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MAINTAINING CORPORATE GOVERNANCE STANDARDS IN GHANA; THE ROLE OF BOARD OF DIRECTORS

Daniel Haizel

Abstract

The effects of the collapse of a company, whether private or state-owned can be very traumatic for the employees and others in the society. It can also have repercussions for the nation's economy. Experiences suggest that the risk of such a collapse is heightened where poor corporate governance practices prevail. This article reviews the OECD principles on good corporate governance and the corporate governance frame work in Ghana. The writer discusses the critical role of the board of directors in ensuring the maintenance of good corporate governance. He concludes by offering some suggestions that will help boards to efficiently discharge their responsibilities.

Introduction

The corporate scandals that rocked the private sector in the USA from 2001 (Enron, WorldCom, Tyco etc.) have given rise to concern on several fronts. First, as the Enron case illustrates, questions have risen with respect to accounting practices. Were appropriate practices and standards being followed? Was there adequate transparency in financial reporting? Were executive compensations justified?

The developing countries have not also been spared the spate of corporate scandals that has rocked the developed countries. In recent years, a growing string of business scandals has occupied the front pages of newspapers in many developing countries. In Ghana for instance, the bank of Ghana in 2001 had to close down two banks, Corporative Bank of Ghana and the Bank for

Housing and Construction, because they became insolvent. Initial investigations revealed that inappropriate corporate governance practices were being practiced by these institutions. These ranged from inadequate transparency in financial reporting, to executives receiving huge loans with questionable repayment terms.

Another case is that of the Ghana National Petroleum Corporation (GNPC) which, despite clear statutory language limiting it to petroleum, veered into investment holdings in areas far removed from its core business as well making 'wild forays' into the world of high finance, placing hedge bets on oil it had not produced. Massive GNPC borrowing from the central bank in 1994, possibly to cover recurring operating losses and contracted liabilities, contributed to a 46% rise in the money supply and higher inflation. During this period, GNPC is not known to have published a single audited financial statement. Investigations indicated lack of control by the board on the company's operations.

The growing interest in good corporate governance practices stems from two reason. First, good governance practices are seen as a way to prevent abuse and keep corporations on tract. Second, evidence indicates that sound governance practices are an important determinant of societal well-being and economic growth. Indeed, as the influence of corporate sector becomes more pervasive and so the process of globalisation continues, large corporations are playing a dominant role in many local economies. As s result, good governance practices in the private sector may affect the lives of local citizens in very direct and positive ways. In the view of the former president of the World Bank, in future, the "proper governance of companies will become as crucial to the world economy as the proper governing of countries."

What is Corporate Governance?

The Commonwealth Association of Corporate Governance and the King Report 1991 define corporate governance as: "The system by which corporations are directed and controlled." The Manual On Corporate Governance in Ghana states that the board is "to ensure the company's prosperity by collectively directing the company's affairs, whilst meeting the appropriate interests of its relevant stakeholders." According to Salmin Corporate governance has to do with." The oversight of corporate strategy as well as the selection, evaluation and compensation of top management." Corporate Governance, in its most simplified iteration, refers to the manner in which corporate bodies are managed and operated.

What is Corporate Governance Standards?

It is a set of corporate governance guidelines or principles set out by the (OECD) Organization for Economic Cooperation and Development. These guidelines or principles are not intended to substitute government or private sector initiatives to identify more detailed corporate governance practices to suit individual circumstances. They are however intended to provide guidance and assistance to governments, regulators, stock exchanges, investors, and corporations in evaluating and developing the regulatory framework and supporting corporate governance systems.

The principles focus on publicly traded companies. However, to the extent they are deemed applicable, they might also be useful tool to improve corporate governance in non-traded companies, for example, privately held and state-owned enterprises. They are intended to be concise, understandable, and accessible to the international community. The principles cover five areas, namely:

- The rights of shareholders
- The equitable treatment of shareholders
- The role of stakeholders
- Disclosure and transparency
- The responsibility of the board

Brief Overview of the Principles of Corporate Governance Standards

The corporate governance framework should protect shareholders' rights which include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect members of the board; and
- share in the profits of the corporation.

