MERIT RESEARCH JOURNALS
www.meritresearchjournals.org

Merit Research Journal of Accounting, Auditing, Economics and Finance Vol. 1(4) pp. 043-048, September, 2013
Available online http://www.meritresearchjournals.org/aaef/index.htm

Review

Historical review and taxonomy of international corporate governance

[1]*Owolabi Sunday Ajao, PhD, [2]Owolabi Titilayo Joy and [3]Olotu Ayooluwa

[1]Associate Professor of Accounting, Department of Accounting, Babcock University, Nigeria

[2]School Officer, Babcock Business School, Babcock University, Nigeria

[3]Babcock University, Nigeria

***Corresponding Author's E-mail: emilagba05@yahoo.com**
Mobile line: +2348034097016

Abstract

The Study examined the historical background of the development of corporate countries like United States of America, Germany, France, United Kingdom and Nigeria. Each of the countries under review showed different historical background which ranges from family ownership to dispensed shareholders. The study also discovered that in the current situation, most countries are converging towards international corporate governance practices. More executive is given to shareholders' right and protection, dichotomy of chairman and chief executive officer dispensed shareholdings, functional judicial system and better regulatory framework. The paper recommends that an international code of corporate governance be instituted to guide at least multi-national companies and to support the international financial reporting system which is becoming a universal reporting system.

Keywords: Shareholders, Corporate Governance, Family Ownership, Dispensed Shareholder Security Markets.

INTRODUCTION

The evolution of modern corporate governance issues cannot be discussed in isolation of the political and economic structure of the environment. The structure of the corporate governance emanates from the political indices and economic climate which are the core determinants of the nature of corporate leadership. Around the world, various corporate governance structures exist, however, they are all products of their legal framework, political and economic systems. The focus of many scholars in this field is not only to understand the historical dynamics of the firm performance and economic development, but also to understand the co-evolution of the corporation with modern ideas of political and legal systems. This is done in conjunction with its interface with other relevant disciplines like Economics, Sociology, Political science, Business, History, Finance, Accounting and others.

This paper has been partitioned into three components, this part deals with the introduction while the next part discusses international review of corporate governance. Part three of the work dealt with conclusion and recommendations.

International review of corporate governance

United States of America

The United States' economy is characterized by the following statistics, population of more than 288 million; Gross National Income exceeds $10 trillion, total number of registered listed companies above 15 million while the market capitalization is above $15,500 billion. The key regulatory body currently is the Public Accounting Reform and Investor Protection Act (popularly called Sarbanes Oxley Act 2002).

The most popular form of enterprises in the United State in the current business regime is firmly dominated

corporate establishments. The capitalist system of corporate settings in the United State gave rise to a dispersed corporate ownership system in the recent times. The major distinction between historical evolutions of corporate governance in most developed economies of the world is the matured, developed and disciplined legal frame work. This enhances the protection of minority interest in most governance issues and company development. (Horwitz, 1977; Horenkamp, 1991; Roy, 1997; Gary, 2006).

The managers that are engaged to defend, develop and increase stakeholders' wealth operate within a well developed governance code guided by a well developed legal frame work. The current dispensation in the United State is the geometrical growth in the dispersed corporate ownership system. This structure now dominates the United State business community. The dispersal nature seems to encourage the development of the security market. The security market in the United State is one of the major developed markets in the world. (Naviu and Sears 1955; Chandler, 1997; O'Sullivan, 2000; Gary, 2006).

The legal framework of the United States still largely depends on the laws of incorporation enacted in each of the 50 states. However, each state's law has high degree of resemblance as moderated by the Model Business Corporation Act MBCA which is usually updated by the American Bar Association. State laws and influential MBCA set forth the fundamentals of corporations and the fiduciary duties of directors, usually tagged as the duty of due care and due loyalty.

