

Corporate Governance in Botswana: Exploring Developments and Compliance

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ABSTRACT

Botswana has recently developed and adopted its own corporate governance code, giving it the opportunity to address perceived gaps in the existing governance structures in its context. This paper evaluates corporate governance in Botswana to determine the extent to which companies listed on the Botswana stock exchange comply with the national code and to gain further insights into corporate governance practices of these companies. Drawing on a critical perspective informed by post-colonial theory, the paper content analyses the annual reports of selected companies focusing on issues of corporate governance. The findings indicate a high level of compliance with the traditional principles of corporate governance such as board composition and separation of powers between the Board chairperson and the chief executive officer but limited in terms of compliance with the contemporary governance principles in particular the governance of information technology and information security. Furthermore, the findings indicate the majority of the companies have yet to fully embrace the new code and move away from the King code, a corporate governance code widely used by South African Companies. Based on the findings the paper maps further avenues for research and policy changes.

Key words: Corporate Governance, Compliance, Botswana Stock Exchange, Botswana Corporate Governance Code.

INTRODUCTION

The concept of Corporate Governance (CG) originally developed from a narrow sense aimed at addressing the apprehensions of capital providers regarding the safety of their

finance in the hands of third parties or agents. In this respect the evolution of corporate governance strictly emanated from concerns of the financiers as aggravated by informational asymmetries (Bushman, Chen, Engel & Smith, 2004; Cormier, Ledoux, Magnan & Aerts, 2010). Over time corporate governance progressed to address concerns of other stakeholders albeit to a limited extent (see Donaldson and Preston, 1995; Jensen, 2002; Agle, 2008). In this respect Stakeholder theory was mobilised, advanced and justified as a link between business and society (Roberts, 1992; Jones, 1995). In the intervening time corporate governance development also extended to variants of models, mechanisms and practices (Bhasa, 2004b). These variants were/are shaped by various elements including those cultural, political and economic (Mintz, 2005; Tricker, 2015). That is, the nature and ways in which these factors interact determine the corporate governance models and related mechanisms and practices that emerge. This indicates the dynamism inherent in corporate governance and in terms the dialectical nature thereof. More functionally corporate governance determines the relationships amongst stakeholders and serves as a mechanism through which resources are accessed and controlled. In this epic battle over resources others can be excluded. Recent reports suggest that 1% of the world population is edging towards collectively owning more wealth than the rest of the world combined (Oxfamamerica, 2015). Corporate governance thus determines how resources are governed and benefitted from. The argument being that society can through enactment of social institutions ensure that the governance of corporations is shaped to better serve the broader society they subsist from. This could be a core corporate governance function reframed to promote public interest.

Corporate governance traditionally constitutes efforts by shareholders to ensure effective management of the affairs of corporations for their benefit. Contemporary developments suggest an increased participation by other stakeholders including governments to ensure strength and integrity in the corporate governance systems. Weaknesses in corporate governance engender poor corporate control often leading to bankruptcy and liquidations with distressing macro-economic ripple effects. As illustrated by the demise of Lehman Brothers of the United States in 2008 and the subsequent global financial meltdown, the collapse of corporations has far reaching social and economic consequences. The failure of corporations in the US, a context widely considered a standard bearer in corporate governance practices demonstrates that corporate governance cannot be taken for granted but rather seen as a complex and dynamic phenomenon that demands constant review. The strength of corporate governance is linked to levels of compliance with various legislative instruments, the degree of conformity with established codes and the influence of contextual elements such as the socio-cultural and political environment.

This research explores corporate governance in Botswana with the view to determine the levels of compliance with the Botswana corporate governance code which has recently been established. The paper adopts a critical perspective informed by post-colonial theorising in analysing the Botswana corporate governance system and compliance with its principles. Post-colonial theory promotes deference to particularities cautioning against blind universalism.

The rest of the paper is organised as follows. First, the paper discusses post-colonial theory and its usage. Next, reviews prior related studies on corporate governance, of which we find very little on the Botswana context. The paper then examines the annual reports of

selected companies listed on the Botswana Stock Exchange to determine the extent to which they comply with the national corporate governance code and to gain further insights into the corporate governance practices of these companies.

POST-COLONIAL THEORETICAL FRAMEWORK

Post-colonial theory attempts to offer a counter-narrative to the mainstream and hegemonic positions on socio economic issues. These positions often assume an overbearing posture and carry with them a tendency to be prescriptive about value systems. For some these tendencies were experienced more practically during the colonial era (Dirks, 1992). Often colonialism was seen as an innocent obligation to civilize. Others deemed it more negatively as an economic expansionist strategy (Townsend & Peake, 1941; Wolff, 1974; Rimmer, 1978). The physical occupation aspect of colonialism ended after indigenous political movements began agitating for sovereignty. Post-colonial theorising seeks to encourage emancipation from forms of domination which include political, economic, social/cultural and psychological (Williams & Chrisman, 1994). In this regard a displacement of own values and imposition of those of others through various instruments such as language and economic systems is rejected. In all this, what it meant was that the local person was denied a voice in all matters political, economic and social. Least of all to practice and promote own value systems. This suppression prompted various literary texts key amongst these texts is, 'can the subaltern speak' (Spivak, 1988), a protest and expression of shock at how the local was oppressed in all spheres. In more modern times subjugation has become less obvious and more subtle. The focus has been on economics, where systems of how resources are controlled and benefitted from are developed and marketed. In this regard the controller no longer requires a physical presence but a system that controls the resources often passed as 'international best practice'. Systems of corporate governance, it can be argued, are implicated in this, ably aided by discursive and communicative practices such as accounting (see Cooper, 1995). This study therefore seeks to anchor and locate the discussion on corporate governance in Botswana in the post-colonial discourse. The development and application of corporate governance in Botswana should therefore be reflective of context. Spivak (1988) challenges and discounts epistemic innocence, i.e. the argumentation being that knowledge is a subtle expression of interest. In this respect it is important that the subaltern should speak and develop own knowledge to dispel imposition of oppressive external interest. Morris (2010, p. 325) reflects on Spivak (1988) work and argues that the author uses "...deconstructionist methods to explore the international division of labor and capitalism's [wording] of the world".

