The juxtaposition of success and failure of corporate governance procedures

The interplay between rules and practice

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Abstract

Purpose – The paper aims to explore a multiplicity of corporate governance issues in the narrow purview of different corporate governance systems and procedures across jurisdictional contexts. It shows a correlation between proper implementation of rules and procedures in a corporation for determining the success or failure of corporations. The paper also posits that however robust internal corporate rules and procedures are, the recent experiences have demonstrated that the fate of corporation could also be dictated beyond the remit of individual corporations by extraneous factors such as globalisation. This was vividly underscored by the recent global financial crisis (2008-2010) and its devastating consequences on well-managed corporation worldwide. The author has structured the paper into two parts – part one and part two. Part one is designed to explore the dynamics of corporate governance in fostering the success or failure of corporations. In part two, the paper examines the interplay between rules and practices in the context of two corporate governance examples –MTN in Uganda and the defunct BCCI (1991) in the UK in corporate success or failure. The former underscores a correlation between effective corporate governance mechanisms in fostering corporate success, whereas the latter underscores how the practice of overlooking corporate rules and procedures could trigger catastrophic consequences for corporations. The paper also tries to tease out how poor corporate governance could be exploited for criminal purposes. This was underscored in the case of the BCCI. The last part underscores how two distinctive corporate governance approaches in MTN (Uganda) and defunct BCCI could proffer a lesson for change of modern corporate governance systems and procedures.

Design/methodology/approach – The paper was written by way of a comparative analysis of different corporate governance approaches in different jurisdictions and their different implications for the success or failure of corporations. It has examined recent corporate scandals with a view to delineate how lax governance procedures and lack robust oversight of corporation could have played in precipitating conditions for criminal exploitation.

Findings – The findings of the paper clearly demonstrate a close correlation between good corporate governance and corporate success. It also correlates how lack of robust corporate governance procedures could provide an environment for exploitation of corporation by executives who may have criminal inclination. The lax corporate environment can also be exploited by criminals to perpetuate other forms of criminal activities such as money laundering and fraud.

Research limitations/implications – The paper was largely undertaken by the analysis of secondary data sources. Because there were no interviews carried to corroborate the foregoing data, it is possible that some of it could have been biased. Undertaking interviews would have mitigated the potential for bias and infused the paper with first-hand experiences from different stakeholders

Practical implications – The paper underscores how two distinctive corporate governance approaches gleaned in the context of MTN (Uganda) and defunct BCCI (1991) could proffer different approaches for a change in modern corporate governance systems and procedures.

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Social implications – The paper has demonstrated that lack of proper corporate governance procedures and oversight could provide a recipe for criminal exploitation to perpetuate crimes such as money laundering in a corporation. This could have far-reaching implications not only for individuals corporations but also local communities in form of job losses), governments and markets.

Originality/value – The originality of this paper is manifested that there are no comparable studies undertaken in its purview. It is, therefore, a must-read for both academic and policy purposes.

Keywords Corporate governance, Corporate failure, Money laundering

Paper type Research paper

1. What is corporate governance?

Corporate governance provides a framework for legitimate distribution of powers across varied stakeholder constituencies in a corporation. The investor, otherwise known as "the shareholder", provides capital but does not take part in the day-to-day management of the company. The executives are responsible for running the corporation on behalf of the shareholders (investors), and the shareholders are responsible for providing capital. In both cases, the purpose of this corporate governance structure is to ensure that the two constituent parties are able to complement each other in promoting corporate objectives without overlapping each other's distinctive roles. The survival of a corporation is dictated, in part, by either the success or failure of its corporate governance procedures and their effectiveness. A well-devised corporate governance framework should ensure that the board is not only accountable to various stakeholder constituencies but also promotes transparency through a proper disclosure and dissemination of information across various stakeholder constituencies. For instance, if investors are not satisfied with internal corporate governance mechanisms such as the company's level of disclosure, they will have misgivings about it and how it is managed. This could subsequently precipitate an environment for investors to withdraw their capital otherwise known as capital flight. Arguably, corporate governance mechanisms (depending on how effective they are) have the potential to influence the health and future survival of a corporation. The effectiveness of corporate governance mechanisms is also of significant importance in enhancing the stability of financial markets. For example, the East Asian financial crisis saw the economies of Thailand, Indonesia, South Korea, Malaysia and Philippines being severely affected by the withdrawal of capital by investors after property assets collapsed (Stigliz, 2002). Lack of proper corporate governance mechanisms was responsible for the financial institutions' failure to withstand sudden changes in asset portfolios in the above economies. It was evident that corporate governance systems of the developing countries were weak largely due to corruption, in particular cronyism and nepotism. In Uganda, for instance, top positions in the majority of corporations tend to be given to people who have strong political connections in the ruling government. This situation has also been prominent in Kenya and presumably replicated in other countries across Africa as well[1]. This begs the question whether "these people" are the best qualified to fill the higher corporate positions they occupy or whether corruption could have a hand in influencing corporate failure in some countries?