President George W. Bush on 2nd July, 2002 signed into law the Public Accounting Reform and Investor Protection Act of 2002, known as Sarbanes – Oxley. The main highlights of the Act are:

- Having 12 sections and 80 subsections
- Create public funded oversight board called the Public Company Accounting Oversight Board to monitor auditors and strengthen their independence.
- Increase CEO accountability
- Make CEO and CFO to sign off on financials.
- Empower SEC with more resources to and authority to enforce security laws.
- Mandate all companies to establish audit committee
- Re-define audit committee's functions and responsibilities with more focus on oversight functions regarding adequate disclosure, integrity and accountability.
- Certain auditors' functions were restricted by the act such as limiting the consulting services as relating to

i. Book keeping or other services related to the accounting records or financial statements of the audit client
ii. Financial information systems design and implementation
iii. Appraisal or valuation services, fairness opinions, contribution in land reports
iv. Actual Services
v. Internal audit outsourcing services
vi. Management functions or human resources
vii. Broker or dealer, investment adviser, or investment banking services, and
viii. Legal services and other expert services unrelated to the audit

In addition, the Security and Exchange Commission in its execution procedure of the Sarbanes Oxley Act instituted the following rules among others

- Standard relating to listed company audit committees.
- Disclosure required by sections 406 and 407 of the Sarbanes – Oxley Act 2000
- Strengthening the commission's requirements regarding auditors.
- Implementation of professional conduct for attorneys

All these are put together to ensure adequate provision that will enhance quality governance systems and performance of corporations. Other relevant bodies in the crusade are; America Stock Exchange (Amex), New York Stock Exchange (NYSE) and National Association of Corporate Directors (NACD).

United Kingdom

The British corporate governance emerged in a synonymous way like the U.S; however there are some few distinct features of the British system. At the inception, the Briton is highly characterized with the closely held family firms, they were highly skeptical of the limited liability system except in the early nineteenth century.

In the early 1930, the inception of merger ushered in the family dispersed ownership system which has since grown progressively (Cheffins 2004, Hannah, 1982 and Franks et al 2004). The early corporate system in Britain is patterned after firmly business ownership which gradually metarmophorsised into the dispersed ownership system. The delay in the limited liability system is attributed to the skepticism in the business community, however, in the twentieth century a movement has been noticed.

The financial institutions particularly that of the banking industry projected a strong demarcation between the commercial and investment banking. The universal banking system is not a popular one, yet the relationship between the banking sector and the corporate bodies are cordial, legitimate and within the legal frame work. It is therefore pragmatically noted that the British banking system operates purely on professional banking services rather than participation in the ownership and control of the firm. (Herrigel, 2006).

The security market in Britain was not fully developed until twentieth century. The utilization of the security market by the indigenes was very limited but the market

has a momentous significant development in depths, and degree of patronage by the indigenous firms during the early industrialization period. The British capital market today is fully developed and has grossly affected the firm's ownership structure and promoted significantly the dispersed ownership pattern in the early nineteenth century (Ross, 1996; Fowin, 1997; Collins, 1998; and Herrigel, 2006).

France

Unlike U.S and Britain, government participation in the industrial and firms activities in France is more prominent. The state determines the direction and pattern of ownership structure. In most cases the state is absolutely in charge of the corporations. During the nineteenth century, there were emergences of a few large corporations in France. Those that did exist were closely held. Mostly, these firms were financed from retained earnings and only have dealings with banks in rare occasions, just by mare short term loans to fill in a short time shortage in operations in form of an overdraft or a similar arrangement. It is rare to see banks holding equities in the firms. French banks like the Briton counterparts maintained specialized divide between commercial and investment functions (Fridenson, 1997; Murphy, 2004; and Herrigel, 2006).

The most unique aspect of corporate governance history in France is the significant role state performs in the firms' governance, most importantly, during the beginning of World War I, the state started encouraging the development of national captains in strategic industries by directing capital to firms and act as their major customers. The end of World War II witnessed a strong national planning development where banks and firms were nationalized and boards composition were both directly and indirectly influenced by the public (Cohen, 1969; Hall, 1986; & Herrigel, 2006).

The economic role of the security market in France has experienced a fast development especially after the World War II. Unlike United State it took a longer time for the France economic development to experience a liberal market system because government involvement was highly material in nature. The minority ownership system was not legally encouraged as there were no sufficient protection acts for this specific purpose. However, further development and economic reformations that commenced since the 1980s systematically inculcate some elements of minority rights' protection. The current trend is that shareholding is systematically becoming more dispersed and also responding (Fanto, 1995; Hancke, 2002).

Germany

The German incorporation law of 1870 set the liberalization of the German corporate world in motion. There were varieties of corporate governance practices in the German liberal economy before the World War II and closely held family enterprises dominated the economy since the beginning of industrialization (Herrigel, 2006).

