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CORPORATE GOVERNANCE PRACTICES

Ушбу мақолада иқтисодиёти ривожланган ва ривожланаётган мамлакатларда корпоратив бошқарувни вужудга келиши, тажрибалари, ўзига хос хусусиятлари тадқиқ этилган.

In this article studied the appearance, experiences and features of corporate governance in the economical developed and developing countries.

Key words: *Organization for Economic Cooperation and Development (OECD), Global Corporate Governance Forum (GCGF), China Securities Regulatory Commission (CSRC), International Finance Corporation (IFC).*

The Global Scenario

Corporate governance standards and practices vary across the world. Every country develops its own code of corporate governance depending upon its socio-economic conditions and political philosophy and modifies the code from time to time based upon its own experiences. In this article, corporate governance practices in leading economies will be discussed and will be presented.

In modern times, corporations are accessing capital and markets across national boundaries. It is also seen that investors are also investing in global companies. The investors want assurance that corporations conform to international norms of corporate governance. The first effort to formulate a uniform global code was made by the Organization for Economic Cooperation and Development (OECD). OECD Principles of Corporate Governance (2004) provided for norms and standards regarding:

- (i) The rights of shareholders,
- (ii) The responsibilities of shareholders,
- (iii) The rights of stakeholders,
- (iv) Disclosure and transparency, and
- (v) The role and structure of the board. In 1999, the World Bank and the OECD joined to create the Global Corporate Governance Forum (GCGF) to promote the cause of good corporate governance.

In spite of certain similarities, companies in the US and the UK differ on some fundamental issues like board structure, position of chairman and executive pay. The independent directors form a majority in the American Boards whereas executives dominate UK Boards. In the UK, the positions of Chairman and CEO are mostly separate, whereas most American companies prefer to club the two positions. American companies prefer highly paid powerful CEOs, whereas British companies are headed by less visible non-executive chairman, with reasonable pay for CEO [1].

Germany

In Germany, corporate governance has traditionally been characterized by a relationship-based, insider governance system. Companies have long-term relationships with banks and financial institutions that provide long-term investments to the German companies. German companies have a two-tier board structure. The supervisory board at the apex level is expected to provide the monitoring role, but the appointment to the supervisory board is not considered transparent. Further, companies hold shares in each other through series of cross-holdings. There are also significant employee ownerships and employee representatives in the Board.

However, the traditional German corporate governance system does not attract investments from global capital markets. Corporate governance code was involved in Germany in 2000, which was revised in 2001 by a commission appointed by the government. The objective was to harmonize German governance practices with international standards.

France

The State plays a dominant role in the French companies with a number of companies either owned or controlled by the State. The banks and financial institutions are also owned or controlled by the State are the major capital providers in the absence of significant investment community.

In order to attract foreign investment in French companies, France has introduced corporate governance reforms through two codes of best practices in 1995 and 1999. The codes were in the line of best international practices in respect of board structure, disclosure of compensation packages of top executives and transparent practices. Currently, 30% of directors in French companies are independent outsiders and 90% Boards had audit, remuneration and nomination committees.

Japan

According to Monks & Minow (*Corporate Governance*, 2004), the Japanese system of corporate governance is characterized by powerful role for the government and relationship investing by holding companies leading to cross-holdings under the *Keiretsu* system with inter-company directorship. Banks play a powerful role in providing finance. Separation of ownership and control is minimum. The governance is insider-dominated. The governments acted not as a regulator but as a promoter and protector of domestic industry. Market control and shareholder activism is almost non-existent. The objective of corporate governance is full employment and the security of the nation. Transparency, accountability and disclosures are weak [2].

In the wake of globalization, Japan through its Corporate Governance Forum issued a corporate governance code in May 1998 to align its corporations to international norms of governance. The Forum called for independent audit, formulation of board committees for financial supervision, pay and nomination

committees. The forum stressed the need for more outside independent directors in the Board in harmony with international practices.

Russia

Since the end of the Cold War, Russia has been opening its financial markets. The Russian stock market has been developing. However, the political changes were too rapid and the economy could not keep pace. In 1996, President Yeltsin introduced reforms for enforcing shareholders' rights. There was large-scale privatization in the nineties in Russia. However, the system of corporate governance is insider-dominated. In order to attract foreign investment, Russia has been taking significant steps towards corporate governance reforms. The Supreme Arbitraz Court and the Federal Commission for Securities market have focused their attention on the need for right corporate governance [3].