To appraise the effect of corporate governance mechanisms in either facilitating the success or failure of corporations, one needs to examine the process in which a corporation is constituted. A corporation is constituted, by virtue of its Articles and Memorandum of Association, to allow different constituent parties to complement each other with regard to contribution of capital, expertise and labour for the mutual benefit of both parties. The separation of ownership and control which is provided for by the constitution of the company explains why shareholders often take a passive or no part in the management of the company. This separation-of-powers issue helps to minimise the possibility of conflict of interests and enables different constituent parties to co-exist in fostering the objectives of the company. Issues of conflict of interests can be pertinent in relation to the disclosure of financial reports and ethics required of senior executives.

Section 33 of the Company Act (2006) in the UK vests the Articles of Association with a contractual force that binds a company and its individual members in their consensual contractual undertakings[2]. Therefore, corporate governance procedures are used to evaluate the relationship between different stakeholder constituencies in a corporation. Corporate governance provides a mechanism for evaluating corporate performance – based on a proper distribution of legitimate powers to safeguard shareholders' equity. The contemporary trend in corporate governance has shifted its focus from the traditional agency orientation based on managers and dispersed shareholders, ascribing an enhanced role to minority and majority shareholders in an organisation[3]. By dispersed shareholders, we mean a situation where no single investor (shareholder) owns enough shares to control the company. The effectiveness of corporate governance systems can also be influenced by external factors such as globalisation and its overlapping effect on economies. Therefore, this paper articulates the effect of corporate governance mechanisms on either fostering the success or failure of corporations in a cross-jurisdictional context.

2. Corporate governance theory

Corporate governance theory is explained often depending on jurisdictions where corporate governance issues are being examined. But generally speaking, corporate governance underscores a set of relationships between the company management, its board, shareholders and other stakeholders. It provides the structures through which the objectives of the company are set and measures for attaining those objectives and monitoring performance are determined (OECD, 2004, p. 11). Organisation for Economic Co-operation and Development (OECD) also defines corporate governance as a system by which companies are directed and controlled. It is a set of rules, policies, laws, measures and instruments that have an effect on the manner in which a company is ruled (Wankel, 2009). It is also used to measure and monitor whether the company is governed in accordance with the law, policies and procedures.

A well-devised corporate governance framework should provide incentives for the board and management to ensure they achieve objectives and the interest of the company. Shareholders should influence the creation of mechanisms for effective monitoring and evaluation of executives in their duties to the company. The presence of effective corporate governance system within an individual company and across an economy as a whole helps to provide a degree of confidence necessary to attract more investment and enhance the proper functioning of the market economy (OECD, 2004). Equally, corporate governance creates mechanisms with which outside investors protect themselves from excesses of insiders (La Porta *et al.*). It provides a mechanism for transmitting signals from products and input markets into corporate behaviour (Berglof and Thaden, 1999). Corporate governance entails a system of checks and balances designed to ensure that management of a corporation is for the benefit of its shareholders in compliance with laws and ethical standards. Corporate governance provides a framework to ensure that the mandate set out by the company constitution is achieved, as well as for making timely disclosure on internal audit activities (Cannell and Khan, 2002). It needs to be noted that the internal audit function is an important facet of good corporate governance because it ensures that the company's objectives are adhered to. It is this particular component of corporate governance that has undermined organisations in developing countries. In some jurisdictions, the audit function of organisations has been weak and corruptible, making it slack in the administration of corporate governance mechanisms.