The decline of family ownership ushered in the dispersed shareholding system towards the end of 1933, however, the trend changed after the Second World War in 1945 and concentrated holdings then dominated the corporate settings. Also, cross-shareholding became very important and prominent form of concentrated ownership (Herrigel, 2006).

Since the inception of industrialization, German corporate financing is bank driven and with the use of universal banking system. Strong bank participation in corporate governance system was prominent especially after the World War II.

In the German corporate governance system, the shareholders play significant roles especially when banks held positions of internal influence within the German firms. They usually constituted stakeholder interest that shaped the character of management calculation (Foblin, 2005; Herrigel, 2006).

According to Herrigel (2006), just like it happened in France, Britain and U.S., there has been a movement, beginning in Germany in the 1990s, toward greater dispersal of holdings, less relationality in banking, more liquidity in securities markets, greater attention to shareholder value, and more emphasis on market solutions to public problems. The current situation in Germany is unambiguous and uncertain as events begin to remember the 1933 norm in corporate governance.

Corporate governance in Nigeria

The Nigerian corporate governance concept is a product of its environment, politically, legally and economically. The nature of corporate governance in Nigeria cannot be completely detached from its political and governance antecedence. The colonial rules and dominance for the periods preceding 1960 has its political underscore on the direction of the corporate governance activities. Besides this, the natures of Nigerian business activities along side with the economic environment are major determinants.

The political situation was a type that witnessed series of military interventions where there was no serious regard for any legal framework that can ensure adequate check and balances on corporate activities. Coincidentally, most of the big corporate bodies had government involvement by way of holding a reasonable percentage of shares; this created an opportunity for the military government to have undue influence on the boards' activities. In most cases "uneducated" retired generals were appointed as the chairman/CEO of companies. This situation lasted for a long time and not

until 1999 when the country had a democratically elected president who equally had a military background and training before some of the chronic anomalies were put on check.

Emanating from its environmental factors, Yakasai 2001 (as cited in Yahaya 1998) presented that opinions differ regarding the content and the relevance of the theory of corporate governance in the third world country like Nigeria, more so because of the underdeveloped, unstructured and natural nature of their economies. Yet the issues of corporate governance and investor protection are critical elements in development and economic prosperity.

The nature of the environment in which Nigeria is positioned makes it evidently difficult to position its corporate governance structures within a specific theoretical framework. Divergence opinions are on the table for diagnostic analysis to position Nigeria within a specific spectrum.

In the words of Yakasai (2001), it was emphasized that organizational theory recognizes the peak of organizational structure in such a way that the chief executive officer (CEO) and the board of directors (BOD) are mere imposition on such a structure, as long as functional reporting obeys such a structure that is, the BOD will remain a mere rubber stamp of the CEO decisions as the case of the recent discoveries in some Nigerian banks. This theory is declared nullity in the Nigerian environment because of the nature of business, size of corporate body and ownership structure (mostly family business).

In the same manner the stewardship hypothesis is faulted by the Nigerian governance system since most of her governance periods were characterized by military rules which is noted for dictatorship, the Annual General meeting is a mere formality and this is where the stewardship report is expected to be examined, scrutinized and make decisions on the directors. Most times, invitations were not sent to the shareholders and where they were sent, they were sent very late and the meetings are fixed in a deliberately chosen difficult location. This hindered the shareholders' active participation in the deliberations that affect the running of the company. The stewardship theory has no definite position in the corporate governance structure of Nigeria.

Again Yakasai (2001) argued that agency theory postulates a different perspective of the nature of man seeking self interest rather than an altruistic goal and such cannot always be trusted. This revealed a conspicuous problem in Nigeria and most suitable theory of Nigerian situation whereby corporate executives milk their companies and become 'fat cats' while the investors become 'anaemic', a situation very prominent since Structural Adjustment Program (SAP) till date.

Considering stakeholders theory which is sometimes seen as an extension of the agency theory which in addition to agency theory position added that there are more parties that have interest in the corporations than the shareholder as postulated by the apostles of agency theory. Other interested parties include the creditors, customers, employees, business partners, government agencies and community at large. This is very relevant to the Nigerian economy in many instances; a case at hand is the Niger Delta crisis that is still on till today. The concept of stakeholders theory is to harmonize the interest of various parties through which the long-term objectives of the firm is achieved. Contrast is the Nigerian case whereby the Boards are not mindful of the environment where they operate and that has created a serious precarious environment that is threatening to the attainment of the long term objectives of the firm. The Niger Delta crisis in Nigeria is one of the most popular and life threatening environmental hostilities which is a consequence of abandonment of environmental management accounting aspect of corporate governance theory as put forward by the stakeholders' theorists.

