CORPORATE GOVERNANCE -BOARDS OF PARTNERSHIPS AND STATE OWNED ENTITIES IN MINERALS, OIL AND GAS INDUSTRIES “A PERSONAL PERSPECTIVE BY SHEILA KHAMA”

Chapter 2 – Corporate Governance (Definition, Principles and Practice)

2020

2.1 The History and Evolution of a Company (Corporation)

It may surprise the reader that the notion of a company is not rooted in private entities as we know them today but in two public (state) entities created by the British Monarch around 1600 as the King's vehicles for colonialization. From a corporate governance point of view, civil servants acting on behalf of the Monarch were *de facto* the equivalent of modern day directors. It was only during the industrial revolution that the idea of a company was repurposed for commercial use. It was also at the time that the notion of a company being a separate legal personality, the concepts of perpetual succession, duties of directors to shareholders and the company were developed. However, over time 'private entities' have dominated the character of companies and not state owned companies. But it is interesting that corporate governance of SOEs and entities in which the State is an investor is a fusion of past and present material and political pursuits. In many ways it is this intersection between public, personal and political interests that lends merit to the discussion of the subject of governance of SOEs.

2.2 Defining Corporate Governance

As a starting point, it is worth defining the concept of *Corporate Governance* and in doing so, as is the case with the concept of *good governance*, one encounters many versions. However, most definitions converge around a few noteworthy principles. The definitions acknowledge that corporate governance is "the process by which an organization defines its *structure*, determines its *strategy* in order to exercise *control* and *balance stakeholder* interests". An important context for understanding corporate governance is that it is framed by certain basic parameters. These are international and national laws (and conventions) that govern companies and specific sectors. Also important are the constitution of individual companies (articles and memoranda of association) and overall aspirations of the founders and shareholders of a company.

In my view these broad parameters notwithstanding, an importnat consideration (as seen from paragraph 2.1 above) is the context in which the discussion and implementation occurs and an acceptance that the concept will continue to evolve. Hence this book creates a clear and narrow context being partnerships and SOEs. Principles of good governance listed below are an additional context provided for my discussion of the subject in the chapters that follow.

2.3. Principles of Corporate Governance

Accepted principles include *capable leadership*, *commitment to transparency*, *proactive risk management*, *regard for sound business ethics* and *compliance with standards of integrity in reporting*. An important reference is the OECD Principles of Corporate Governance.[1] *More* recently, regard for *sustainability* arising out of concern for *ESG matters* as well as *innovation* have also come to the fore. The principles are a practical point of reference based on accepted norms for accountability in a corporate setting.

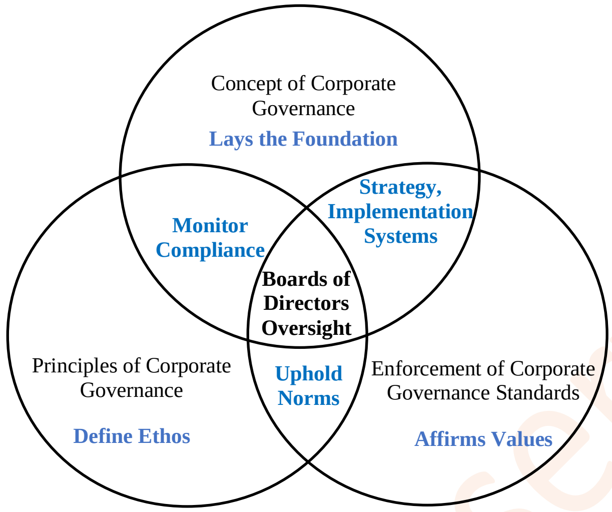
2.4. The Value of Corporate Governance

Applied consistently, these principles increase public and investor confidence. Both are vital for corporate performance in the marketplace because they create a conducive business environment. Reputationally, companies that are perceived to be led by capable leadership whose actions are based on principles of corporate governance can leverage brands to attract talent, procure finance and technology competitively. Successful competition to access minerals, oil and gas resources,

[1] https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?

finance and markets is enhanced by positive perception of a company's brand. This is a strong value proposition and a strong business case to all stakeholders.

Diagram 2: *The Interplay of Corporate Governance*



2.5. The Role of the Board of Directors in Driving Corporate Governance

The Boards of Directors are custodians of corporate governance. The Board sits at the intersection between the conceptual framework, principles of corporate governance the setting and enforcing of principles and standards. As shown in Diagram 2 above, the Board of Directors is the bull's eye.

The primary role of the Board is to provide the company with strategic direction and engage the right leadership team to implement the strategy while balancing the interests of diverse stakeholders. The strategy serves as both a long-term operational pathway, a risk containment and performance-monitoring tool. An important mechanism for corporate governance is the creation of an appropriate accountability structure including committees of the Board to take responsibility for specific aspects of the Board's governance oversight role.

In terms of strategy, a vital role of the Board is to consider and determine first and foremost the sector of choice for investment and the rationale. Given the nature of the value chain of a given sector, the Board determines where in the value chain the company will focus its business activities. Given the geographic spread of countries endowed with the different resources, to manage risk and deploy limited resources the Board selects the countries in which to operate. In the context of minerals, oil and gas companies, two key drivers of these strategic choices are geological resources potential and perception of sovereign risk. The correlation between trade competitiveness and sovereign risk heightens the importance of corporate governance as relates not just to investment decisions but risk oversight. The fact that companies are guided by resources availability for decisions on where to invest is only one of many sector-specific challenges for boards of minerals, oil and gas companies. But it also raises a myriad of other issues that confront such boards and I discuss these later in the book.

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