Due to the rigours of corporate governance, executives have sometimes been constrained and unable to undertake desirable risks. Some executives have been less inclined to undertake risks for fear of not wanting to jeopardise their positions, should the proposed risky strategies fail to crystallise the anticipated outcomes. When executives devise strategies and succeed, they are applauded as heroes or heroines and, on many occasions, elevated; but when the same strategies fail (as recently seen in many football clubs in UK), their jobs could be on the line. Therefore, managers tend to be averse to risks in implementing innovative strategies for fear that failure could jeopardise their positions.

2.1 Agency and stewardship theories

In corporations, the shareholders (investors) delegate decision-making powers to executives (as agents) to act in their (principal) best interest. This, in part, implies a loss of ownership control by shareholders in relation to decision-making powers on corporate management matters. The agency theory provides that problems are easily resolved when the board of directors is constituted of people who know little of the company or who are not personal friends of the top management. It proposes that for the company to be properly managed, it should have a high percentage of the board of director's from diverse backgrounds[4]. The agency theory postulates that top management should have a significant degree of ownership in the organisation and a strong financial stake in it to ensure its long-term success. Agency theory is concerned with aligning the interests of owners and managers and is based on the fact that there is an inherent conflict between the interests of a firm's owners and its management. This meant that managers now possessed superior knowledge and expertise to the firm's owners and were therefore in a position to pursue self-interested action at the expense of the shareholders. Jensen and Meckling (1976), who argued that agency costs are an inevitable part of the management/ownership relationship, formalised this hypothesis into a mathematical model. The clear implication for corporate governance is that adequate monitoring mechanisms need to be established to protect shareholders from management's conflict of their capital (equity).

Directors of corporations are given the authority by virtue of the Memorandum and Articles of Association to take independent executive decisions on all matters regarding the corporation on behalf of shareholders. These authorities fall into two categories – actual authority and apparent authority. The first form of authority is provided for by the constitution of the company, that is, the Articles and Memorandum of Association (Dine, 2005), while the latter is inherent in the office of directorship.

On the other hand, the stewardship theory postulates that executives tend to be more motivated by acting in the best interest of the corporation than their own self-interests.

This theory focuses on higher-order needs, such as a sense of achievement and self-actualisation. It is based on the premise that senior executives tend to view corporations as extensions of themselves rather than use the firm for their own ends. These executives are most interested in guaranteeing the continued life and success of the corporation. The relationship between the board and top management is this one of principal and steward, not principal and agent ("hired hand"). Thus, the stewardship theory postulates that, in many instances, top executives may care more about the company's long-term success than do about short-term-oriented shareholders who can sell their shares anytime they choose (Carson, 2008).

There are various corporate governance models adopted by different jurisdictions to foster effective corporate governance frameworks. In the Anglo-American model (such as those in the USA, UK and Australia), corporate governance emphasises a well-developed stock market, strong investor protection, substantial disclosure and arm's-length banking relationships (Jeremy *et al.*, 2000). This model is based on the system of individual or institutional shareholders that are the outsiders of the organisation. In this model, the key players are the management and the board of directors. This model is designed to ensure a clear separation of powers between management and ownership of the corporation. The board of directors is made up of insiders (executive directors) and outsiders (non-executive directors). This structure is essential for checks and balances in executing the duties and responsibilities of the corporation. By contrast, the Germany–Japan model (prevalent in Germany and continental Europe, Japan and parts of Asia) ascribes an increased role to long-term manager–investor and firm–bank relationships, concentrated ownership and cross-shareholdings among firms and between firms and financial institutions (Jeremy *et al.*, 2000).

3. The match between corporate success and corporate failure

Corporate failure is characterised by loss of shareholders equity, loss of jobs and capital flight (investors relocating their capital as in the case of East Asian countries in 1998) and insolvency of corporations. With corporate failure, investors are likely to lose their investments and their reputation. Thus, corporate failure often signifies bad news not only for the company, its executives and employees, who may lose their jobs, but it also affects the economy – precisely, the reason why governments have a vested interest in the way corporations are managed.

