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Corporate governance developments in Ghana: the past, the present and the future

Abstract

Corporate governance has received a lot of attention after the 2008 global credit crunch that culminated into bank failures and worldwide economic crises. In many developing countries, disclosures and the compliance with the corporate governance codes of best practices existing in such countries have become necessary due to ever increasing foreign investors who rely upon the financial reports of companies in those countries before having huge economic and financial investments in them.

In the case of Ghana, following the enactments of the 2002 corporate governance code by the SEC, many codes of best practices have emanated while there have been calls for a single code by various regulators and stakeholders. While full compliance with the codes and its enforcement by the SEC is being canvassed for, corruption which has persisted and continues to grow has been single out as the major bane within the Ghanaian system. This paper, however, contributes to a body of knowledge and existing literatures while giving a lucid picture as to the corporate governance developments in Ghana in the past, the present and the future. It discusses the issue of compliance with the codes of best practices and the challenges being faced in a developing economy such as Ghana. It argues that while the socio-cultural problem of corruption persists, it is onerous on the government to fight through good governance, effective legal system, proper enforcement by the regulators and citizenship enlighten.

Keywords: corporate governance, developments, Ghana, past, present, future.
JEL Classification: G21, G34.

Introduction

Corporate Governance systems have evolved over centuries, often in response to corporate failures or systemic crises. The first well-documented failure of governance was the South Sea bubble[1] in the 1700s, which revolutionized business law and practices in England. Similarly, much of the securities laws in the US were put in place following the stock market crash of 1929 (Borgia, 2005). However, the subject of corporate governance in many other developed markets in the late 1900's received serious attention after some corporate and business collapses such as Parmalat and Enron cases which are attributed to poor governance practices. This development was accelerated with the onset of the Asian crisis in mid-1997 and the early 2000 global financial crisis that started out in the US housing market, causing global economic contagion (Ghana SEC, 2002).

Interestingly, corporate governance in the developing economies also received a lot of attention within the last decade (Oman, 2001; Goswami, 2001; Lin, 2001; Malherbe and Segal, 2001). Corporate governance developments in Ghana has however taken an interesting dimension with the introduction of 2002 Code of best practices by SEC; as well as many other guidelines by all other agencies.

While the subject has taken on international dimensions, due to the globalization of the economies and the financial investment markets, many multilateral agencies has continued to encourage governments, regulators and organizations to examine the subject closely and to take proactive steps to introduce and implement proper corporate governance procedures. Thus, many of these agencies either individually or collectively issued codes containing the general principles upon which acceptable corporate governance frameworks should be based. Notably amongst these are the codes and principles issued by organizations such as the Organization for Economic Co-operation and Development and the Commonwealth Association for Corporate Governance (Ghana SEC, 2002).

[1] Popular name in England for the speculation in the South Sea Corporation, which failed disastrously in 1720. The corporation was formed in 1711 by Robert Harley, who needed allies to carry through peace negotiations to end the War of the Spanish Succession. Holders of J9 million worth of government bonds were allowed to exchange their bonds for stock (with 6% interest) in the new corporation, which was given a monopoly of British trade with the islands of the South Seas and South America. The monopoly was based on the expectation of securing extensive trading concessions from Spain in the peace treaty. These concessions barely materialized, however, so that the corporation had a very shaky commercial basis. Nonetheless, it was active financially, and in 1720 it proposed that it should assume responsibility for the entire national debt, again offering its own stock in exchange for government bonds, a transaction on which it expected to make a considerable profit. The government accepted this proposal, and the result was an incredible wave of speculation, which drove the price of the corporation's stock from J1281/2 in January 1720, to J1000 in August. Many dishonest and imprudent speculative ventures sprang up in imitation. In September 1720, the bubble bust. Banks failed when they could not collect loans on inflated stock, prices of stock fell, thousands were ruined (including many members of the government), and fraud in the South Sea Corporation was exposed. Robert Walpole became first lord of the treasury and Chancellor of the Exchequer and started a series of measures to restore the credit of the corporation and to reorganize it. The busting of the bubble, which coincided with the similar collapse of the Mississippi Scheme in France, ended the prevalent belief that prosperity could be achieved through unlimited expansion of credit. Legislation was enacted that forbade unincorporated joint stock enterprise (Borgia, 2005).

