe and Asia, hence efforts were made to chill hostile takeovers of firms incorporated in their jurisdictions. Corporate governance systems have not evolved without political undertone. Admittedly, as stated by Gordon Smith D, (1996) there has been chronicled increase of institutional activism in the US in the past years. However political intervention forced corporate ownership to remain fragmented and restrict the financial institutions from blockholding. Thus, the market system is politically and ideologically contingent and not simply the product of the market forces only.

In Japan, the "keiretsu" came into existence in the 1950s. The intention was to avoid the consequences of anti-monopoly laws imposed by the US after World War II. Olson M, (1982) states that group coalition could block efficiency-enhancing reforms even if it contributes to national decline. For example, Japan was unable to adopt needed reforms in its banking systems during the Asia financial crisis. Though these are gradually changing, transparency in the Japanese financial market continues to be a hindrance to investment.

The power of labour is stronger in continental Europe and Japan than the Anglo-American systems. The European corporate law has long protected labour For example, the policy of 'codetermination' in the German Corporate Governance Code requires that for corporations having 500 or 2000 employees, the supervisory board should constitute employee representatives

of one third or half respectively. This is so rooted in the German legal system that their interests lie in minimising job loss than profitability. The 1997 hostile takeover bid by Krupp for Thyssen triggered national protests in Germany which was a result of the codetermination policy. This situation has not experienced any dramatic change over the years. The US has similar system in 'Rust Belt' jurisdiction to prevent job loss. However the Delaware jurisdiction allow for reincorporation to a more hostile takeover friendly states.

Path Dependency

Variations in corporate governance reflect the evolution of economic systems. Whether by historical accident or political compromise, the initial direction of the economy dictates its future path to a particular system. As argued by Roe M J, (1994) the development of relatively small scale financial intermediaries in the US and UK was partly due to tradition which was sceptical of shareholder concentration and power. For example the Banking Act of 1933 or the Glass-Steagall Act grew out of a depression-era notion that the USA financial house can best be kept in order if bankers and brokers stay in separate compartments. Much smaller to their European and Japanese counterparts in proportion to domestic Gross National Product, financial institutions were dwarfed especially in the US due to distrust in concentrated power. This distrust is what has resulted in the Glass-Steagall Act of 1933 in the US.

As stated earlier, political compromises have also led to a lifetime employment in Japan and 'codetermination' in Germany. The beginning of the economic evolution in Germany and Japan for example, saw heavy reliance on debt and growth, the optimal governance solution will unlikely be shareholder profit maximisation. Therefore, where path dependency determines the issue of financial structure, invariably, governance structure becomes dependent variable.

Considering the path of dependency theory, the convergence towards a single system determined by market forces seems unlikely. However, it is argued that a functional convergence that is sufficient to achieve competitive equivalence and maintain the local firm's cost of capital at basically comparable level may be attained with least resistance.

Towards Convergence: Market Forces or Regulation?

The German Stock Corporation Act, 1965, secs. 76 and 95 make it mandatory for the task of management and supervision to be separated. The management board (Vorstand) is responsible for managing the company and the supervisory board (Aufsichtsrat) advices, appoints and dismisses members of the Vorstand. Functionally, the UK and the German boards perform similar functions. The Hampel Report (Committee on Corporate Governance 1998, Summary No. 10) however recommended one-tier board for the UK. There is a fundamental homogeneity of board split up in both systems. In the UK for example, a movement towards independent/outside directors on the board with a special function of control, is a distinct and a novel separation of management and control in the market system of corporate governance, (Cadbury Report 1992, 4.9: Code of Best Practice No. 1.20). Furthermore, the Cadbury Report has recommended the separation of functions of the CEO and the Chairman of the board. The difference in the two systems is that whiles the German two-tier board (and also in the US through the Sarbanes-Oxley Act 2002) is established by law, the UK adopted the code approach. One significant change that could not be realised in German boards is the deregulation of the mandatory size of the board which is largely determined by codetermination policy.

