CORPORATE GOVERNANCE IN KENYA

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OUTLINE OF THE PRESENTATION

• Definitions of Corporate Governance
• Global, Regional and National Trends in Corporate Governance
• Emerging themes /issues in corporate governance at global and regional (East Africa) level
• The Kenyan Context – Recent Developments
• Opportunities and process of entrenching good corporate governance
• Benefits of Good Corporate Governance
• Summary and Conclusion
Corporate Governance defined
The processes, policies, structures, actions employed by a Board to oversee and monitor an organization /company so that it can achieve its objectives.
Corporate Governance defined

• Refers to the manner in, and the system by, which power over, and the power of, a corporation is exercised in the stewardship of its total portfolio of assets and resources with the primary objective of increasing and sustaining shareholder value and while satisfying the interests, or taking account of the needs, of other stakeholders in the context of the mission and vision of that corporation.
Global Corporate Governance: Why It Matters

• It is concerned with who controls what, and how well they are doing it
• It is changing, and we need to understand what is happening
• It affects all economies, multi-national corporations, small businesses, institutions and individuals
Corporate Governance: Why It matters

• It is about relationships among various participants in determining the direction and performance of corporations” (Monks and Minow, 2009)
• Main participants: shareholders, management, directors, corporate secretaries
• Other participants: employees, customers, suppliers, creditors, the community: the stake holding approach
Corporate Governance embraces

• Issues of public policy, the overriding national values and ethics and the national priorities and consensus under which the Licence to Operate is granted to corporations
• Monitoring the legitimacy, relevance and compliance of a corporation,
• supervising and regulating corporations through national laws and statutes the conventions, standards, practices and procedures that regulatory authorities, the market, trade and business associations, professional bodies and the society promulgate or express to guide the conduct of business
Background to Corporate Governance Globally

Globally, the concept of Corporate Governance originated in the Private Sector, with a focus on:

- Corporate failures due to:
  - weak management boards
  - too powerful chief executives
  - weak internal controls

- Private sector is characterized by:
  - lack of clarity of roles e.g. chair and CEO
  - lack of internal audit functions
  - weak control/override of controls.
Background to Corporate Governance continued

Initial areas of concern were on:
- Financial reporting and accountability.
- Separation /concentration of powers: chief executives/chairperson

More recent focus has been on:
- Identifying and managing risk.
- Securing independence of Management Board.
- Defining the role of audit committees and relationship with audit – both internal and external.
Global Trends: Drivers of Change

- Liberalization: falling trade barriers, capital controls
- Technology: mobile money, information access through social media
- Increased competition: exposing stagnant performance
- Transition: roll back of the State
- Decline in public funding: from aid to investment
- Capital exporters: rapid growth in institutional investment
- Scandals, corruption and collapse
Global Trends: Some Scandals

- Banks in 1990s Japan
- Equitable Life in the UK
- World-com in USA
- Defense contracts in France and UK
- The 2008-9 global banking collapse
Global Trends: The Response

- Public reform (codes, listings, company law, regulation)
- Private sector response
- Demand for global standards (OECD principles)
- Financial stability forum
- International initiatives (WB – OECD cooperation)
- International standard setters
- Establishment of Corporate Secretaries International Association (CSIA) to deal with Corporate Governance Issues among its members
Emerging themes /issues in Corporate Governance Globally

- Leadership and strategic management;
- Transparency and Disclosure;
- Compliance with Laws and Regulations;
- Communication with stakeholders;
- Board independence and governance;
- Board systems and procedures;
- Consistent shareholder and stakeholders’ value enhancement; and
- Corporate social responsibility and investment
Where does the Global Meet the Regional and the National: the Variables?

– Legal heritage
– Pattern of ownership
– Exposure to international markets
– Business culture and environment

... one size does not fit all (but fundamental principles apply)
State of Corporate Governance in Africa

- In Africa Private Sector has been seen as the engine of growth and development. However there are few men and women of vision, integrity and accountability that can be relied upon to exercise leadership, enterprise and astute judgment in directing business enterprises.
- Insufficient home-grown standards that can be promoted and implemented, seen as African standards, developed, formulated and ratified by Africa and not imposed upon it.
- Inadequately regulated, functioning and competitive capital and financial markets to provide a disciplinary mechanisms.
- Diverse legal, judicial and tax regimes.
State of Corporate Governance in Africa: Challenges

• Africa is characterized by very few quoted public companies, a limited number of public companies, many family or small private companies, a multiplicity of state owned enterprises, a varied number of co-operatives and co-operative societies and other community based business organizations, many informal sector business arrangements.

• What this means is that principles of corporate governance as and when introduced should ensure that they do not disadvantage or indeed create trade barriers for the quoted companies.

• Suffers from inadequacy of institutions that have the capacity to implement and enforce best practices including regulators particularly in the financial sector and self-regulatory organizations.
State of Corporate Governance in East Africa

Achievements

Articles 2 and 3(1) of the East African Community Protocol on Good Governance establishes and prescribes membership to the Treaty respectively, and Article 5(1) of the Treaty enjoins the Partner States to develop policies and programmes aimed at widening and deepening cooperation among them in political, economic, social and cultural fields, research and technology, defence, security, legal and judicial affairs, for their mutual benefit.
Challenges facing corporate governance reform in East Africa

- Endemic Corruption especially in public organizations especially State – Owned - Enterprises
- Weak regulatory enforcement
  - In Kenya, Ethics and Anti – Corruption Commission has been disbanded by Parliament twice in 5 years due to political arm twisting
- Inactive shareholders
- State-Owned – Enterprises doing business and collapsing with huge public resources
- One-size fits all governance codes
- Professional bodies jostling for space to be heard
- Board weaknesses - Leadership is predictable: retired (and tired) CEOs, politicians and professionals- mostly male; quarterly meetings, rigid agenda; information provided by management in standard, predictable formats; stage-managed annual general meetings where shareholders rubber stamp decisions of their boards.
Corporate Governance in Kenya