Morris (2010, 325) further sees Spivak's work as:

...hon[ing] in on the historical and ideological factors that obstruct the possibility of being heard for those who inhabit the periphery. It is a probing interrogation of what it means to have political subjectivity, to be able to access the state, and to suffer the burden of difference in a capitalist system that promises equality yet withholds it at every turn.

RELATED STUDIES

There exists a significant body of literature on corporate governance mostly emanating from developed economies like the US, Western Europe and Japan (Kaplan, 1997; Shleifer & Vishny, 1997; La Porta., Lopez-de-Silanes, Shleifer & Vishny, 2000; Yoshikaw, & Phan, 2001; Denis & McConnell, 2003; Bhasa, 2004a, 2004b; Keasey, Thompson & Wright, 2005; Solomon, 2007; Brennan & Solomon, 2008; Sikka, 2008) but also increasingly from transition economies (Berglöf & Claessens, 2006; Young *et al.* 2008; Claessens & Yurtoglu, 2013). The picture in developing countries however ranges from very little to non-existent. In Botswana, there is clearly a paucity of research on the subject. This paper abstracts from prior literature on corporate governance in an attempt to begin to build a body of literature for this particular context. Corporate governance remains an important phenomenon in wealth creation, management and distribution. As the citadel of wealth creation it also distributes power and subsequently influences both economic and social settings (Blair & Roe, 2010). For this reason there must be a constant academic enquiry into developments in corporate governance. Sikka (2008, p. 995) emphasises this point that there must be a continuous stimulation of "...debates about the creation of corporate governance mechanisms and processes which would help to secure an equitable distribution of income and wealth for workers." Whilst the focus of Sikka (2008) is on workers this study argues in favour of a more socially inclusive corporate governance mechanism.

Here Polanyi (1944) is used to predicate the argumentation on resource governance mechanisms and their social implications. Polanyi (1944) provides insights into how humans struggle with transformation and how resources are defined and mechanisms developed to govern them. The definition and governance of resources influence social structures. Whilst it is argued that economic forces influence social structure (see Polanyi, 1944); contemporary praxis shows how corporations lobby governments to distort public policy often away from public interest (Cooper, 1995; Cole & Cooper, 2006; Tricker, 2015). This lobbying could be seen as corporate interventionism for own benefit. A counter-argument could however, be advanced, that society itself has latent power to influence economic structure. This of course is more challenging in some contexts as it demands significant emancipatory efforts from society. Whilst the institutions that serve capital and its usage were created in line with mainstream economic thought of maximizing shareholders wealth there is need to move towards development of more socially embracing settings (Jensen and Meckling, 1976) Lazonick & O'Sullivan, 2000; Jensen, 2002). In this way societies can determine ways in which they can better govern themselves as well as how they can govern their means of production. Ways of governing involve significant and protracted dialectics at both micro and macro levels in terms of what they engender. The argumentation is that, systems of governance must be conscious of social dynamics and context (see Kamla, 2007). In other words universalism should be circumvented. The mainstream argument holds that markets allow for creation of significant material wealth. The key question is how can governance systems be developed to ensure equity and justice in wealth allocation in the contemporary society? Over the longer horizon corporate governance systems that permit skewed wealth accumulation may not be sustainable and need countering. Even the traditional notion of maximization of shareholder wealth is under attack, with shareholders increasingly getting

displaced by the managerial cohort. Recent scandals show how shareholders, lenders and employees experienced losses in the exception top management (Unerman & O'Dwyer, 2004).

Polanyi (1944, p. 130) further succinctly refers to the origins and extraordinary development of the market system and delineates its difficulties and limitations:

That system developed in leaps and bounds; it engulfed space and time, and by creating bank money it produced a dynamic hitherto unknown. By the time it reached its maximum extent, around 1914, every part of the globe, all its inhabitants and yet unborn generations, physical persons as well as huge fictitious bodies called corporations, were comprised in it.

The limitation with this growth pattern is its inherent characteristic of exclusion in terms of actual benefits. Polanyi (1944, p. 130) indicates that he agrees with Robert Owens contention that “the market economy if left to evolve according to its own laws would create great and permanent evils”.

Polanyi (1944, p. 130) further reflects on the interaction of production ‘factors’ and how particular factors such as man and the environment might be assisted to cope with the market system thereby articulating an interventionist strategy:

Production is interaction of man and nature; if this process is to be organized through a self-regulating mechanism of barter and exchange, then man and nature must be brought into its orbit; they must be subject to supply and demand, that is, be dealt with as commodities, as goods produced for sale. Such precisely was the arrangement under a market system. Man, under the name of labour, nature under the name of land, were made available for sale. But, while production could theoretically be organized in this way, the commodity fiction disregarded the fact that leaving the fate of soil and people to the market would be tantamount to annihilating them. Accordingly, the countermove consisted in checking the action of the market in respect to the factors of production, labour and land. This was the main function of interventionism.

In an attempt to judiciously govern corporations as centres of production, variants of corporate governance models have emerged - from those that insist on market superiority to those that promote intervention and wider participation from stakeholders (Donaldson & Preston, 1995; Keasey., Thompson & Wright, 2005; Goergen., Brewster & Wood, 2010). There is significant debate on these variants in respect of which model is superior. Over the years the contention and battle for this superiority has been between the Anglo Saxon and the Japanese and German models. For example Shleifer and Vishny (1997, p. 737) emphasise this point that “...there is also constant talk of replacing the Anglo-Saxon corporate governance systems with those patterned after Germany and Japan.” Despite the comparison between the two models both of them are considered quite superior offering superior benefits in their contexts.

The recent collapses of firms within some of these advanced contexts- particularly in the US and the UK, suggest that corporate governance is nonetheless a complex and dynamic

phenomenon that demands constant critique in terms of praxis and theory. Whilst a debate on corporate governance could include details relating to matters of compliance, disclosure and enforcement by the various agencies, the nature of what is being complied with must be considered. A system that in its nature cultivates greed could lead to breach or compromise on compliance by those meant to defend them. Following the various company collapses we have witnessed a number of interventions through various legislative instruments and codes such as Sarbanes-Oxley, Kings code, Hampel, Cadbury and Basle 1, 2, 3 which were introduced to try and strengthen corporate governance and limit the harmful excesses (Romano, 2004; Agrawal & Chadha, 2005. Parker, 2005; Bhagat, Bolton & Romano, 2008; MacAvoy & Millstein, 2004; Winter, 2011).