Significant areas of homogeneity are the use of committees composed of outsiders for remuneration, auditing, nomination, transparency and reporting, improvement of internal control, and limitation of board seats for members. The standard of conduct of directors in both systems remains largely similar. Duty of care is determined by evolving business judgement rule in both systems. Enforcement of duty of care remains

problematic in the UK. The questions of how an objective standard can meet the twin requirements of 'incentivising' the director to fulfil the functions of his role, without imposing liability for risks which are outside his control remain problematic. Riley C, (1999) argued that, too close a scrutiny of business decision may inhibit legitimate risk taking. At the other end, directors may avoid taking risky decisions and so miss out on opportunities which are essential for a successful dynamic business. This situation makes outside directors ineffective which consequently creates room for 'free riding.' The German system is not also immune from this problem due to cross shareholdings and reciprocal votes.

Incentivising directors through the use of stock options in the UK and USA has increased. According to Holderness et al (1998), managerial ownership amounted to 12.2 per cent of total equity in 1995 for NYSE companies. There is also an increase in institutional investors which used to be more prevalent in the Continental Europe. In addition, the deregulation of the banking system in the US (i.e. the abolition of The Glass-Steagall Act 1933 and the Bank Holding Company Act, 1956) would, in the long term, free the banks in playing more active roles in the corporate governance system, just like their counterpart in Continental Europe.

Takeover bids are self regulatory in the UK by the Panel with its City Code of 1968, on takeovers and mergers. In Germany, the German Insider Trading Guidelines of 1970, which was criticised for its lack of transparency has been replaced by the German Takeover Code 1995 (as amended 1997). This is in line with European Insider Trading Directive of 1989. Nevertheless, the neutrality principle and mandatory bid elements of the Takeover regulation has not yet been incorporated into the German Law. However, the German takeover Code of 1995 has at its core these two elements. Other European countries have successfully adopted the UK self regulatory system.

Accounting regulations and auditing of financial statements are further areas to examine in the search for convergence. The German balance sheet law is said to be creditor friendly. Hidden reserves continue to dominate the balance sheet of the German banks and insurance firms. However the attraction to New York Stock Exchange (NYSE) of German firms e.g. Daimler-Benz, and the increasing number of other European firms, in order to get listed in the US to facilitate capital raising, has forced Germany to fashion out its legislation to conform to internationally accepted standard. For instance, Kapitalaufnahmeerleichterungsgesetz – KapAEG of 20.4 1998; Federak Gazzette 1998 1 707 section 2 subsection 2 No.2b stipulates that the balance sheet should comply with 7th European Directive. Furthermore, to keep up with international competition, the German board in 1997, lifted the role of the statutory auditor to supervisory board level. This corresponds with both US (Sarbanes-Oxley Act 2002) and the UK (The Combined Code 2000 Section 1 D.3) systems. It could therefore be argued that, national corporate laws facilitate corporate systems harmonisation. For example, the Sarbanes-Oxley insider trading prohibition affects not only US companies. The Act applies to all companies required to file periodic reports with the Security Exchange Commission (SEC). Companies that seek access to the US capital markets are also affected by this Act.

The European Union Effort

Article 54(3)(g) of The Treaty of Rome requires all European Union (EU) member states to coordinate laws that will seek to protect shareholders and the dealings with the firm. The purpose is to ensure that laws enacted in Europe should be of same standard. It lends support to the idea that firms based anywhere in the EU can carry on business through the medium of a company incorporated under the Companies Act (1985) of UK. When that happens, countries corporate governance laws with the exception of tax will begin to be similar. The competition to attract companies like the US experience (Delaware) may also become a part in the European Union. The flexible regulation of business operation which is common in the US may motivate EU governments to pass laws that will attract firms and thereby change some of their

corporate governance laws.

The 7th European Directive is also a feather in the cap of EU harmonisation of corporate governance systems. The Fourth and Eight European Union Directives have achieved modest success in harmonising the auditing practices in Europe. The European Commission Report in 1996 largely collated the Cadbury Report and other codes within the EU in order to fashion a more acceptable and binding Directive which will harmonise auditing regulations and practices in Europe.