The issue of bank bonuses in the UK highlights the extent to which corporate executives are ready to go in overlooking ethical guidelines in management of companies for their personal benefit. It is apparent that executives of companies have been driven by greed and the desire to reap exorbitant bonuses at the end of the year, overlooking ethics and the long-term health of corporations. This has triggered a variety of concerns epitomised by the closure of many corporations recently in the wake of the global financial crisis (2007-2010). Some of the few examples include the Lehman Brothers Ltd., highly leveraged broker dealers but collapsed because of the zeal to taking foolish risks. The Northern Rock and Royal Bank of Scotland were nationalised by the British Government, and HBOS was forced into a shotgun merger with Lloyds Banking Group under similar circumstances. In the USA, Merrill Lynch was taken over by the Bank of America with the Federal Reserve Bank of New York having an oversight responsibility; Goldman Sachs was rescued by Warren Buffett (Daily Mail, 2012). In part, the foregoing scandals were partly caused by failure of corporate governance, not least careless risk taking driven by the greed of corporate executives to reap huge bonuses at the end of the year. I presume that the failures of corporate governance has also partly been caused by the overzealousness of bank executives – spreading too fast and too wide without devising appropriate corporate governance tools to ensure effective oversight of their operations. Executives have admitted (Evening Standard Newspaper, 6th February 2013) that the structural weakness of global banks like HSBC, Barclays, City Bank and many more has not been fit for purpose. Let us not forget that criminals will always be snooping to identify any weaknesses in the system and exploit them as a gateway to perpetuate their criminal ambitions. As a matter of fact, the structural weaknesses of big banks such as HSBC have lately been in the spotlight for charges of money laundering and financing of terrorism. It would appear that the global banks suffer the syndrome of "too big to manage". With more than 100 country heads reporting to one chief executive, some of these banks will always be prone to regulatory risks. Even if regulatory standards such as "Know Your Customers" designed to prevent money laundering are not being applied by country banks, it is very difficult for an executive based in London to know it. There could be complicity of bank officials to exploit the system which might go undetected for a long time, and there is no way someone relying on reports from country heads can do unless they are supplied with information. However, for the case of HSBC, it was accused by the US authorities of having acted too slowly to adopt effective anti-money laundering counter-measures. Following the issuance of the excruciating report about the failures of HSBC by the Office Comptroller, the bank is said to have responded by investing $700 trying to review its "Know your Customer" measures worldwide. But part of the regulatory failures in major banks has also been caused by excessive greed. It is greed that has made executives of corporations to overlook the risk profiles of their customers in the anticipation of reaping huge bonuses. For instance, undocumented migrant workers in the USA have unfettered access to credit to the extent that they were able to buy five bed-roomed mansions in areas such as Washington and New York. This would have never been a big issue in good economic times when the economy was vibrant and illegal immigrants were doing two jobs to be able to pay up their loan obligations. However, in bad economic times, illegal migrants cannot easily switch (find alternative) jobs, as natives start to compete for jobs they would earlier have overlooked. The slowdown of the US domestic economy and of the EU implies that lenders are likely to lose their money, with borrowers losing jobs and with little prospects of finding alternative ones in the short term[5]. On many occasions, working illegally pays off in an economic environment, where the economy is booming with jobs which natives are reluctant to do. But, in bad economic times, when natives are also clamouring for dreary work to pay their bills such as mortgages and other survival imperatives, undocumented immigrant workers will be at a very big disadvantage. As a matter of fact, the underestimation of customer risk assessment procedures by banks would have greatly contributed to the outbreak of the global financial crisis (ACCA, 2009).

The recent global financial crisis has demonstrated a clear correlation between corporate governance and corporate failure (ACCA, 2009). In the wake of the foregoing financial crisis, there was a spike in failed companies such as the Northern Rock (Britain's fifth largest mortgage lender), many more in other jurisdictions as earlier elucidated. It is important to remember that banks fund mortgages by taking in deposits and lending the cash out to other customers, but they also borrow from wholesale financial markets. Banks can also package up existing mortgages into a bundle and sell the debt on to investors. This latter process is known as securitisation, and banks relied heavily on it and borrowing from money markets to raise funds. Due to the unprecedented number of sub-prime borrowers defaulting on their loan obligations, both of the foregoing sources of funding dried up. Based on the economic theory on price mechanisms, "the higher the demand, the higher the price, and vice versa; and conversely, the lower the supply, the higher the price and vice versa". This meant that with the reduced flow of funds into the market, the interest rate would subsequently skyrocket. The foregoing situation was compounded by the LIBOR interest rate scandals at Barclays Bank; wholesale mis-selling of payment protection insurance by all high-street banks in the UK; and money laundering allegations against Standard Chartered Bank and HSBC[6]. The foregoing environment spooked the market and constricted the flow of funds for would-be borrowers. As a result, sub-prime borrowers with a bad credit history could not sustain their loan repayments. There was a looming possibility that those on low incomes would default considering that people plan their expenditure based on incomes. Abrupt changes in the market can undermine the borrowers' ability (especially those on low incomes) to pay their loan obligations. The resulting environment spooked the market and prompted banks to stop lending to customers, as well as to each other. This would later trigger the economic slump we have recently witnessed across many regions. The World Trade Organisation has predicted that the global trade will continue to slacken from 3.7 to 2.5 per cent this year less than half the average of past 20 years (Daily Mail, 2012). This is largely attributed to the credit crisis in Europe and the slowdown growth of the US economy. It is important to remember that the financial and credit crisis in these two economies was partly triggered by the failure of corporate governance. Corporate executives were found to have been overlooking risk management procedures by taking excessive risks, in the craziness of wanting to reap huge bonuses at the end of the year. There were, however, exceptional situations (caused by extraneous factors) – where companies found themselves in a helpless economic predicament due to globalisation and its offshoot effect on businesses.