Achievements

• Published and distributed The Principles and Sample Code of Best Practice for Corporate Governance in Kenya in the 1990s

• Corporate governance put on the Kenyan policy agenda.
  - The Central Bank of Kenya demands good corporate governance for financial stability and sustainability from all licensed banks and financial institutions

• The Capital Markets Authority requires all listed companies to comply with principles of good corporate governance from 2002

• Parliament and the public investment committee, reviews corporate governance in state owned enterprises

• The Government – i.e. Department of Investments and Public Enterprises demands good corporate governance from all state corporations
Corporate Governance in Kenya – Recent Developments

In September 2015, Companies Act is passed in parliament and received Presidential assent. The Act places full responsibility on the boards to play their fiduciary roles well and even comes up with punitive penalties for those who do not play their roles well.

Emphasis on:

Elimination of ‘paper’ directors through punitive sanctions for those who do not exercise their oversight role with due diligence
Corporate Governance in Kenya – Recent Developments

Kenya enacted a new Constitution in 2010 that seeks to promote among others promotion of good governance through transparency, effective leadership and integrity. The Institute of Certified Public Secretaries of Kenya (ICPSK) established through an Act of Parliament CAP 534 is in the frontline of promoting good governance.

In April 2015, Mwongozo Code of Governance is passed. ICPSK played a significant role in its formulation. Key takeaways include:

- Promotion of transparency among the 260 State Corporations,
- Every state corporation is expected to enjoy the services of a Company Secretary, who is a member in good standing in ICPSK.
- Having a balanced board of 9 members with diverse skills, who must undergo induction upon appointment
- Term limits of two terms. A term is 3 years.
- Emphasis is on declaration of conflict of interests
The Kenyan Case

The Constitution of Kenya 2010

Key Relevant Chapters

• Chapter 6: Leadership and Integrity- Entrenched in Leadership and Integrity Act- address issues of election on the basis of personal integrity, competence and Suitability; the declaration of any personal interest that may conflict with public duties; and accountability to the public for decisions and actions;
The Kenyan Case

• **Article 10:** National Values and principles of governance-binds all State organs, State officers, public officers and all persons to among others to endure good governance, integrity, transparency and accountability; and sustainable development.

CHAPTER THIRTEEN—THE PUBLIC SERVICE

• Part 1—Values and Principles of Public Service- it addresses among other issues: involvement of the people in the process of policy making; accountability for administrative acts; and transparency and provision to the public of timely, accurate information.
The Kenyan Case

Governance codes: Kenya has recently developed various codes of good governance among them:

1) Code of Governance for Publicly Quoted companies by Capital Markets Authority- based on the principle of apply or explain.

2) The Code of governance of state owned enterprises “Mwongozo” based on the principle of apply or explain. Implemented under Executive order no. 6 of 2015. This code entrenched the annual mandatory governance audit by certified secretaries qualified as per under CPS Act CAP 534 laws of Kenya,
The Kenyan Case

3) Code of Governance for private organizations developed by Institute of certified Public Secretaries of Kenya (ICPSK)

4) The ICPSK is in final stages of developing Code of Governance for Non Governmental organizations (NGO) with support from Hanns Siedel Foundation
The Kenyan Case

The Kenya Capital Market Authority in conjunction with ICPSK has drafted two codes namely:

1. Draft Stewardship Code for Institutional Investors
The Kenyan Case

- ICPSK is now in the 6th year of recognizing individuals and institutions who have excelled in promotion of the practice of good governance an Award named “Champions of Governance Award” (COG)
- This year 2015 the Gala Dinner is planned for November 6, 2015 at The InterContinental Hotel. The Kenya Government is one of the Sponsors.
- The Institute also launched a governance index which is now in it third year.
Opportunities /Process of addressing issues in Corporate Governance

1. Identify problem or issue
2. Set criteria & standards
3. Observe practice / data collection
4. Compare performance with criteria & standards
5. Implementing change
Benefits of Good Corporate Governance

• Investor confidence
• Access to cheaper capital leading to growth
• Access to the best human capital, & improved
• Staff motivation and retention
• Better operational performance
• Infusion of new experience and ideas brought in by Independent directors
• Good management and constant monitoring of risks
• Reduced fraud
• Assuring the integrity of financial reports
Benefits of Good Corporate Governance

• Long-term reputation effects amongst key stakeholders
• Better decision making which ultimately improves the bottom line
• Good corporate citizenry and therefore respect and prestige
• Improved relationship with bankers.
• Higher market valuation
• Delivery of not only higher but also more sustainable value.
• Fewer fines, penalties and law-suits
Strategies of entrenching Good Corporate Governance

• The separation of ownership and control.

• Alignment of the interests of the company, board, shareholders, employees and community in which the company/organization operates.

• Protection of organizations as they are important to the welfare of individuals-
  a) They create jobs, generate income and income tax.
  b) They produce a wide variety of goods and services.
  c) They provide mechanisms for savings and investments.

• Creation of efficient organizations through performance contracting and board evaluations.

• Environmentally and socially responsible corporate organizations.
In summary………..

Companies/organizations that have adopted good Corporate Governance have consistently out-performed their peers by delivering the following:

- High returns,
- Increased their net worth and
- Enhanced their shareholders wealth
Conclusion

- Value of partnerships – private and public
- Reform measures already put into place to be enforced
- Political buy-in for reform programmes
- Corruption is a serious issue that requires immediate action
- Culture of disclosure and transparency aligned to international standards
Thank You
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