Shareholders have the right to participate in, and to be sufficiently informed on decisions concerning fundamental corporate changes such as:

- amendments to the statutes or articles of incorporation or similar governing documents of the company;
- the authorization of additional shares; and
- extraordinary transactions that, in effect, result in the sale of the company.

Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures that govern general shareholder meetings:

- Shareholders should be furnished with sufficient and timely information concerning the date, location, and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.

- Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings, subject to reasonable limitations.
- Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.

- Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

- Markets for corporate control should be allowed to function in an efficient and transparent manner.

- The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.

- Anti-take-over devices should not be used to shield management from accountability.

- Shareholders, including institutional investors, should consider the costs and benefits of exercising their voting rights.

The Equitable Treatment of Shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. All shareholders of the same class should be treated equally as spelt out below:

- Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in

voting rights
should be subject to shareholder vote.

- Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares.

- Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.

- Insider trading and abusive self-dealing should be prohibited.

- Members of the board and managers should be required to disclose any material interests in transactions or matters affecting the corporation.

The Role of Stakeholders in Corporate Governance

The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

- The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.

- Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

- The corporate governance framework should permit performance-enhancing mechanisms for stakeholder participation.

- Where stakeholders participate in the corporate governance process, they should have access to relevant information.

Disclosure and Transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. Disclosure should include, but not be limited to, material information on:

- The financial and operating results of the company.
- Company objectives.
- Major share ownership and voting rights.
- Members of the board and key executives, and their remuneration.
- Material foreseeable risk factors.
- Material issues regarding employees and other stakeholders.
- Governance structures and policies.

Good governance requires that all relevant information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure, and audit. In addition, an annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented.

Overview of Corporate Governance Framework in Ghana

A number of laws provide for governance structures for companies in Ghana. These include the Companies Code 1963 (Act 179), which provides for governance of all companies incorporated in Ghana; The Securities Industry Law, 1993 (PNDCL 333) as amended by the Securities Industry (Amendment) Act 2000, (Act 590), which provides for, among other things, governance of all stock

exchanges, investment advisors, securities dealers, and collective investment schemes licensed under the Securities & Exchange Commission (SEC);the Ghana Stock Exchange's Listing Regulations, 1990 (L.I. 1509); and Rules on Take-Overs and Mergers that regulate governance of listed companies. Under the above legal framework for corporate governance, certain provisions ensure tight internal controls in the hope that it will be kept to a minimum. These include: role of board of directors, payments, and financial accounting.

Role of Board of Directors

Responsibility for good corporate governance at the level of the firm is imposed on the Board of Directors. Under the Companies Code 1963, (Act 179), the business of a company is managed by the board of directors, except as otherwise provided in the company's regulations. No doubt, the effectiveness with which the Board plays its oversight role depends to a large extent on its membership, its independence, and its expertise.

Under the Companies Code, the appointment and replacement of directors of companies is regulated by the company's regulations and is the preserve of shareholders. Corporate bodies, adjudicated and un-discharged bankrupts, and persons convicted on indictment in Ghana or elsewhere of any offence involving fraud, dishonesty, or any offence in connection with the promotion, formation or management of a corporate body, are not competent to act as directors of companies in Ghana. Companies seeking a listing on the Ghana Stock Exchange (GSE) must show "continuity of company management with a requisite level of competence and integrity." The Companies Code prescribes a minimum of two directors for each company and allows companies to fix the maximum number of directors in their Regulations.

The GSE Listing Regulations are silent on the size of boards. There is no requirement under the Companies Code for the appointment of independent directors, as best practice requires. The Companies Code makes provision for the appointment of executive directors by allowing directors to hold concurrently with the office of director any other office or place of profit in the company except the office of auditor.

The Companies Code does not provide for the balance of executive and non-executive directors. It however makes it possible for different stakeholder interests to be represented on a board by providing that "the Regulations of a company may provide for the appointment of a director or directors by any class of shareholders, debenture holders, creditors, employees, or any other person".