Corporate governance is crucial for companies in fostering their predetermined objectives, and in enhancing the stability of the financial markets. The failure of corporations has the potential to trigger a wide range of catastrophic consequences, not least the erosion of investors' confidence, followed by capital flight and closure of companies. There is empirical evidence to confirm the fact that companies that fail to achieve their corporate objectives are characterised by the following corporate governance failures[7]. The failure of some corporations such as Enron (2003), for instance, was characterised by the poor reputation of the internal audit departments, negative perceptions about the corporation, the absence of formal corporate governance frameworks, lack of staff sensitisation on business risk management and governance issues (Weasels, 2004). The overriding factor for failure of many corporations and subsequent closures of many commercial banks (by Bank of Uganda in 1990s) included, among other things, poor corporate governance mechanisms and outdated internal audit practices[8]. The post-closure commission of inquiry instituted to investigate the closure of several commercial banks by the Bank of Uganda recommended the need for strengthening of corporate governance and improving internal audit practices (BOU Bulletin, 2000). Thus, it can be inferred that robust corporate governance mechanisms enable companies to properly manage risks and to achieve enhanced performance and stability (IFC, 2003). The post closure of the bank commission instituted to investigate the closure of banks in Uganda in 1990s also revealed that politicians and businessmen would bypass established procedures to deal directly with executives[9]. Executives would ignore reporting procedures which compromised corporate objectives and also risked shareholders' equity. Some bank managers treated corporate money as personal and would lend it to their favoured persons without recourse to stipulated procedures. This was not helped by lack of clear regulatory oversight of financial institutions, and some crooks were able to exploit the flaws in the system to their full advantage. Risk assessment procedures were said to have been ignored, undermining corporate governance procedures and standards (BOU Bulletin, 2000).

4. Corporate governance factor in corporate success

The importance of corporate governance procedures has never been important for corporate survival in the wake of corporate scandals and the failure of many corporations lately. The failure of corporations in the past two decades across the USA, Europe, Asia and Africa has, in part, been attributed to by the lack of robust corporate governance mechanisms[10]. These failures were largely underscored by failure of many banks – whose challenges were exacerbated by their global interconnectedness and its attendant potential to transmit risks from one bank to another in a different jurisdiction. As noted earlier, the lack of corporate governance mechanisms has made executives overlook internal risks assessment procedures – driven by the bonus culture in many corporations. Similarly, owing to a series of failures in corporate governance practices, there were a series of corporate frauds and closures, resulting in losses of billions of dollars of shareholder's equity and loss of thousands of jobs, triggering criminal investigations of dozens of executives and record-breaking bankruptcy filings (Monks and Minnow, 1995). The catalogue of the foregoing problems manifests a failure of corporate governance mechanisms to safeguard diverse stakeholder interests in a corporation. The HSBC has recently been fined up to $1bn (£645mn) by the US regulators – the Office of Comptroller for failing to comply with anti-money laundering systems and controls. The lapses in corporate governance procedures of Britain's biggest bank have been exploited by some opportunistic corporate officials to transmit money to Iran in violation of the UN sanctions (Daily Telegraphy 13 July 2012). HSBC has also been recently fined £27.5mn for transmitting illicit proceeds of drug trafficking on behalf of drug kingpins in Mexico. The Mexican National Banking and Securities Commission (NBSC) imposed the exorbitant fine on HSBC for its failure to comply with anti-money laundering systems and controls (Daily Telegraphy, above). The US regulators who recently fined the HSBC £1.2bn lamented that money laundering was so widespread that it was more or less known as the bank of criminals' choice. It needs to be remembered that criminals are always snooping to identify any weaknesses in the internal corporate governance system to foster their own interests. Barclays Bank has suffered a huge blow to its reputation, having been fined a record $470mn (£290mn) for rigging the California Electricity market (Daily Mail, 2012). Barclays and other banks trade in complicated financial instruments which bet on electricity price movement in electricity trading hubs across the USA (Daily mail above). Barclays has been accused with the conspiracy to sell electricity at a loss and other manipulative scams. These scandals were revealed in the e-mails and phone messages sent by the Bank's traders – which were published by the US energy regulators. It might also be worth remembering that earlier in July, the Barclays Bank Chief Executive Bob Diamond was forced to resign after the bank was fined £290mn by regulators in the UK and the USA for rigging the LIBOR interest rate. It was also fined £2mn for mis-selling the Payment Protection Insurance and £450mn for mis-selling interest rate swaps.