1. What is corporate governance?

A shared definition of corporate governance which is both valuable and consistent has not been easy to find (Borga, 2005), because every economy and country has different systems of corporate governance that differ to each other in accordance to the strength, power and influence being exercised by their various stakeholders and management. Furthermore, different socio-economic, legal, political and cultural systems existing in each country do have relevant influences on corporate governance (Okike, 2007). That is why the use of the clause: there is "no one size fit all" approach in corporate governance is prevalently being used. Nevertheless, the objectives of corporate governance share common denominator worldwide.

However, few definitions from various bodies shall be considered in this piece.

The Ghanaian Securities and Exchange Commission defined corporate governance in 2002 as "the manner in which corporate bodies are managed and operated".

The Organization for Economic Co-operation and Development (OECD)[1] *however defines it (corporate governance) as a set of relationships governing the various members of a corporation. It is further defined by the OECD (1999) as the system by which business corporations are directed and controlled. It specifies the distribution rights and responsibilities among different participants in a corporation, such as: the board, managers, shareholders and other stakeholders while spelling out the rules and procedure for making decisions on corporate affairs. By doing this, it provides the structure through which the objectives are set and the means of attaining those objectives and performances monitoring.*

[1] Pursuant to Article 1 of the Convention signed in Paris on December 14, 1960, and which came into force on September 30, 1961, the Organization for Economic Co-operation and Development (OECD) shall promote policies designed: (1) to achieve the highest sustainable economic growth and employment and a rising standard of living in member countries, while maintaining financial stability, and thus to contribute to the development of the world economy; (2) to contribute to sound economic expansion in member as well as non-member countries in the process of economic development; and (3) to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations, OECD (2004).
The original member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The following countries became members subsequently through accession at the dates indicated hereafter: Japan (April 28, 1964), Finland (January 28, 1969), Australia (June 7, 1971), New Zealand (May 29, 1973), Mexico (May 18, 1994), the Czech Republic (December 21, 1995), Hungary (May 7, 1996), Poland (November 22, 1996), Korea (December 12, 1996) and the Slovak Republic (December 14, 2000). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention).

2. Corporate governance developments (the past)

The corporate governance developments and disclosures in any country are often shaped by a wide array of internal as well as external factors (Okike, 2007). Accordingly, the internal factors include the state of the economy and the capital market, corporate and business culture, the legal system, government policies, professional/regulatory bodies, amongst others while the external factors (such as the old colonial ties, membership of international accounting standard committee, direct foreign investment activities of multinationals such as foreign banks and companies) contribute considerably, if not totally, to the complex reality of corporate governance development in any developing country. The impact of these factors and the differences in the system operating within each country are well documented in the accounting and corporate governance literatures (see Rose and Meyer, 2003; Okike, 2007 amongst others).

Traces of the corporate governance root in Ghana can be traced to its companies' laws right from the colonial days. The regulation, control and governance of business enterprises in Ghana as of *present*, are largely contained within the provisions of the company legislation which has its root in Ghana's colonial past. Like most other former British colonies, Ghana inherited, at independence, many rules and regulations left behind by the colonial government. During the colonial period, British company legislation was introduced into the country; hence Ghana's legal system and corporate governance practices mirrored the UK pattern (Okike, 2007).

Prior to the independence, foreigners, mostly British, controlled the activities of business enterprises in many of their old colonies and thus bring along with them their economic interest and their (British) legislation. In brief, the Ghanaian Companies Code, 1963 (Act 179) is based largely on the English Companies Act of 1948 (Adda and Hinson, 2006). Although the Code has seen no major changes since the enactment and many attempts at revising it have mainly been mere editorial changes, these historical analysis, therefore, confirms and suggest that the Ghanaian system of corporate governance is essentially an "Anglo-Saxon", or the "outsider control system" (Franks and Meyer, 1994), and is a reflection of its colonial heritage (Okike, 2007).