Legal Requirements of Corporate Governance in Ghana

The legislations governing corporate governance practices in Ghana include the Companies Code 1963 (Act 179), the Securities Industry Law 1993 (PNDCL 331) as amended in 2001, and the Ghana Stock Exchange Listing and Membership Regulations. These provide regulatory framework for the establishment and operations of companies and the practice of corporate governance. The Securities Industry Law and the Regulations of the Ghana Stock Exchange ensure shareholders' rights and the transfer of shares. They also provide for shareholders access to information and participation in decision making.

The Companies Code made provisions that regulate the internal governance of businesses registered in Ghana either as public limited liabilities or as private limited companies. The public limited liability companies are permitted to raise equity or share capital from the general public. Their outstanding shares may be listed for trading on the stock exchange. In contrast, private limited liability companies are not permitted to raise equity from the general public. Consequently, their shares are held by a limited number of shareholders and cannot be listed or traded on the stock exchange.

The provisions in the Companies Code are designed to ensure that corporate entities do not create room for management or majority shareholders to cheat other investors or minority shareholders. In addition, the Companies Code deals with such important matters as the practices and constitution of board of directors of a company; qualifications of participating managers; methods for ensuring accountability to shareholders; the powers and duties of directors; issues of conduct on the part of directors that constitute conflict of interests; remedies for a breach of duty by a director; regulations designed to protect the stated capital of the company; authority of the Registrar General to register all companies and to ensure compliance with the provisions of the Code through such means as investigations, requests for information, and appointment of inspectors, etc,. The Registrar General is further empowered to initiate judicial proceedings to wind up a company and to bring judicial proceedings against the board, a director, former director, officer, or any third party of the company.

Discussion

Forces driving the convergence need to be comprehensively and rigorously examined. Relative share prices and the role of multiple foreign listings are direct explanations of convergence in corporate governance. Furthermore, the rapid internationalisation of the world's most important financial markets provide a compelling impetus for change in and convergence of corporate governance. It is significant to note that the convergence is as a result of different corporate governance systems reacting to the same set of international challenges such as high stock prices; rapid technological change; internationalisation of capital markets; growing importance of institutional investors across the world; and increased interaction and unification of regional blocks. With these developments, governance systems come to converge over time.

For Ghana to position herself for international capital inflows for investments, the investors would have to have confidence in the country's corporate governance system. It will therefore be presumed that the corporate governance laws and practices must be seen to be similar to the existing global and

tested ones. Customisation of corporate governance principles to suit only local needs may not be beneficial to the country in the long run.

Ghana's Companies Code has not brought corporate governance practices in Ghana to the reasonably accepted standards expected by the law. Evidence suggests that the governance provisions of the code are most often violated. The reason being that the clearly out-dated (1963) Companies Code no longer provides adequate legal framework which is responsive to the dynamics of modern day global business operations and corporate governance systems. Self-dealing by corporate management and insiders is rife in Ghana because of lack of enforcement of relevant laws; lack of well developed local capital market; excessive government interference in the operations of state-owned companies; and ignorance of shareholders about their rights and obligations are some of the factors that weaken Ghana's corporate governance system.

The initial direction of Ghana's political philosophy and economic path dictate the nation's current corporate governance. The history of corporate governance in Ghana is embedded in the socialist ideology of state owned enterprises or the notion of state ownership of businesses. Despite the implementation of the divestiture and privatisation programmes and the significant changes in the ideological context of state-owned enterprises from the socialist concept to the new free market ideology, the pattern of corporate governance for state owned enterprises in Ghana remains practically unchanged. Corporate governance under this system is characterised by politics, patronage, and populism which are largely accountable for the continuing under-performance of state owned companies, colossal financial losses, and corruption. Unfortunately, the practice of corporate governance in the state enterprises has also negatively affected the private sector. According to Kwasi Prempeh H, (2002), the "habits of governance learned in the state enterprises sector, have spillover effects on the nature and quality of governance in the private sector and national government".

In order to adopt and implement effective and globally relevant corporate governance systems, the country's economic path would have to be clearly defined by government. The situation where government states an economic path, but in practice implements a different economic ideology, is not only confusing to industry but negates on effective corporate governance system of accountability.