The foregoing crisis in the banking industry, coupled by corporate scandals which involved big corporations such as Enron, WorldCom, Tyco and Adelphia, have, among others, raised concerns not only concerning the qualifications but also the ethical standards exhibited by many corporate executive officers. The above companies' bank balances were said to have been boosted artificially by major accounting frauds that persisted for a remarkable period of time (Clarke, 2012). Others were found to have been financially weak because their executives had engaged in major self-dealing transactions (for example, Tyco Adelphia). The failure of Enron also raised questions on the effectiveness of the board to ensure a complementary relationship with executive managers in safeguarding shareholders equity. Enron became infamous for the questionable actions about its top executives who doctored (manipulated) audit accounts and misled shareholders without the board ever knowing and intervening. This was manifested in many ways not least that the off-balance sheet partnerships were used to hide the company's slacking financial performance and revenue from long-term contracts being recorded in its first year instead of being spread over multiple years (Zeller, 2002). Financial reports were being falsified to inflate executive bonuses, highlighted by manipulation of the electricity market, triggering a California energy crisis (Zellner, 2002) outside the USA.

The US approach to corporate governance is a statutory rule binding all companies (including foreign companies) that have a listing in the USA (Dine, 2005). This is different from the UK, where the emphasis is placed on voluntary compliance of companies. The foregoing US rule-based approach is illustrated by the fact that the Sarbanes–Oxley Act 2002 requires all companies with a listing in the USA to include in their annual report a certificate vouching for the accuracy of the financial statements. This certificate must be signed by the company's principal executive officer and financial officer (ACCA, 2009). Recently, the Dutch Bank – ING – has been fined $619mn by the US Government for allegations that it violated US sanctions against Cuba, Iran and other countries. ING is said to have moved $1.6bn illegally through banks in the USA from early 2007 by concealing the nature of the transactions (City A.M reporter, 2012). It did this by eliminating payment data that would have revealed the involvement of sanctioned countries and entities. The bank also advised clients how to evade computer filters designed to prevent sanctioned entities from gaining access to the US banking system. It provided US finance services to sanction entities through shell companies and misuse of internal ING accounts. ING has become the fourth bank to be imposed on sanctions after Credit Suisse agreed to pay $536mn in 2009 to settle charges of illegal transactions involving Iran, Cuba and Libya. Lloyd Bank TSB also agreed to pay $350mn in this same year to settle charges of altering client records for clients from Iran, Sudan and other sanctioned countries. In 2010, Barclays Bank settled charges of £298mn for violating US rules for sanctioned countries and entities (City A.M reporter, 2012). Incidences like these underscore the failure of corporate governance procedures in a corporation. The availability of appropriate internal controls and mechanisms for the board and senior executives to provide effective oversight of the shareholders equity would help to counter the following incidences (Kookkinis, 2012). Corporate governance plays a fundamental role of ensuring that there are appropriate checks and balances on different constituent parties in the corporation. For instance, the board cannot use their privileged positions to dominate other constituent parties but will exploit available mechanisms to engage in robust scrutiny of each other. This will, in turn, help to cultivate a culture of good corporate governance of large companies including banks and other financial institutions. Some jurisdictions have been accused of operating a culture of silence, culminating in the failure to publish those who flout corporate rules. For instance, the American regulators have done nowhere near enough to punish the mass fraud that precipitated the global financial crisis. As of July 18 this year, the Securities and Exchange Commission (SEC) had charged 110 entities or individuals in crisis-related cases, and won $1.39bn in penalties (Daily telegraph 10th November 2012). Those penalties include a $550mn agreement with Goldman Sachs to settle claims that it misled investors over a mortgage-related security called Abacus 2007-AC1. As part of the settlement, Goldman did not formally admit to the SEC's allegations that it was betting against the underlying bonds marketed to clients in the Abacus deal (Daily Telegraph above). From the foregoing evidence, it can be argued that the accusation that American regulators have been more inclined to impose penalties on foreign-registered financial institutions, while keeping a blind eye on their banks (responsible for triggering the financial crisis in the first place) does not seem to be well founded. A good law needs to be applied uniformly across the board if it is to regulate undesired behaviours and crystallise into norms of customary international law.