As best practice requires, there ought to be separation between the roles of CEO and Board Chairman. The Companies Code, however, does not preclude the appointment of the same person to the two offices. In the exercise of their duties to the company, directors stand in a fiduciary relationship with the company and are required to observe the utmost good faith towards the company in any transaction with it or on its behalf. They are required to "act at all times in what they believe to be the best interests of the company as a whole so as to preserve its assets, further its business, promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful, and ordinarily skilled director would act in the circumstances."

Payments

The board is required, under the Companies Code, to obtain shareholders' approval prior to making voluntary contributions in any financial year to any charitable or other funds (other than a pension fund for employees of the company or an associated company), exceeding two percent of the income surplus of the company at the end of the immediately preceding financial year. No other explicit provisions exist in the Companies Code

prescribing which payments a company can make and how such payments ought to be made. However, because payment of bribes to a public official is unlawful under the Criminal Code, directors could be restrained by shareholders pursuant to a court order from allowing such payments to be made, or could be made to refund such payments to the company after they have been made.

Increasingly, the role of the board in financial controls is seen as ineffective without an audit committee of the board. The Companies Code has no requirement for the establishment of such a committee. The Ghana Stock Exchange Listing Regulations recognize the need for such a committee. A company seeking listing on the Ghana Stock Exchange must attach to its application written evidence regarding the operation and effectiveness of an audit sub-committee of that company's board of directors covering a period prior to the application, as the GSE may prescribe. The Listing Regulations provide that the audit sub-committee shall as far as possible be composed of the company's non-executive directors.

The GSE Listing Regulations prescribe the following terms of reference for audit committees:

- To make recommendations to the board concerning the appointment and remuneration of external auditors;
- To review the auditors' evaluation of the system of internal control and accounting;
- To review and discuss the audited accounts with the auditors and call for further information from the auditors or management;
- To review the scope and effectiveness of the internal audit procedures in consultation with the chief internal auditor, director of finance or controller or their equivalents, however designated in the particular company and the external auditors; and
- To consider and make recommendations on the conduct of any aspect of the business of the company that the GSE believes should be brought to the attention of the board.

Financial Accounting

The Companies Code enjoins directors to, at least once annually(at intervals of not more than 15 months), have prepared and send to each member and debenture holder of the company a profit and loss account and balance sheet and directors' and auditors' reports. These documents are to be presented to shareholders at the Annual General Meeting.

The Ghana Stock Exchange Listing Regulations require more frequent disclosure from listed companies. Listed companies must provide the Ghana Stock Exchange a half-yearly report as soon as figures are available (no later than three months after the end of the first half-yearly period in the financial year and a preliminary financial statement as soon as figures are available (no later than three months after year-end).

No explicit liability for the accuracy of financial statements is imposed on the board by the Companies Code.

Under the Companies Code, the auditors of a company stand in a fiduciary relationship to the members of the company as a whole and should act the way "faithful, diligent, careful, and ordinarily skilful auditors would act in the circumstances." Auditors are required, among other things, to report to shareholders their opinion as to the adequacy of information obtained on the company and whether the company's accounting books have been kept properly. Under the Code, auditors must be licensed and practicing chartered accountants, and must not be infants; persons found by

competent courts of law to be of unsound mind; un-discharged bankrupts; or persons convicted of offences involving fraud, dishonesty, or any offence in connection with the promotion, formation or management of a body corporate, or of any fraud or breach of duty in relation to a body corporate.

Auditors are appointed by an ordinary resolution of shareholders, except that directors may fill any casual vacancy in the office of an auditor. To promote auditor independence, the Companies Code disqualifies persons who are officers of the company or associated companies, partners of, or employees of an officer of the company or of an associated company, from holding office as auditors. However, the Code permits auditors, in addition to their statutory duties to shareholders as auditors, to provide other services to the company such as "advising on accounting, costing, taxation, raising of finances and other matters."
This provides fertile ground for conflict of interest situations, which will compromise their role as independent statutory auditors. Under the Companies Code auditors, once appointed, are to continue in office until they cease to be qualified for appointment as auditors. At this point, they must resign their office by presenting a notice in writing to the company, or they can be removed by an ordinary resolution of shareholders at an annual general meeting after three- to five-days' notice to the auditor. The auditor is required to respond to the intention to remove him and must
be allowed to speak to this at the annual general meeting. No provisions exist under the Companies Code limiting the term of office of auditors.