The Russian Corporate Governance code was introduced in 2002 to elevate Russian corporate governance standards to levels expected by international investors. However, much more work remains to be done to take full advantage of the benefits of globalization. The Russian Corporate Governance Code recommends that the byelaws of all joint stock companies should include a shareholder's general meeting stature, a board of directors' stature, a board committees' stature, a CEO/Management Board stature, a company secretary stature, an audit commission stature, a financial control service stature, an internal audit service stature, and provision for dividend policy declaration and a company information policy.

Simultaneously, the number of independent directors in Russian companies has been gradually growing. Despite these achievements, the Russian corporate community still needs dramatic improvements in a number of variety important areas such as disclosure of ownership structure, clear rules for mergers and acquisitions, reorganizations, dividend payments, board composition, independent and effective practices.

China

After 20 years of exploring gradual reforms, more than 1,200 companies in China have diversified their ownership through public listing. 80 percent of small and medium-sized firms have been transformed into-state owned enterprises. Most listed companies in China were reformed state-owned enterprises. Since the beginning of 2000, the China Securities Regulatory Commission (CSRC) has adopted a series of measures with regard to the improvement of the corporate governance structure of listed companies. First, CSRC has formulated the basic norms of corporate governance so that listed companies can follow the rules; secondly, CSRC issued the Guide to the Establishment of Independent Directors System with the aim of standardizing the operations of the board of directors of each listed company, which should have at least one-third independent directors. According to the country's company law, a board of directors should consist of 5 to 19 directors. The average size of boards in 1999 was 9.9 (Tenev and Zhang 2002).

The World Bank and the International Finance Corporation (IFC) published a report that two-thirds of all directors are executive directors. Apart from such common problems as limited time and energy and asymmetrical information, the other constraints include:

- 1) Lack of legal backing for the role of independent directors;
- 2) Lack of incentives;
- 3) Drawbacks in the independent directors' own credentials and abilities; and
- 4) The impact of the social and cultural environment [4].

The Code for Corporate Governance for Listed Companies in China was issued in January 2002. The code sets forth, among other things, protection of investors' interests and rights and the basic rules and standards to be followed. The code is composed of seven aspects like:

- a) Shareholders and shareholders' meetings;
- b) Listed companies and their controlling shareholders;
- c) Directors and Boards of directors;
- d) The supervisors and supervisory board;
- e) Performance assessments and incentive and disciplinary system;
- f) Stakeholders; and
- g) Information disclosure and transparency.

South Africa

Significant corporate governance reforms were introduced in South Africa through the first King Report in 1994. The report was characterized by its stress on the stakeholder-oriented approach. The report included for the first time, a code of business ethics for companies as well as for the stakeholders. In this way, the King Report is one of the most forward-looking codes of corporate governance. The code was updated by the King Report in 2002 by the chairman of the Corporate Governance Committee, Mervyn E. King. The King (2002) defines relationship between the company and its shareholders as:

- The modern approach is for a board to identify the company's stakeholders, including its shareowners, and to agree to policies as to how the relationship with these stakeholders should be advanced and managed in the interest of the company;
- Board must apply the test of fairness, accountability, responsibility and transparency to all acts or omissions and be not only accountable to the country, but also be responsive and responsible towards the company's identified stakeholders.

South Korea

Until well after World War II, Korea was occupied by Japan. This meant that Korean business was influenced substantially by the Japanese structure of business. As in Japan, the corporate ownership structure has been characterized by founding family ownership concentration. The Korean *chaebol* or conglomerate business groups have arisen from small family-run companies and are now global players (e.g. Hyundai and LG). Until very recently, the corporate governance structure in Korea has kept its traditional insider character. There has been little separation of ownership and

control at the highest level. Indeed, outdated hierarchical business strategies have been blamed in part for the way in which South Korea succumbed to the Asian crisis in 1997.

The Asian financial crisis in 1997 hit South Korea heavily and resulted in significant expropriation of minority shareholder wealth by majority shareholders in such companies as Samsung Electronics and SK Telecom. Such transfers of wealth highlighted a need for tightening of company law. The government has had a substantial impact on company activities as state-owned banks provide finance. The government also instructed Korean companies on the strategic direction they wish them to take. Links with the state are now being lessened to allow greater autonomy to the companies.

Japanese vs. American Corporate Governance Practices

Masaru Yoshimori (2005) stated that the performance of two Japanese companies Toyota and Canon is superior to that of their American rivals like GM and Xerox despite the traditional Japanese style of governance. The author opined that corporate governance alone does not assure sustained corporate performance. Values, culture and strategy play an equal or perhaps more important role in corporate performance [5].