Ghana SEC (2002) identified some common elements that underlie good corporate governance upon which further evolution and developments in governance structures are built upon today. They are: (1) the rights of shareholders; (2) the equitable treatment of shareholders; (3) the roles of stakeholders;

(4) disclosure and transparency; (5) the responsibilities of the board. These pillars are explicitly uncovered in the 2002 code of best practices released by the Ghana Securities and Exchange Commission.

3. Internal influences

Okike (1999) posited that internal influences on corporate governance disclosures of many developing countries like Ghana come from one or more of the sources such as: government, the professional bodies such as accountancy bodies, Institute of Directors, Corporate governance forum, the Securities and Exchange Commission, the Central Banks, the stock exchange body and the Corporate Affairs Commission etc. Thus, Okike (2007) further argued that government of a country play vital role in corporate governance frameworks through promulgation of laws that will affect management and control of business enterprises in such country. Specifically, the Ghanaian Companies Act, 1963 (Act 179) specifies the requirements of corporate governance fundamentals in Ghana such as greater roles for the company's directors and an effective participation of the shareholders in company's affairs. In one sense, these enactments can be seen as the means by which government attempts to represent and, at least to some extent, to define the role of corporate governance in society (Turley and Sherer, 1991; via Okike, 1999). If this view of government's role is correct, legal provisions should reflect societal perceptions of the need for and desired contribution of corporate governance.

As society's perceptions of corporate governance increases so also are the legal provisions revised and new legislation passed to reflect these changing perceptions. However, the swiftness with which the government response to changing perceptions of society on corporate governance as reflected in the enactment of new legislation varies from one country to the other. In the case of Ghana, while the country's (Ghanaian) Companies Code of 1963 (Act 179) was a complete mimicking of the English Business Act of 1948 with very little or no modification, Ghana's 1963 Companies Code is yet to be properly reviewed. Whereas, the UK had revised its Acts in 1967, 1976, 1989, 1991, 1985, 1989 and 2006 in recognition of the changing societal perceptions. However, the UK Acts of 1980, 1981, 1985, 1989 and 2006 etc. were heavily influenced by the European Communities Directives (Okike, 1999).

However, serious attempts have been made in the past time in Ghana to promote effective corporate governance through various organizations. This include the formation of the Institute of Directors, the development of the National Accounting Standards, the formation of Ghana Securities and Exchange Commission which developed a Corporate Governance Code of Best Practice to be followed by the companies in Ghana (Tsamenyi et al., 2007). Thus, the SEC Guidelines on Best Corporate Governance Practices is based on OECD principles. The Bank of Ghana (BoG) also incorporated some corporate governance rules into the Banking Act 2004 (Banking Act 2004 amended in 2007) and published the BoG code of Conduct for Primary Dealers (ROSC, 2005). Basically, the Ghanaian regulatory framework with regard to corporate governance comprises the Ghana's companies code (1963), the Securities Industry Law, 1993 (PNDCL333) (hereafter referred to as SIL) as amended, and the Membership and Listing Regulations of the Ghana stock exchange (GSE, 1990). It is also supported by the Ghana national accounting standards and the codes of professional conduct imposed by the Institute of Chartered Accountants (Ghana) on its member (Tsamenyi et al., 2007).

4. External influences

Having earlier submitted that such external influences like old colonial ties, membership of international accounting standard committee, direct foreign investment activities of multinationals such as foreign banks and companies contribute considerably, if not totally according to Okike (2007), to the corporate governance development of a country, such external environment of corporations do make demands which require the corporate governance of a country to respond positively by being pro-active.