The Importance of the Practice of Corporate Governance Standards on an Organization

Empirical Evidence suggests that excellent corporate governance practices enhance the individual company's performance as well as improve its ability to access capital. This is generally because the framework established focuses the board and management on the company's objectives and keeps them accountable for their actions.

For governments and regulators, ensuring that individual companies and their management are adopting excellent corporate governance practice has a number of attractions. It is increasingly seen as a mechanism which supports both the objectives of regulators responsible for protecting the confidence in the financial systems and markets, as well as encouraging international investment flows and enhancing overall economic performance. To remain competitive in a changing world, corporations must innovate and adopt their corporate governance practice so that they can meet new demands and grasp new opportunities. Similarly, governments have an important responsibility for shaping an effective regulatory framework that shareholders board of directors' staff clients CEO provides for sufficient flexibility to allow markets to function effectively and respond to expectations of shareholders and other stakeholders.

The Role of the Board in the Maintenance of Corporate Governance Standards

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Board structures and procedures vary both within and among nations. Some countries have two-tier boards that separate the supervisory function and the management functions into different bodies. Such systems typically have a "supervisory board" composed of non-executive board members and a "management board" composed entirely of executives. Other countries have "unitary" boards, which bring together executive and non-executive board members. Together with guiding corporate strategy, the board is chiefly responsible for

monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation.

In order for boards to effectively fulfill their responsibilities, they must have some degree of independence from management. Another important board responsibility is to implement systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labour, environmental, equal opportunity, health and safety laws. In addition, boards are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities. Observance of environmental and social standards is relevant in this context.

(1) Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders. In some countries, the board is legally required to act in the interest of the company, taking into account the interests of shareholders, employees, and the public good. Acting in the best interest of the company should not permit management to become entrenched.

(2) Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly and equitably.

(3) The board should ensure compliance with applicable law and take into account the interests of stakeholders.

(4) The board should fulfill certain key functions, including:

a. Reviewing and guiding corporate strategy, major plans of action, risk, policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.

b. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.

c. Reviewing key executive and board remuneration, and ensuring a formal and transparent board nomination process.

d. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.

e. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law.

f. Monitoring the effectiveness of the governance practices under which it operates and making changes as needed.

g. Overseeing the process of disclosure and communications. The specific functions of board members may differ according to the articles of company law in each jurisdiction and according to the regulations or articles of incorporation of each company. The above-noted elements are, however, considered essential for

purposes of corporate governance.

(5) The board should be able to exercise objective judgment on corporate affairs - independent, in particular, from management.

The variety of board structures and practices in different countries will require different approaches to the issue of independent board members. Board independence usually requires that a sufficient number of board members not be employed by the company and not be closely related to the company or its management through significant economic, family, or other ties. This does not prevent shareholders from being board members.

Independent board members can contribute significantly to the decision-making of the board. They can bring an objective view to the evaluation of the performance of the board and management. In addition, they can play important roles in areas where the interests of management, the company, and shareholders may diverge such as executive remuneration, succession planning, changes of corporate control, take-over defenses, large acquisitions, and the audit function.

The Chairman, as the head of the board, can play a central role in ensuring the effective governance of the enterprise and is responsible for the board's effective function. The Chairman may, in some countries, be supported by the company secretary. In unitary board systems, the separation of the roles of the Chief Executive and Chairman is often proposed as a method of ensuring an appropriate balance of power, increasing accountability, and increasing the capacity of the board for independent decision making.

The following concepts are essential for good corporate governance:

(1) Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination, and executive and board remuneration.