Whilst contemporary discourse on corporate governance suggests an increasing inclination towards stakeholder variants and interventions, traditional theory does not fully embrace interventions that are not influenced by market forces. The argumentation however that markets will provide the necessary discipline in respect of good corporate governance has been challenged by the recent collapse of firms. The blame has been placed on possible greed, and loopholes in the mechanisms that were meant to prevent this from happening (Romano, 2004; Agrawal & Chadha, 2005). In other words failure to comply with relevant governing instruments has been considered a contributory factor to corporate collapse and financial crisis in general. That means the market could not be fully relied upon to regulate itself. Magiver' makes a poignant observation in the foreword to Polanyi (1944, p. xi), arguing against the market as a solid regulator:

Some may doubt whether the role of the market economy was so absolute, whether the logic of the system was in itself so rigorous and compelling...For one thing it shows that such liberal formulas as...world peace through world trade...will not suffice. If we are content with such formulas we are the victims of a dangerous and deceptive simplification. Neither a national nor an international system can depend on the automatic regulants. Balanced budgets and free enterprise and world commerce and international clearing-houses and currencies maintained at par will not guarantee an international order. Society alone can guarantee it; international society must also be discovered.

Better governance systems could be developed to assist regulation and compliance by corporations. In sub-Saharan Africa it has been argued that there is no corporate governance (Shleifer and Vishny, 1997). Rwegasira (2000) argues that going forward, African countries will have to develop or adapt corporate governance models to the peculiarities of their specific economies. The author argues that as Africa develops it needs to critically assess both the Anglo-Saxon system as well the Japanese model and decide how to proceed. These two models are however based on the various strands of capitalism and other obtaining local factors. Africa would therefore have to consider what is relevant and applicable to its own strand of capitalism or economic system used.

Going forward African countries could then infuse compliance and enforcement mechanisms into its corporate governance system in order to create integrity (Okeahalam, 2004; Rossouw, 2005; Vaughn & Ryan, 2006; Ntim, Opong & Danbolt, 2012). The fundamental objective would be to avoid poor controls that lead to corporate collapse

elsewhere. Africa needs to adopt or create a system that would prevent diversion of corporate profits and assets for personal gain. Compliance and enforcement should be considered as central part of the mechanism to prevent financial scandals. It would seem self-defeating to invest in a system that could be easily ignored or breached. The building of a solid and inclusive corporate governance is the very point at which financial scandals can be prevented.

COMPLIANCE WITH CORPORATE GOVERNANCE REQUIREMENTS

The basic understanding of compliance is conforming to stated requirements (Conyon, & Mallin, 1997; Goncharov., Werner & Zimmermann, 2006; Ettredge., Johnstone., Stone & Wang, 2011; Albu & Gîrbină, 2015). Compliance generally takes two forms – it can be conformity as a matter of law with a clear tick the box system or it could be a matter of principle where there is ‘comply or explain’ i.e. failure to comply must be explained. These two approaches determine and are also embedded in varieties of corporate governance codes such as Sarbanes Oxley, Kings, Hempel, Cadbury (Arcot, Bruno & Faure-Grimaud, 2010). Compliance whilst on face value lends itself to simplicity; its praxis is subsumed in complexity. This is partly because corporate governance compliance is both an internal process as well as external. The tension between these two centres, i.e. internal and external, is the genesis of agency theory (Berle and Means, 1932; Jensen and Meckling, 1976; Hilt, 2008). A rather silent and subtle discourse exists between these two centres. Both are assumed to be geared towards the success of the firm and the benefit of stakeholders. Whilst the need for compliance largely emanates from external stakeholders particularly equity stakeholders, its achievement is dependent on internal processes driven by management. In this regard management’s responsibility and accountability relates to identifying what must be complied to. Areas of compliance have generally included statutory obligations, prohibitions and contractual obligations (Dedman, 2002). Corporate managers further assess the risks and costs of non-compliance (Jensen and Meckling, 1976). This means that compliance is then subjected to a cost-benefit analysis. This way compliance becomes wedged firmly in the mainstream theorising that would reject compliance if it affects the traditional bottom line of profitability. Compliance falls prey to the economic hegemony and can then be ignored with a less than satisfactory explanation or no explanation at all.

Corporate Governance compliance is intended to ensure proper conduct of firms and builds trust with the outside world. Compliance is considered a reflection of responsible corporate citizenship (Waddock, 2000; Hemphill, 2004). Corporate citizenship principle suggests that benefits of compliance go beyond corporate managers and shareholders and the notion of costs should therefore not constrain its achievement (see Matten & Crane, 2005; Visser, Middleton & McIntosh, 2005; Albu & Gîrbină, 2015). To ensure corporate governance compliance, some firms develop comprehensive compliance programme and go on to indicate how such a programme is enforced. For example, Lufthansa in their website indicates that:

Compliance describes all measures taken to ensure the correct conduct of companies, their management and staff with respect to statutory and the Company's own obligations and prohibitions. The Lufthansa Group Compliance Programme is intended to prevent staff and the Company from coming into conflict with the law and at the same time to help them to apply statutory regulations correctly...the Lufthansa Compliance Programme is made up of the following elements: Competition, Capital Markets, Integrity, Embargo and Corporate Compliance. An ombudsman system gives staff the opportunity to report any suspicion of criminal activity or breaches of the compliance regulations. The central Compliance Office, which reports to the Board member responsible for Human Resources and Legal, the various central and local compliance committees in the Lufthansa Group and the Compliance Officers in Group companies, among others, ensure that the Lufthansa Compliance Programme is enforced throughout all companies in the Lufthansa Group by means of regular online training courses and information published on the intranet. The Audit Committee of the Supervisory Board is notified semi-annually of incidents and progress concerning compliance in a Compliance Report (Lufthansagroup, undated)

The disclosure of such a programme in the corporate annual reports is vital and any further developments thereof. The existence of a compliance programme and related disclosures could ensure that transparency is attained and ultimately achievement of corporate citizenship integrity. The compliance programme should have basic elements that it can be judged upon deriving from relevant statutory instruments. Such a programme would form an integral part of the corporate governance system. Codes should therefore emphasise clearer compliance programmes. Could compliance and its enforcement be in part a control measure against greed and corruption?