The pace of events within the Ghanaian economy over the past decade suggests that the government cannot afford to remain passive with regards to the issue of corporate governance. Critically, a look into the 1980s, 1990s and 2000s conjures images of an economy that was quickly recovering from years of recession. Various factors come into play on the reasons why good corporate governance practices and better disclosures are now being echoed and orchestrated in Ghana than it had being previously done. One of such factors is the economic reform and program being pursued and implemented by the government. More so, the need for international convergence of the corporate governance codes and international relevance of the countries pursuing this has necessitated this.

5. Corporate governance disclosures

A disclosure has been defined by Ahmed & Karim (2005) as the appearance of an item of information in the annual reports of a company. The role of disclosure at facilitating and enhancing good corporate governance practices can never be overemphasized. From the research embarked by this author between 2009 and 2012, findings shows that Ghanaian listed banks do comply fully and partially with the 2002 SEC code of best practices. This might not be unconnected with the facts that many of the listed banks in Ghana are foreign banks and do have international affiliations. The features considered in the research are: the board responsibility, the board composition and structure, the shareholder's rights, the transparency and disclosure and the audit committee. It also shows that varied patterns of disclosures are displayed by the banks under those mentioned headings. The wording of the corporate governance disclosures identified during the period covered by the investigation is also identical to that which has being used by the listed companies on the FTSE100. It is likely that the development of corporate governance practices in the UK which led to the crafting of the UK combined code of corporate governance and disclosures may have influenced corporate governance code and disclosures in Ghana.

6. The present and the future

Oertel (2004) argued that despite the establishment of a seemingly robust legal regime governing corporate governance in Ghana via the companies' code of 1963, not minding lack of its amendments for a very long period (ROSC, 2004), the enforcement of the provisions of the code has been relatively weak thereby leaving Ghana deficiently in the corporate governance practices.

Mensah et al. (2003), however, single out corruption as the major and only bane of the socio, economic and political development of Ghana. According to the CDD-Ghana (2000) report, corruption has persisted for a long time and still continues to grow while undermining the business corporate and the country's democratic system. A survey highlighted by Mensah et al. (2003) revealed that Ghanaian majority express concern with regards to "corruption" which has become endemic in the country. This is supported by the 2010 report releases of transparency international on the corruption perception index where Ghana has been rated the 69th; a slightly better position than in the previous reports. Okike (2007) noted that the issue of corruption in Africa is purely cultural. Cultural shift, good ethical values and moral standard with sound corporate governance practices can reduce the corruption side of the Ghanaian socio-cultural problems. Moreover, establishments of more regulatory agencies as well as revisiting the legal structure and acts of the country while putting preferences on enforcements will improve the governance status of the country. Anticorruption crusade of previous governments such as President John Kufour and some old initiatives like Ghana Anti-Corruption Coalition (GACC) are highly commended and must be improved upon the current administration. Many other regulatory bodies and agencies who had been active in the promotion of good corporate governance in Ghana such as: the Securities and Exchange Commission Ghana (SECG) and the Ghana Stock Exchange (GSE) charged with the responsibilities of regulating financial reporting practices of listed companies should be further empowered and encouraged. Other non-binding frameworks of corporate governance, tighter internal controls, and more corporate accountability should also be further improved upon.

Conclusion

While there has been great awareness with regards to the issue of corporate governance compliance in developing countries like Ghana indicating improvements in the legal and regulatory structure, the practices and enforcement actually diverge.

One of the major problems in Ghana is corruption. Although, the issue of corruption is not only peculiar to one country as it is being reported in Europe and North America as well, it is onerous on the government and the citizens to fight this deadly cankerworm. In particular, governments who are aiming at attracting foreign direct investments into their countries should be able to pull through the corruption side.

There should also be political willingness and courage from the government to fight the corruption. In addition, the government should increase the institutional capacity of the regulators, as well as improving the administrative and judiciary system while reforming the legal framework. The awareness and significance of corporate governance should be published while updating the code of best practices to represent the current realities as well as improving the quality of disclosures expected from the listed companies. Non-listed companies should be seriously encouraged to make disclosures.

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