Yoshimori held that independence is extremely difficult to define. Outside directors are only as good as the CEO. A self-interested CEO can undermine their independence with relative ease, as the Enron case illustrates. As such it may be time to look more closely at internal governance mechanisms, instead of trying to refine the external governance system [6].

Malaysia

A definition by the Finance Committee on Corporate Governance in Malaysia in the Report on Corporate Governance (2002) stated that: *“Corporate governance is the process and structure used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability with the ultimate objective of realizing long term shareholder value, whilst taking account the interests of other stakeholders”*. This indicates that corporate governance is not only applied to the shareholders but the other stakeholders as well.

The main sources of the Corporate Governance reforms agenda in Malaysia are from the Malaysian Code on Corporate Governance by Finance Committee on Corporate Governance, Capital Market Master Plan (CMP) by Securities Commission and Financial Sector Master Plan (FSMP) by Bank Negara Malaysia on the financial sector. It provides guidelines on the principles and best practices in corporate governance and the direction for the implementation as well as charts the future prospects of corporate governance in Malaysia.

The initiative started with the establishment of Finance Committee on Corporate Governance in 1998 that consists of both government and industry.

Recognition of corporate governance in Malaysia was significantly evidenced by the released of the Malaysian Code on Corporate Governance by the Committee in

March 2000. The principles underlying the report focus on four areas including: board of directors, director's remuneration, shareholders and accountability and audit. The code is hybrid in nature, which is similar to the Combined Code on Corporate Governance (United Kingdom). Under the approach, the companies in Malaysia should apply the broad principles of good corporate governance sets out by the code flexibly and with common sense to the varying circumstances of individual companies.

Nigeria

For a developing country such as Nigeria, corporate governance is of critical importance. In its recent history, that lack of corporate governance has led to economic upheavals. Two examples illustrate the point being made. In the late 1980's and early 1990's the country witnessed a near collapse of the financial sector through the phenomenon of failed banks and other financial institutions. In consequence, the failed Banks and financial malpractice in Bank act was promulgated to facilitate the prosecution of those who contribute to the failure of Banks and to recover the debt owed to the failed banks. Secondly, privatization and commercialization program of the Nigerian Government was a reaction to the failure of corporate governance in state owned enterprises. The privatization functions lies with the Bureau of public Enterprises (Vincent O. Nmehielle and Eyinna S. Nwauche, 2004).

Other corporate governance failures in Nigeria include:

- In the Bank loans case, capital market operators were charged, accused of sale of forged certificates and were required to buy back.
- A number of publicly quoted companies have gone into oblivion for reasons bordering on ineffective and non-existent systems e.g. NASCOM Plc.
- Falsification of accounts by the then directors/management of Lever Brothers Plc., where over-valuation of stocks running into millions of naira discovered, and African Petroleum Plc. where about N24 billion credit facilities were not disclosed, in spite of the due diligence review carried out by the core investors and reporting accountants. It is noteworthy that the last AGM before privatization AP still paid N3 as dividend and a section of shareholders Association praised then to high heaven.

In the last five years, corporate governance has become one of the most debated corporate issues in Nigeria. In 2001 the securities and Exchange Commission (SEC) of Nigeria set up a committee that came up with a code of best practices for public companies in Nigeria (“The Code” in 2003) in 2005 the institute of Director of Nigeria set up a center for corporate governance to champion the cause of good corporate governance amongst its members. In 2006 the Central bank of Nigeria issued post-consolidation corporate guidelines for all banks operating in Nigeria.

The Nigerian code of Corporate Governance is primarily aimed at ensuring that managers and investors of companies carry out their duties within a framework of accountability and transparency. This should ensure that the interest of all stakeholders are recognized and protected as much as possible.

The code of Best practices for Public Companies in Nigeria (“The Code”) is voluntary even though it is recommended that all Nigerian public companies comply with the code and are required to state reason for non-compliance.

Corporate Governance simply put, is ensuring good business behavior. It is about the way in which boards oversee the running of a company by its managers, and how board members are in turn accountable to shareholders and the company. This has implications for the company behavior towards employees, shareholders, customers, and other stakeholders. Poor corporate governance can weaken a company’s potential and can pave way for financial difficulties and even fraud.

In the case of Nigeria, the need is for good business behavior is even more important, in view of the country’s image of corruption and lawlessness.

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