Creating Sustainable Ghanaian Businesses Through Sound Corporate Governance Principles

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Introduction

Adopting sound corporate governance principles is a sine qua non for a sustainable Ghanaian business especially those engaged in cost intensive, risky and of course highly profitable sector like the upstream Oil and Gas sector.
What is a Business?

• The Blacks Law Dictionary, 9th Edition defines business as follows:
  o a commercial enterprise carried on for profit;
  o a particular occupation or employment habitually engaged in for livelihood or gain;
  o Commercial Enterprises like companies
  o Commercial Transactions like contracts
  o Transactions of a non commercial nature
  o Deliberations of Parliament
• For our purpose a business is “a commercial enterprise carried on for profit or Commercial Enterprises like companies” i.e. an organisation or enterprising entity engaged in commercial, industrial or professional activities for profit in the upstream Oil and Gas sector.

• A Ghanaian Company (business) is defined in the Ghana Investment Promotions Center Act 2013 (Act 865) as

  o ... a company, partnership or association or body whether corporate or unincorporated which is wholly owned by a citizen of Ghana.
• A Ghanaian business in our present context is thus any wholly Ghanaian owned and/or in my view those largely but jointly owned (in terms of equity and shareholding) *commercial enterprise carried on for profit* which includes Commercial Enterprises such as:

  o Sole Proprietorships
  o Partnerships
  o Companies
• By the *Petroleum Commission Act of 2011 and Petroleum Production and Exploration Action Act, Act 919 of 2016* only Corporate Bodies can engage in Petroleum operations to wit, upstream oil and gas operations that is from exploration through to decommissioning and its ancillary operations like transportation, storage, supply of services etc.

• To this extent our focus is on the Ghanaian profit-making limited liability companies be it public or private as per Section 7 of the Companies Act, 2018, Act 992 because a large proportion of the enterprises in Ghana in this sector is conducted through the business company.
Meaning of Sustainable/Sustainability

• Merriam-Webster Dictionary defines ‘sustainable’ as “capable of being sustained.” It defines ‘sustained’ as “maintained at length without interruption or weakening, lasting, prolonged.”

• Blacks Law Dictionary has a similar meaning “as maintaining for a long time and enduring.”

• Cambridge Dictionary defines it as “the quality of being able to continue over a period of time”.
• Business Sustainability, also known as corporate sustainability is thus the management and coordination of the economic, environmental, social and financial demands and concerns to ensure the ongoing success of a business entity.

• Such ongoing success of a business entity undoubtedly cannot be achieved without sound corporate governance principles especially in our country where businesses fold up and collapse most often within the first 20 years of their existence.
What are these Sound Corporate Governance Principles?

- According to Oneil Williams on Core Principles of Good Corporate Governance, “Corporate governance is the structure through which companies are directed and managed.”
- The Cadbury Report of UK in 1991 states that “Corporate governance is the system by which businesses are directed and controlled.”
- The Organisation for Economic Co-operation and Development (OECD) “Principles of Corporate Governance” in 2015 indicates that “Corporate governance involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders ... also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”
Corporate Governance is thus a set of relationships between an organization’s (public or private) management, governing body, owners and other stakeholders in which power is exercised in the management of economic, financial, human and social resources for enhanced performance and sustainable growth of that organization.
The Legal Framework

- The legal framework for general corporate governance is captured in the following:
  - International Corporate Governance Codes such as that of the OECD principles
  - Securities and Exchange Commission (SEC) Guidelines on Corporate Governance
  - International Financial Reporting System (IFRS)
  - The Banking Business -Corporate Governance Directive 2018
  - Companies Act 2019 (Act 992)
  - The Public Financial Management Act 2016 (Act 921)
  - The Public Procurement Act 2003 (Act 663)
  - Board Charters and Code of Ethics
  - Particularly, for the upstream sector the PEPA, The PCA, the PEP Regulations.
Key Stakeholders in Promoting Sound Corporate Governance practices

• Government
• Directors
• Secretaries
• Auditors
• Shareholders/Owners.
Leadership
- An effective board
- Clear division of responsibilities at the top
- Chairman’s leadership responsibility
- Role of non-executive directors
- Calibre and competence of the board and its committees
- Appointments procedures to the board.
- Orientation and training of Directors
- Awareness of Directors of their legal responsibilities
- Commitment of Directors to the
- Information flow to the board
• **Transparency**
  - It means openness, a willingness by the company to provide clear information such as disclosing truthful and accurate data on the business and financial performance figures to shareholders and stakeholders.
  
  - Disclosure of roles and responsibilities of the board and management to the public to ensure some level of accountability and ultimately ensure that stakeholders have confidence in the decision-making and management processes of the business.
  
  - Disclosure of conflict of interests.
Accountability

• Sound corporate governance ensures stakeholders know the company's mission, values, short and long term strategic goals and the role they must play in helping the company accomplish them.

• Not only must stakeholders be aware of what is expected of them, they should be cognizant of what the repercussions are if these expectations are not met by their actions or inactions.
Effective Documentation of Policies and Procedures

Documented policies and procedures allow employees across an organization to understand how the company functions and to determine whether organizational objectives are being met or not and assure employees that the company is in compliance with all legal and regulatory requirements, thereby establishing a framework through which the organization can operate seamlessly, successfully and sustainably.
Risk Governance and Internal Control

• Ghanaian businesses should develop and have in place a comprehensive and vigorous system of risk management.

• The board should ensure the maintenance of a sound internal control system.
Reporting with Integrity

Any business through the board should present a fair, balanced and understandable assessment of the organization's financial, environmental, social and governance position, performance and outlook in its annual report.
Sound Procurement Practices

Transparent tender processes and avoiding sole sourcing to ensure value for money.
Effective and Independent Audit

• Ghanaian businesses should have effective and independent internal audit function that has the respect, confidence and cooperation of both the board and the management.

• Businesses should also put in place formal and transparent arrangements to appoint and maintain an appropriate relationship with the external auditors.
Ghanaian businesses through their boards should carry out regular, formal, rigorous and effective annual evaluation of their performances and that of their committees and individual directors.
Effective Succession Plan

Ghanaian businesses should put in place measures to ensure that the death of a major shareholder should not lead to the collapse of the business.
Conclusion

Whilst these principles of sound corporate governance needed for creating a sustainable business may not be exhaustive it is expected that to a large extent if Ghanaian businesses adopt these sound principles it will ensure that notwithstanding a ‘drought’, they will withstand and still be in business forever and ever.
THANK YOU