External controls on corporate governance practices are dependent in part on the existence of well-developed capital markets. In essence, companies that are perceived to have poor corporate governance are punished in the capital market with low share price and high interest on borrowings. Ghana's capital market is not sophisticated enough for shareholders to exercise effective external control through low share price. In addition, the majority of the companies in Ghana fall under the private limited liability category and are therefore immune from the measures of the capital market. The problem is further compounded by the weak administrative enforcement of the Companies Code by the Registrar General. This leaves the Code to rampant and wide abuse.

The banks should be encouraged and monitored to enforce rigorous and sound lending practices. This would ensure that borrowers maintain sustainable debt-equity ratios as well as comply with all the governance provisions of the Companies Code. This measure will address under-capitalisation of private companies and the other problems related to debt-ridden corporate balance sheets. It is therefore of much importance for banks to establish constantly updated clients' databank in Ghana to facilitate quick due diligence and access to company information the newly enacted Credit Bureau law would go a long way in this regard.

Furthermore, there should be established a well coordinated collaborative effort within professional and regulatory organisations such as the Private Enterprise Foundation, the Ghana Chamber of Commerce, the Association of Ghanaian Industries, the Ghana Stock Exchange, the Institute of Directors etc., to promote good

corporate governance. This can be done through education and fora as well as some punitive measures for members who have poor corporate governance record. ■

References

Aoki M, (1990) 'Towards an Economic Model of the Japanese Firm', 28 Journal of Economic Literature Vol 1, pp 14-17

Blair M, (1995) 'Ownership and Control; Rethinking Corporate Governance for the 21st Century

Business Week of 25 Jan, 1999, 'Is the Stock Market too high?' p 56

Cheffins B, (1997) 'Company Law'

Coase, R, (1937) 'The Nature of the Firm', Economica, New Series, Vol 4, p 386

Coffee J C, (1999) 'The Future as History; The Prospects for Global Convergence in Corporate Governance and Its implication', Northern University Law Review, Vol 93, pp 641, 647

Dine J, (2000) 'The Governance of Corporate Groups', p 122

Fanto J, (1998) 'The role of Corporate Law in Adaptation of French Enterprise', Columbia Business Law Review, p 107

Forsyth C, (1996) 'Of Fig Leaves and Fairy Tales; The Ultra Vires Doctrine, the Sovereignty of Parliament and Judicial Review', Cambridge Law Journal, pp 129-130

Friedman M, (13 Sep, 1970) 'The Social Responsibility of Business is to make Profits, New York Times Magazine

Gilson R J, (1998) 'Globalising Corporate Governance: Convergence of Form or Function', Sloan Conference at Columbia Law School

Gordon Smith D, (1996) 'Corporate Governance and Managerial Incompetence: Lessons from Kmart', 74 North Carolina Law Review, pp 1104-1105,

Holderness et al, (1998) 'Were the Good old days Good? Changes in Managerial Ownership since the great Depression' The Journal of Finance, Vol, 54 p 2

Hopt K J, (2002) 'Common Principles in Corporate Governance in Europe?' In McCahery Moerland, Raaijmakers & Renneboog (ed) Corporate Governance Regimes, OUP

Jensen M & Meckling, W, (1976) 'Theory of the Firm', Managerial Behaviour, Agency Costs and Ownership Structure; 3 Journal of Financial Economics, p 305

Kwasi Prempeh H, (Volume 3 Number 4 January 2002), 'Reforming corporate governance in Ghana', Briefing Paper, Ghana Center for Democratic Development -CDD-GHANA

Miles L, (2003) 'Recent Development in Japanese Corporate Governance', ICCLR, 14(1) 343

Miller G P, (1998), 'Political Structure and Corporate Governance: Some Points of Contrast between the United State and England', Columbia Business Law Review Vol 51, pp 52-53,

Nolan R, (1998) 'The Proper Purpose Doctrine of Company Directors', The Realm of Company Law;

Olson M, (1982) 'The rise and decline of Nations: Economic Growth, Stagflation and Social Rigidities'

Pedersen, Torben & Thomsen S, (1997) 'A European Patterns of Corporate Ownership', Journal of International Business Studies, Vol. 28

p 4.