While the responsibility for financial reporting, remuneration, and nomination are those of the board as a whole, independent non-executive board members can provide additional assurance to market participants that their interests are defended. Boards may also consider establishing specific committees to consider questions where there is a potential for conflict of interest. These committees may require a minimum number of or be composed entirely of non-executive members.

(1) Board members should devote sufficient time to their responsibilities.
It is widely held that service on too many boards can interfere with the performance of board members. Companies may wish to consider whether excessive board service interferes with board performance. Some countries have limited the number of board positions that can be held. Specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders.

In order to improve board practices and the performance of its members, some companies have found it useful to engage in training and voluntary self-evaluation that meets the needs of the individual company. This might include that board members acquire appropriate skills upon a ppintment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial risks. In order to fulfill their responsibilities, board members should have access to

accurate, relevant and timely information.

Board members require relevant information on a timely basis in order to support their decision-making. Non-executive board members do not typically have the same access to information as key managers within the company. The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company such as, for example, the company secretary and the internal auditor, and recourse to independent external advice at the expense of the company. In order to fulfill their responsibilities, board members should ensure that they obtain accurate, relevant and timely information.

Concluding Remarks

Getting the right board in place and making sure it works effectively are fundamental to good governance. Since the role of the board is to lead and control the company, it should have clearly defined set of responsibilities. It is important that no single individual has unfettered power and there should be a cadre of independent outside directors in unitary board structures.

Having the right answers to the following questions is crucial to ensuring the effectiveness of any board:

- Does the board have the right blend of skills and experience to take the company forward?
- Do board members have sufficient time to discharge their responsibilities conscientiously?
- Is the board's committee structure appropriate?
- Are there clear objectives, viable strategies to achieve them, and a sound approach to risk management that reflects those objectives?
- Does the board receive and discuss financial and other key performance measures on a timely basis?
- Does the board provide a challenging yet supportive environment for the executive team, with full discussion of major issues before decisions are taken?
- Does the board assess its own performance on a regular basis?
- Is sufficient emphasis given to providing relevant training for board members?

Finally, leading-edge human resource practices must be as evident in the boardroom as they are elsewhere in the organisation. This means focusing on selecting the right board, checking that it works well as an effective team, developing appropriate remuneration strategies, getting training and developing right and reviewing past decisions. Board agenda must focus on right issues, with long-term strategic and shorter-term performance issues properly balanced. Agenda topics must be concise and informative and must be distributed to members well in advance before meetings are held. The board must ensure regular meetings to fully discuss company business. Productive board member performance of meeting must be expected and achieved with directors coming to meetings well prepared. The size of boards facilitates effective decision-making. Boards must ensure full discussion at board meetings before major decisions are taken. All board members must feel able to and must contribute at meetings.

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PERSONAL LEADERSHIP: A MAJOR FACTOR IN ORGANISATIONAL LONGEVITY IN GHANA

Akua Frimpong

Abstract

Many Ghanaian organisations, public or private, do not last long in the system due to ineffective leadership or management. Lack of personal leadership in the lives of leaders or managers in Ghana has been identified as a major cause of the short "life span" of organisations in Ghana and Africa. Leaders and managers in Ghana lack personal leadership because of flaws in the leadership foundation in Ghana. Flaws in the leadership foundation are traced to the misunderstanding of what leadership or management position is all about. This may be a legacy Ghanaians inherited from the colonial masters, as well as their own cultural orientation. The exercise of self-discipline by current and aspiring leaders and managers is the only way to correct these flaws and get leaders to lead and managers to manage effectively for organisational survival in Ghana.

Introduction

State owned enterprises in Ghana date back to the colonial period and especially to the post –World War II. For example, the British organized a number of public utilities, such as water, electricity, postal and telegraph services, rail and road network, and bus services. To foster exports, Agricultural Produce Marketing Board was founded in 1949. In addition, the colonial government established the industrial Development Corporation and the Agricultural Development Corporation to promote industries and agriculture. In the mid 70s, the National Redemption Council under I. K. Acheampong also emphasized state enterprises. The Acheampong government established a number of new enterprises and partly