Next the paper reviews the corporate governance model used by the Botswana Stock Exchange listed companies before exploring the corporate narratives in the annual reports, the main communicative instrument with stakeholders, to determine the extent of compliance with the Botswana Corporate Governance code. Since many of the companies listed on the BSE are chapters of foreign multinationals, this may influence their corporate governance practice as Ntim (2009) has observed in the case of RSA companies listed on JSE.

BOTSWANA CORPORATE GOVERNANCE CODE (BCGC)

Botswana has recently developed its own corporate governance code. Prior to this, the Botswana Stock Exchange (BSE) had its own "Code of Best Practice" which was developed based on the Corporate Governance code of the Institute of Chartered Accountants of Sri Lanka and the King Report of 2002. The new national code is more detailed and has retained all the key principles of the BSE Code of Best Practice. The BSE has adopted this new national code and made it part of its listings requirements. The Botswana Corporate Governance Code itself was developed and adopted to address perceived gaps in the existing governance structures in its context. This followed the aftermaths of corporate collapses elsewhere which the new code clearly articulates. Having had the hindsight of others' problems, Botswana could thus use Magiver's argument and observation in the foreword to Polanyi (1944, p. xi):

We stand at a new vantage point, looking down, after the earthquake, on the ruined temples of our cherished gods. We see the weakness of the exposed foundations—perhaps we can learn how, and where, to rebuild the institutional fabric so that it may better withstand the shocks of change.

Botswana could therefore have benefited from insights thereof to develop a more rigorous code that addresses its own unique system, one that would effectively regulate foreign chapters operating in an emerging market. This is potentially a situation that invites hegemonic inferences in the code. Did Botswana resist and avoid these possible hegemonic noises in its code? Or was there a fixation with ‘international best practice’ and therefore accepting Kings and Cadbury code as is?

A close examination of the Botswana Corporate Governance Code indicates that as with most other African countries the code has been fundamentally influenced by the so-called “international best practice” reflecting among others the OECD principles, the King Report(s) and the Commonwealth guidelines on corporate governance. The national code also makes claims of inclusivity but does not have very clear indicators of how it is oriented towards stakeholder model. Many of the items are basically those beneficial to equity stakeholders. Non-equity stakeholders including ordinary employees and the society in general are not explicitly indicated. Whilst in general compliance itself might benefit society by keeping the corporation in business and by extension employment and possibility of increased taxes, there has to be some indications of moving beyond the singular bottom line to effectively and explicitly espousing the triple bottom line (see Wanyama *et al.* 2009). In the next section we analyse the Botswana Corporate Governance code and how it is complied with as per the corporate annual reports.

METHODOLOGY

Compliance generally takes two forms – it can be conformity as a matter of law with a clear tick the box system or it could be a matter of principle where there is ‘comply or explain’ inability to comply. Compliance with the BCGC is based on the latter principle. Accordingly it is stated in the code thus:

The recommendations of the code must be applied, but if a company decides it is in its best interest to adopt another practice, it is entitled to do so, but then must explain to its stakeholder why it has adopted another practice and why it believes it is better than the recommended one in the interest of the company. An explanation register should be maintained by the company (BSE, 2013, p. 153).

This study therefore focuses on the “comply or explain” principle of corporate governance in assessing the level of compliance with the BCGC. This involves examining the annual reports of the Botswana Stock Exchange listed companies, to determine whether they comply with the code’s principles and if not, whether a reasonable explanation is provided as justification

for not doing so. This approach has also been used in previous studies (Ntim, 2009; Ntim *et al.* 2012) and is considered one of the most effective. Of the 22 listed companies 11 were selected based on availability of their annual reports on company website. Those left out, either had not posted their annual reports on their websites or their websites were not accessible. To avoid potential bias we avoided soliciting the annual reports from the companies (Ohlhoff, 2008). Since the Botswana CG code was adopted in 2013, only the annual reports dating from 2013 to 2015 were considered for this study.

To gain further insights into corporate governance practices of BSE listed companies, the narratives in the chairman’s statement were examined (Smith & Taffler, 2000). As the company’s spokesperson the chairman is well placed to articulate company policies and philosophical position on governance issues (Merkl-Davies and Koller, 2012).

ANALYSIS

The annual reports were examined paying particular attention to the corporate governance issues and statements pertaining to compliance with the various BCGC principles. Since compliance with BCGC is based on eight broad chapters (issues), these and their underpinning principles were used as the basis for analysis. For practical reasons however and following Werder, Talaulicar and Kolat (2005), 3 key principles were subjectively selected from each of the 8 chapters of the code (see table 1).

Table 1: Botswana Code: Governance Chapters & Selected Principles

Governance Chapters (Issues)	Selected Key Principles
1 Board & Directors	<ul style="list-style-type: none"> i. Board composition –Non-Executive & Independent Directors ii. Role separation - Chairperson & CEO iii. Board chairperson - independent non-executive
2 Internal Audit	<ul style="list-style-type: none"> i. Establish an internal audit function ii. Appoint auditor –internal or external (outsource) iii. Internal auditor’s written assessment of internal controls
3 Audit Committee & Auditors	<ul style="list-style-type: none"> i. Establishment of an audit committee ii. Composition of at least 2 independent NED iii. Chairperson is an independent NED
4 Governance of Risk	<ul style="list-style-type: none"> i. Risk Management committee established ii. Levels of risk tolerance & risk mitigation strategy iii. Matrix of key risk indicators established
5 Governance of IT & IS	<ul style="list-style-type: none"> i. IT Governance Charter established ii. Information Security Management System established iii. Regular monitoring & evaluation of IS system
6 Stakeholder Relationships	<ul style="list-style-type: none"> i. Interactive relationship with various stakeholders ii. Stakeholders Needs, Interests & Expectations iii. Establish dispute resolution clause
7 Corporate Reporting	<ul style="list-style-type: none"> i. Community support & social investments ii. Integrated reporting iii. Disclosure of social & environment impacts
8 Board Appraisal	<ul style="list-style-type: none"> i. Periodic self-appraisal ii. Board appraisal forms completed iii. Appraisal must covering key responsibility areas

Each annual report was perused by the researchers (working independently of each other) and coded with a letter “A” if there is evidence of the principles being applied, “E” if the principles are not applied but satisfactory explanation is provided and “N” if the principles are not applied and no satisfactory is provided. To ensure validity the outcomes were compared and differences in the coded statements reconciled. Then a frequency table was created which reflected the 8 CG issues, the three key principles and their compliance ratings in frequencies and percentages (See table 2).