The effectiveness of any corporate governance code and structure depends strongly on the level of the genuines of the democratic process in Nigeria. This will in return determine the strength of the relationship between BOD, corporate governance and political structure because these inter-twine.

Conceptually speaking, corporate governance is relatively new in Nigeria. Academic researches on this area are still few and ongoing. However, a few academic and corporate researchers in Nigeria have identified institutional, legal and capacity development as pivotal to the development of corporate governance in Nigeria. Anglo-American system of corporate governance is adopted in Nigeria. Already, the executive and non-executive directors are elected by the shareholders during general meeting. The directors in this instance place high premium on the shareholders to encourage reasonable returns to the investors through excellent performance.

Oyejide and Soyinbo (2001) asserted that the Nigerian situation is only theoretically similar to the above. However, in the Nigerian case, the executive board and non-executive are handpicked; and are not independent and not necessarily bound (legally or by default) to place higher value on shareholders interest or protect the business interest let alone the interest of stakeholders.

The current and last challenges that erupted the corporate world do not exclude Nigeria. The collapse of some of the world leading corporate bodies like Enron, WorldCom, and particularly in Nigeria banking industry where many banks collapsed as a result of management and leadership failure. The most recent ones are Oceanic bank, Intercontinental bank, Afri-Bank etc.

Nigeria economic system is characterized by the serious weak internal control system alongside with corruption. The nature and manner with which corporate bodies operate gives room for insider dealing, executive overriding and collusion. All these are basic challenges

to solid corporate governance system. It may equally be attributed to a very long period of military role in the past (Quadri, 2010).

The struggle of several underdeveloped economies of the world to come out of the last global melt down which most continent of the world experienced call for a caution in the area of strong leadership system, corporate governance system and code. The experience of the less developed countries in Africa, Middle East, Asia and the Eastern Europe in the recent past calls for a quick attention to re-assess the corporate leadership problems and code of corporate governance. The minority and other stakeholders' right should be examined to incorporate a proper compliance system, risk assessment and adequate legal framework.

The most popular recent economic reformation that you find in the developing countries is the privatization programme. Nigeria is one of the leading countries of developing nations pursuing this agenda; this requires adequate, legal framework, transparency, effective corporate leadership and commitment to the economic development and growth. The code of corporate governance in Nigeria needs a review to comply with the modern corporate governance dynamics; this is to include the compliance and evaluation systems. The announcement, preparation and publication of code of corporate governance do not necessarily translate to effective and efficient implementation of the code as it is in Nigeria presently.

Prior to the ongoing global financial meltdown, the experience of the Asian Tigers' financial crisis in the 1990s signaled a clarion call to reform corporate governance as the solution for successful turnaround. The ongoing practice in the less developed countries in Africa, Middle East, Asia, and Eastern Europe to embrace privatization of government enterprises, most especially Russia's regretful massive privatization without the appropriate systems in place, are wakeup calls to the underdeveloped, developing and developed countries alike to invest in infrastructure necessary to sustain efficiency in corporate governance best practice (McGee, and Bose, 2009).

CONCLUSION

The international review of corporate governance structure and practice around the world demonstrated that there are various cultural and social backgrounds to the evolution of corporate governance structure in different places around the globe. The political structure has played a great role in the nature and structure of the corporate governance in different regions and countries of the world.

The historical evaluation also revealed that the ownership structure and legal framework in different countries play very crucial role in the governance matrix. The structure of the United States, France, Briton and Germany is moving fast towards greater dispersal of holding, greater attention to shareholders' value and market solutions to public problems. This is through effective stock market in the various countries.

The concluding observation is that there is a greater movement towards international convergence towards common corporate governance mechanisms such as legal protection of shareholders, duality of chief executive and chairman, board size, audit committee and external directors.

RECOMMENDATIONS

The international requirements of ethical issues in corporate governance should be accompanied with the adoption of international financial reporting standards. This will enhance investors' confidence, easy comparison and understanding of the various reports.

Currently, most countries produce independent corporate governance code, it is observed that they vary from one country to the other but, there is need for an international template which can be adopted internally especially by international companies. The document should be flexible to accommodate few differences emanating from the indigenous peculiar situations.

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