Pettet, B, (2001) 'Company Law', p 73

Posner, R, (1977) 'Economic Analysis of Law', p 411

Steen Thomsen, (1997) 'Convergence goes both Ways: An Alternative perspective on the convergence of corporate governance systems", Paper on Nordic Conference on Company Law, Ensig and Neville

Riley C, (1999) 'The Company Director's Duty of Care and Skill: The case for an Onerous but subjective Standard', Modern Law Review Vol. 62, pp 697-72

Woolcock S, (1996) 'Competition among Corporate Governance in the European countries:

The case of Britain, in National Diversity and Global Capitalism', p 185

Official Documents

Banking Act of 1933 or the Glass-Steagall Act

Bank Holding Company Act 1956

Cadbury Report 1992, 4.9: Code of Best Practice No. 1.20

Companies Act 1985 of UK

Companies code, 1963 (Act 179) of Ghana

European Commission Report in 1996

European Insider Trading Directive of 1989

Federak Gazzette 1998 1 707 section 2 subsection 2 No.2b

Ghana Stock Exchange Listing and Membership Regulations

German Banking and Financing 1998

German Corporate Governance Code Feb 26, 2002

German Insider Trading Guidelines, 1970

German Takeover Code 1995 (as amended 1997)

Kapitalaufnahmeerleichterungsgesetz – KapAEG of 20.4 1998

Law Society of Scotland's memorandum on the 13th Directive on Takeovers, 1989

OECD report of February 1998, 'Financial Market Trends', No. 69

The Combined Code 2000 Section 1 D.3

The German Corporate Governance Code 2002
The German Stock Corporation Act, 1965

The Hampel Report (Committee on Corporate Governance 1998, Summary No. 10)

The Securities Industry Law 1993 (PNDCL 331) as amended in 2001

The Treaty of Rome
Sarbanes-Oxley Act 2002

7th European Directive

Cases

Bell Houses Ltd v City Wall Properties Ltd. [1966] 2 QB 658

British Equitable Assurance Co. v Bailey [1906] AC 35

R v Lord President of the Privy Council [1993] AC 682.

Re Crown Bank (1890) 44 Ch D 634; Cotman v Broughman [1918] AC 514

Standard Chartered Bank v Walker [1992] BCLC 603

About the Author

The author is an international trade consultant. He holds a Graduate Diploma in Management Studies and an LLM in International Commercial Law.

He can be reached on 0244364031. Email: kbartho68@hotmail.com

You are not here merely to make a living. You are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement. You are here to enrich the world, and you impoverish yourself if you forget the errand.

Woodrow Wilson

E-BUSINESS IN THE GHANAIAN TOURISM INDUSTRY

Robert Ebo Hinson

Abstract

Purpose: Ghana's tourism sector is hypothesized to be a major economic growth catalyst. The role of e-business in improving the fortunes of Ghana's tourism sector cannot be overemphasised. This exploratory study sought to generate a preliminary understanding of the benefits of e-business to tourism firms in Ghana and also to ascertain the commitment of top management to e-business development in Ghanaian tourism firms. **Design/Methodology/Approach:** The study was exploratory and adopted a small scale survey approach. Data was collected by final year undergraduate students in the University of Ghana Business School from 60 tourism firms in Ghana. Presentation of findings is by simple descriptive statistics.

Findings: The Research revealed that 56% of Managing Directors of Ghanaian tourism organizations are e-business champions. Advantages of e-business to tourism firms are distributed nearly proportionately across various firms' improvement parameters such as improvement in marketing management (14%) as well as improvement in process management (13%). Also reported were improvements in marketing communications (12%), human resource management (10%), as well as improvement in distribution (9%). Other benefits reported were improved logistics management (8%), efficient financial management (8%) as well as e-scouting (4%).

Research Implications: This study is the first in a series of studies that will investigate website use, Internet use, and e-commerce usage in Ghanaian tourism firms. This first study, therefore, provides some basis for hypothesis formulation in the upcoming studies alluded to earlier.

Limitations: The Study is exploratory and therefore does not make any generalisable claims. It is only useful as an initial eye-opener to e-business issues in Ghana's tourism sector.