FINDINGS

Table 2: Frequency Table of Compliance with BCGC Principles by BSE listed Companies

BCGC Chapters & Principles	Frequency (%)			Total
	Applied (A)	Explained (E)	Neither Applied nor Explained (N)	
Board & Directors:				
Board composition	11 (100%)	-	-	11
CEO & Chairperson roles separated	11 (100%)	-	-	11
Independent Board chairperson	11 (100%)	-	-	11
Internal Audit:				
Establish an internal audit function	11 (100%)	-	-	11
Appoint auditor –internal or external	11 (100%)	-	-	11
Written assessment of internal controls	11 (100)			11
Audit Committee & Auditors:				
Establishment of an audit committee	11 (100%)	-	-	11
Composition of at least 2 independent NED	11 (100%)	-	-	11
Chairperson is an independent NED	11 (100%)	-	-	11
Governance of Risk:				
Risk Management committee established	11(100%)			11
Levels of risk tolerance & risk mitigation	11(100%)			11
Matrix of key risk indicators established	7(64%)		4(36%)	11
Governance of IT & IS:				
IT Governance Charter established	3(27%)		8(73%)	11
Information Security Management System	0		11(100%)	11
Monitoring & evaluation of IS system	1(9%)		10(91%)	11
Stakeholder Relationships:				
Interactive relationships with stakeholders	11 (100%)	-	-	11
Stakeholder needs, interests & expectations	11 (100%)	-	-	11
Establish dispute resolution clause				11
Corporate Reporting:				
Community support & social investments	11 (100%)	-	-	11
Integrated reporting	10 (90 %)		1(0%)	11
Disclosure of social & environment impacts	11 (100%)	-	-	11
Board Appraisal:				
Periodic self-appraisal	3(27%)		8 (72%)	11
Board appraisal forms completed	0		11 (100%)	11
Appraisal to cover key responsibility areas	3 (27%)		8 (72%)	11

The findings of this study are reflected in Table 2 above which consists of three columns. The first column includes the eight BCGC chapters and three selected principles under each chapter. The second column includes compliance ratings expressed in frequencies and percentages. The final column consists of total number of companies rated.

Board and Directors

The findings show compliance with the key principles relating to the composition and structure of the Board of Directors. For example, all 11(100%) companies included in their annual reports a compliance statement about the non-executive and executive directors including the non-executive independent directors. Similarly, in all the 11 (100%) companies the positions of the Chairman and Chief Executive Officer (CEO) are clearly defined and do not vest in one person. This finding is important given that the separation of powers between CEO and Chairman is a critical element of good governance (see Dahya, Lonie & Power, 1996; Lorsch & Zelleke, 2005; Abels & Martelli, 2013). Others however found less encouraging results. For example, Ntim *et al.* (2012) found in the case of JSE listed companies that compliance with these provisions was relatively low with 40 % or less firms compliant.

Internal audit

The Botswana code requires among others that the Board should establish an internal audit system that functions independently of management; that a competent internal auditor be appointed or outsourced; that internal controls are reviewed annually and their effectiveness certified by the Board in the annual report and that the internal auditor should give a written assessment of the adequacy and effectiveness of internal controls. The findings indicate that all the 11 firms under investigation have an internal audit function. This finding is significant given the role of internal audit as the first line of defence in the detection and prevention of corporate fraud or malpractice.

Audit committee and auditors

The national code requires among others that there should be an audit committee whose composition includes at least three directors, the majority being independent or non-executive directors. The code further requires that the Chairperson of the audit committee should be an independent non-executive director and that companies should conduct annual audits. Our findings indicate that all 11 companies have an audit committee that includes independent non-executive directors.

Governance of Risk

With regard to governance of risk, the code requires among others that there should be a risk management plan approved by the Board; that levels of risk tolerance or mitigation of risk should be established by the Board and that the Board develop a matrix of the key risk indicators showing the risks involved in carrying on the business of the company and the process for anticipating unpredictable risks. Our findings indicate that all companies make references to these principles. The actual application however is not evident. Risk governance in these companies is still treated as an extension of internal audit and risk management

systems. A separate detailed approach on risk governance is yet to be developed. For example, while many of the companies refer to risk indicators they do not have a fully developed matrix of key risk indicators.

Governance of Information Technology (IT) & Information Security (IS)

The key issues here are whether the company has an established IT Governance Charter, whether there is an Information Security Management System and whether IT and IS issues are treated as an integral part of risk management. Of the eleven companies six (54.5%) applied the above principles while five (45.5%) neither applied nor explained their failure to comply. Compared with other principles, this reflects a fairly low compliance level which raises key questions: Could this be explained by the fact that these are new or contemporary governance issues that local companies may yet to take on? Or could the additional costs associated with these new provisions be a contributing factor? Ntim et al. (2012) have intimated that compliance is a costly exercise and that some may well decide not to comply with certain provisions of the code to minimise costs. Whilst these companies may be conscious of issues relating to technology and information systems, they may not be actively treating them as serious governance issues.

Corporate reporting

The code's key principles relating to corporate reporting include the filing of integrated reports, investing in corporate citizenship and reporting on the impact that operations of the business have on society. With the exception of one company which neither applied nor explained its non-compliance our findings reveal that corporate reporting among the rest of the companies conforms to the principles laid out in the national code. Corporate reporting and in particular integrated reporting is a practice that is widely used particularly by multinational corporations (Ntim, 2009). Since most of the companies that listed on Botswana Stock Exchange are chapters of multinationals, it comes as no surprise that they have adopted integrated reporting these principles.

Stakeholder Relationships

The issue here is identifying key stakeholders linked to the business of the company, maintaining an interactive relationship with the various stakeholders and considering the legitimate interests of key stakeholders are key principles underlying stakeholder relationships. With the exception of one company all have adopted these principles.

Board Appraisal

The code's principles require periodic self-appraisal of the board and its members and completion the recommended board appraisal forms. Our findings indicate that board self-appraisal or its disclosure does not appear to be a norm among companies that are listed on Botswana Stock Exchange. Of the 11 companies only 3 (27%) disclose in their annual reports that they conduct Board appraisal. The rest (72%) neither state nor explain what they do instead. Failure to comply with such a critical issue that reflects how the Board is performing its functions is a concern. This should be an opportunity for the Board to disclose its challenges.

Further Insights from the Chairman's Statement

The examination of the chairman's statements revealed a number of things. In the main, it revealed different levels of depth given to the subject of corporate governance in general and compliance in particular. In other words, while some present a more informative account of the company's position with regard to compliance others presented only a less detailed account. A few even completely ignored the subject of compliance focusing instead on such matters as board composition without reference to compliance with a given code. Clearly there is need that Chairperson Statements in Botswana must begin to recognise the relevance and importance of corporate governance issue. This is fundamental because many of the corporate collapses point to lack of corporate governance compliance controls.

DISCUSSION OF FINDINGS

Overall, the findings reflect varying levels of compliance with different principles ranging from 100 % to 0 % compliance levels. Similar findings have been reported in previous studies (e.g. Ntim, 2009; Ntim *et al.* 2012). As Ntim *et al.* (2012) observes compliance appears to be relatively high for the traditional CG principles particularly those that are statutorily mandated such as Board Composition, Audit committee, Corporate Reporting and Stakeholder Relationships, The problematic areas are the more contemporary governance issues such as Information technology and information security and Governance of risk. In many of the annual reports these are not complied with. These are new and emerging issues and many of the companies have not yet embraced them. The governance of risk is still considered a part of internal audit issue and this position will have to change with complexity of business going forward. The Botswana corporate governance code uses the 'comply or explain' principle. In many of the omissions in the annual reports where there is no disclosure relating to some principles, there is also no explanation for non-compliance. Where there is some explanation, it has been less than adequate in many instances. Board appraisal is also a problem area, in terms of compliance. There is no satisfactory disclosure regarding this principle in the annual reports or explanation.

It is apparent from the findings that most of the listed companies have adopted the new code only in spirit; in practice they continue to rely on other codes particularly the King code. In fact a large proportion of the companies investigated make reference to either King II or King III. Ohlhoff (2008) observed a similar tendency among FTSE/JSE listed companies although in this case the other codes did not include King II. This behaviour was attributed to strict compliance requirements of foreign regulators (Ohlhoff, 2008). The contradiction in our case appears to arise from the fact that the Botswana CG code relied heavily on the King code in its development. There is no radical departure from the King code and there is very little in the code that seeks to delineate Botswana's context. The construction of a Botswana context and what differentiates it from other contexts would have been helpful in adapting the King code and other codes to Botswana context. Further the case of how the new code is intended to address this unique context should have been made more explicitly. As a result it

would appear that companies are following the King code because its principles are similar to those of the Botswana national code. Sefalana (2014 p. 37) for example, uses the King code and states in its Annual report thus:

The Board promotes principles of good governance and in large adopts the King Code of Corporate Governance (King III) consistently applying substantially all the provisions of this code throughout the financial year. Each year, it tries to improve the quality of its reporting. The Company has substantially applied the Botswana draft Corporate Governance Code as entrenched in the draft revised Botswana Stock Exchange ("BSE") listing rules, and awaits its formal approval and adoption by the relevant authorities in Botswana.

What is interesting from this statement is that Sefalana does not state that it will no longer rely on the King code or when it will adopt the new code. This underlines the view that the King code and the Botswana Corporate governance code are similar. This thinking is also echoed by BIHL chairperson thus:

As a Botswana based company, BIHL is not regulated by the King III Code of Corporate Governance; we have nevertheless actively chosen to follow its prescriptions (Botswana Insurance Holdings Limited, 2014.p. 113.)

In this regard it would seem that there is an easy and interchangeable use of the King code and the Botswana code for Botswana companies. Although the local code was meant to respond to country specifics, these are not articulated in the code. This has created a situation where companies may not see the necessity of switching over from King Code to the new local code. As a result, BSE listed companies continue to follow the King code and migration to the Botswana code appears to be not taking a full swing.

CONCLUSION

The paper has reviewed the corporate governance development in Botswana and notes that the Botswana corporate governance code was developed to respond to Botswana country specifics. These specifics however need to be more clearly articulated going forward. The local code relied heavily on the King code and that in future the code could be revised to incorporate any of the local peculiarities. In terms of the post-colonial theorizing the development of the code did not account for differentiation as it claimed but rather seemed to confirm acceding to dominance from earlier codes. In general there is some level of compliance with the key principle although it is difficult to ascertain the quality of this compliance.

LIMITATIONS

This study has a number of limitations which must be acknowledged. The majority of companies that are listed on Botswana stock exchange are chapters of major international corporations which imply that their corporate governance practices may be influenced in

large part by codes from other countries. Further the Botswana national code is still at its infancy both in terms of its development and adoption by the Botswana stock exchange. Some companies listed on Botswana stock exchange were excluded from the study due to unavailability of annual reports on company websites.

IMPLICATIONS FOR RESEARCH AND PRACTICE

The findings of this study open some avenues for further research. Given the relatively short period since the introduction of the Botswana national code a follow up study, say five years from now, is necessary to determine the compliance levels of BSE listed companies with the national code. Future research must incorporate different sources of data beyond annual reports to afford triangulation. In particular the personal views of key players such as employees, managers and shareholders may provide further insights into corporate governance practices of BSE listed companies. The impact of migration from the King code to the local code also need to be assessed.

From a policy perspective the findings of this study underscore the need for clarity in terms of the peculiar circumstances that have informed the new national code. In other words, it is not very clear on the face of it what the national code brings that is different from what has been in use, namely, the King code. Unless this is made unequivocally clear, companies may continue to apply the King code in lieu of the national code. Going forward companies should write into their practice corporate governance compliance, disclosure and sanctions thereof for failure.

REFERENCES

- Abels, P. B., & Martelli, J. T. (2013). CEO Duality: How many hats are too many?. *Corporate Governance: The International Journal of Business in Society*, 13(2), 135-147.
- Agle, B. R. (2008). Dialogue: Toward superior stakeholder theory. *Business Ethics Quarterly*, 18(02), 153-190.
- Agrawal, A., & Chadha, S. (2005). Corporate Governance and Accounting Scandals. *Journal of Law and Economics*, 48(2), 371-406.
- Albu, C. N., & Gîrbină, M. M. (2015). Compliance with corporate governance codes in emerging economies. How do Romanian listed companies “comply-or-explain”?. *Corporate Governance*, 15(1), 85-107.
- Arcot, S., Bruno, V., & Faure-Grimaud, A. (2010). Corporate governance in the UK: Is the comply or explain approach working?. *International Review of Law and Economics*, 30(2), 193-201.
- Berle, A and Means, G. (1932). *The Modern Corporation and Private Property*. New York: Macmillan.
- Bhagat, S., Bolton, B., & Romano, R. (2008). The promise and peril of corporate governance indices. *Columbia Law Review*, 1803-1882.

Berglöf, E., & Claessens, S. (2006). Enforcement and good corporate governance in developing countries and transition economies. *The World Bank Research Observer*, 21(1), 123-150.

Bhasa, M. (2004a). Global corporate governance: debates and challenges. *Corporate Governance: The International Journal of Business in Society*, 4(2), 5-17.

BIHL (2014), Annual Report.

Blair, M. M., & Roe, M. J. (Eds.). (2010). *Employees and corporate governance*. Brookings Institution Press.

Bhasa, M. (2004b). Understanding the Corporate Governance Quadrilateral. *Corporate Governance: The International Journal of Business in society*, 4(4), 7-15.

Botswana Stock Exchange (2013). CHAPTER 12 - Botswana Code of Corporate Governance *Botswana, Botswana Stock Exchange Listings Requirements pp 127-155*.

Brennan, N. M., & Solomon, J. (2008). Corporate governance, accountability and mechanisms of accountability: an overview. *Accounting, Auditing & Accountability Journal*, 21(7), 885-906.

Bushman, R., Chen, Q., Engel, E., & Smith, A. (2004). Financial accounting information, organizational complexity and corporate governance systems. *Journal of Accounting and Economics*, 37(2), 167-201.

Claessens, S., & Yurtoglu, B. B. (2013). Corporate governance in emerging markets: A survey. *Emerging markets review*, 15, 1-33.

Cooper, C. (1995). Ideology, hegemony and accounting discourse: a case study of the National Union of Journalists. *Critical Perspectives on Accounting*, 6(3), 175-209.

Cole, B., & Cooper, C. (2006). Deskilling in the 21st century: the case of rail privatisation. *Critical Perspectives on Accounting*, 17(5), 601-625.

Conyon, M., & Mallin, C. (1997). A review of compliance with Cadbury. *Journal of General Management*, 22, 24-37.

Cormier, D., Ledoux, M. J., Magnan, M., & Aerts, W. (2010). Corporate governance and information asymmetry between managers and investors. *Corporate Governance: The international journal of business in society*, 10(5), 574-589.

Dahya, J., Lonie, A. A., & Power, D. M. (1996). The case for separating the roles of chairman and CEO: An analysis of stock market and accounting data. *Corporate Governance: An International Review*, 4(2), 71-77.

Dedman, E. (2002). The Cadbury Committee Recommendations on Corporate Governance—A review of compliance and performance impacts. *International Journal of Management Reviews*, 4(4), 335-352.

Denis, D. K., & McConnell, J. J. (2003). International corporate governance. *Journal of financial and quantitative analysis*, 38(01), 1-36.

Dirks, N. B. (1992). *Colonialism and culture*. University of Michigan Press.

Donaldson, T., & Preston, L. E. (1995). The stakeholder theory of the corporation: Concepts, evidence, and implications. *Academy of management Review*, 20(1), 65-91.

Ettredge, M., Johnstone, K., Stone, M., & Wang, Q. (2011). The effects of firm size, corporate governance quality, and bad news on disclosure compliance. *Review of Accounting Studies*, 16(4), 866-889.

Goergen, M., Brewster, C., & Wood, G. (2010). Corporate Governance: Nonequity Stakeholders. *Corporate Governance: A Synthesis of Theory, Research, and Practice*, 469-495.

Goncharov, I., Werner, J. R., & Zimmermann, J. (2006). Does compliance with the German corporate governance code have an impact on stock valuation? An empirical analysis. *Corporate Governance: An International Review*, 14(5), 432-445.

Hemphill, T. A. (2004). Corporate citizenship: the case for a new corporate governance model. *Business and Society Review*, 109(3), 339-361.

Hilt, E. (2008). When did ownership separate from control? Corporate governance in the early nineteenth century. *Journal of Economic History*, 68(03), 645-685.

Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of financial economics*, 3(4), 305-360.

Jensen, M.C. (2002). Value Maximization, Stakeholder Theory, and the Corporate Objective Function, *Business Ethics Quarterly*, 12(2), 235-256.

Jones, T. M. (1995). Instrumental stakeholder theory: A synthesis of ethics and economics. *Academy of Management Review*, 20, 404-437.

Kamla, R. (2007). Critically Appreciating Social Accounting and Reporting in the Arab Middle East: A Postcolonial Perspective. *Advances in International Accounting*, 20, 105-177.

Kaplan, S. N. (1997). Corporate governance and corporate performance: A comparison of Germany, Japan, and the US. *Journal of Applied Corporate Finance*, 9(4), 86-93.

Keasey, K., Thompson, S. & Wright, M. (Eds.). (2005). *Corporate governance: accountability, enterprise and international comparisons*. John Wiley & Sons.

La Porta, R., Lopez-de-Silanes, F., Shleifer, A., & Vishny, R. (2000). Investor protection and corporate governance. *Journal of financial economics*, 58(1), 3-27.

Lazonick, W., & O'sullivan, M. (2000). Maximizing shareholder value: a new ideology for corporate governance. *Economy and society*, 29(1), 13-35.

Lorsch, J. W., & Zelleke, A. (2005). Should the CEO be the chairman. *MIT Sloan Management Review*, 46(2), 71-74.

Lufthansagroup (undated). <http://investorrelations.lufthansagroup.com/en/corporate-governance/compliance.html> Accessed July 13, 2015.

MacAvoy, P. W., & Millstein, I. M. (2004). *The recurrent crisis in corporate governance*. Stanford University Press.

Matten, D., & Crane, A. (2005). Corporate citizenship: Toward an extended theoretical conceptualization. *Academy of Management review*, 30(1), 166-179.

Merkl-Davies, D.M., & Koller, V. (2012). 'Metaphoring' people out of this world: A Critical Discourse Analysis of a chairman's statement of a UK defence firm. *Accounting Forum*, 36, 178-193.

Mintz, S. M. (2005). Corporate governance in an international context: Legal systems, financing patterns and cultural variables. *Corporate governance: an international review*, 13(5), 582-597.

Morris, R. (Ed.). (2010). *Can the subaltern speak?: Reflections on the history of an idea*. Columbia University Press.

Ntim, C. G. (2009). *Internal corporate governance structures and firm financial performance: evidence from South African listed firms* (Doctoral dissertation, University of Glasgow).

Ntim, C. G., Opong, K. K., & Danbolt, J. (2012). The relative value relevance of shareholder versus stakeholder corporate governance disclosure policy reforms in South Africa. *Corporate Governance: An International Review*, 20(1), 84-105.

Ohlhoff, J. H. S. (2008). *A survey of disclosure of compliance with King II by top listed South African companies: An investigative study of the companies listed on the FTSE/JSE top 40 index* (Doctoral dissertation, Stellenbosch: University of Stellenbosch). South Africa.

Okeahalam, C. C. (2004). Corporate governance and disclosure in Africa: Issues and challenges. *Journal of Financial Regulation and compliance*, 12(4), 359-370.

Oxfamamerica, 2015. <http://politicsofpoverty.oxfamamerica.org/2015/01/guess-what-critics-oxfam-is-right-about-the-top-1/> Accessed March 8, 2015.

Parker, L. D. (2005). Corporate governance crisis down under: post-Enron accounting education and research inertia. *European Accounting Review*, 14(2), 383-394.

Polanyi, K. (1944). *The Great Transformation*. New York: Farrar & Rinehart.

Rimmer, D. (1978). The Economics of Colonialism in Africa. *The Journal of African History*, 19(02), 265-273.

Romano, R. (2004). The Sarbanes-Oxley Act and the making of quack corporate governance.

Roberts, R. W. (1992). Determinants of corporate social responsibility disclosure: an application of stakeholder theory. *Accounting, Organizations and Society*, 17(6), 595-612.

Rossouw, G. J. (2005). Business ethics and corporate governance in Africa. *Business & Society*, 44(1), 94-106.

Rwegasira, K. (2000). Corporate governance in emerging capital markets: Whither Africa?. *Corporate Governance: An International Review*, 8(3), 258-267.

Sefalana (2014), Annual Report.

Shleifer, A., & Vishny, R. W. (1997). A survey of corporate governance. *The journal of finance*, 52(2), 737-783.

Sikka, P. (2008). Corporate governance: what about the workers?. *Accounting, Auditing & Accountability Journal*, 21(7), 955-977.

Spivak, G. C. (1988). Can the subaltern speak?. In *Marxism and the Interpretation of Culture* (pp. 271-313). Macmillan Education UK.

Solomon, J. (2007). *Corporate governance and accountability*. John Wiley & Sons.

Townsend, M. E., & Peake, C. H. (1941). *European colonial expansion since 1871*. JB Lippincott.

Tricker, R. I. (2015). *Corporate governance: Principles, policies, and practices*. Oxford University Press, USA.

Unerman, J., & O'Dwyer, B. (2004). Enron, WorldCom, Andersen et al.: A challenge to Modernity. *Critical Perspectives on Accounting* 15, 971-993.

Vaughn, M., & Ryan, L. V. (2006). Corporate governance in South Africa: a bellwether for the continent?. *Corporate Governance: An International Review*, 14(5), 504-512.

Visser, W., Middleton, C., & McIntosh, M. (2005). Corporate citizenship in Africa. *Journal of Corporate Citizenship*, 18(Special Issue), 18-20.

Waddock, S. (2000). The multiple bottom lines of corporate citizenship: Social investing, reputation, and responsibility audits. *Business and Society Review*, 105(3), 323-345.

Wanyama, S., Burton, B., & Helliar, C. (2009). Frameworks underpinning corporate governance: Evidence on Ugandan perceptions. *Corporate Governance: An International Review*, 17(2), 159-175.

Werder, A. V., Talaulicar, T., & Kolat, L. (2005). Compliance with the German Corporate Governance Code: an empirical analysis of the compliance statements by German listed companies. *Corporate Governance*, 13 (2), 178-187.

Williams, P., & Chrisman, L. (1994). *Colonial discourse and post-colonial theory: A reader*. Columbia University Press.

Winter, J. W. (2011). The financial crisis: does good corporate governance matter and how to achieve it?. *DSF policy paper*, (14).

Wolff, R. D. (1974). *Britain and Kenya, 1870-1930: The Economics of Colonialism*. Trans Africa Publishers.

Yonekura, A., Gallhofer, S., & Haslam, J. (2012). Accounting disclosure, corporate governance and the battle for markets: The case of trade negotiations between Japan and the US. *Critical Perspectives on Accounting*. 23(4), 312-331.

Yoshikawa, T. & Phan, P. H. (2001). Alternative corporate governance systems in Japanese firms: Implications for a shift to stockholder-centered corporate governance. *Asia Pacific Journal of Management*. 18(2), 183-205.

Young, M. N., Peng, M. W., Ahlstrom, D., Bruton, G. D., & Jiang, Y. (2008). Corporate governance in emerging economies: A review of the principal–principal perspective. *Journal of management studies*, 45(1), 196-220.