The nexus of corporate governance and failure was also underscored in Uganda in the 1990s. Several banks were closed by the Bank of Uganda (Central Bank) because of poor corporate governance procedures – which led to losses of millions of shareholders equity (Sapte, 2002). Cases of greedy executives are many and cannot be confined to one jurisdiction. There is, for instance, an on-going case in the commercial division of the high court in the UK regarding a top employee of a Swiss Bank (UBS), who caused a loss of £1.4bn in reckless investment trading and wiping £2.8bn off the bank's share prices (Daily Mail, 2012). The defendant's (Mr Kweku Adoboli) reckless behaviour was said to have been motivated by greed to maximise bonuses and to enhance his personal status and future promotion prospects within the bank. The evidence adduced against him indicates that he used to fake bookings for meeting non-existent investors, hoodwink colleagues, created false accounts to lie to accounts and risk assessment departments to systematically defraud the bank. There was a culture among top executives at UBS to overlook prudential guidelines in relation to high-risk investments. It needs to be noted that corporate governance procedures are there to safeguard the shareholders equity, the reason why failure to adhere to risk assessment procedures and other prudential guidelines usually paves way for corporate fraud. The behaviour recently demonstrated by executives of failed corporations begs the question: Where are the professional ethics of such corporate executives? It also begs another question whether carrying out background checks on the character of an executive can effectively caution shareholders from the excesses of corporate executives and future corporate failures? Can background checks carried out on executives predict the subsequent behaviours (omissions or inactions) of corporate executives? The limitation which is inherent in background checks on corporate executives is that they are backward looking which does not reflect the fact that people change in response to changes in their individual circumstances. People do not live in the past but in the present, notwithstanding that the past is the cinder of the present. In my view, one cannot plan the future performance of a business based on past records alone but also he/she needs to continuously take into account normative changes such as globalisation to reflect the contemporary environment. The foregoing misgivings cannot discount the fact that character reference checks are essential to caution employers by preventing bad elements from infiltrating into different corporate positions. This presupposes that there is a need for continuous appraisal and monitoring of corporate officers so that corporations are not caught unaware in situations likely to trigger far-reaching consequences. The proactive oversight attitude can also help to prevent any unusual exigencies before they spiral out of hand. For this reason, I do not wholeheartedly embrace the proposition fronted by the HSBC that bank bosses should in the future be subjected to tough screening procedures before they are elevated to higher positions of responsibility (Daily Mail, 2012). The rationale for tough screening checks is to weed out recklessness and egomaniacs and other unsuitable characters from wrecking the banking industry again (Daily Mail above). However, one wonders whether the so-called "tough screening of bank executives" before they are hired or elevated to higher corporate positions can help to weed out ego-maniacs and those suffering from psychological flaws such as excessive greed and poor professional ethics? Under the English law, a director who has been found to be incompetent and responsible for causing losses to the company could be disqualified from holding the directorship office under "the Company Directors Disqualification Act 1986 and the Insolvency Act 1986". These two instruments can be used to disqualify not only directors from holding directorship offices, but they could also be asked to compensate their companies for their directional misconduct. They have also generally raised the standard of probity and competence to which the law requires company directors to conform. As a matter of fact, directors must exercise power of proper purpose bonafide in the interest of the company. This interventionist disposition is an objective test that allows English courts to monitor the director's decision-making process. It is also important to bear in mind the importance of a clear corporate governance structure in fostering the success of corporations.

5. Corporate governance structure

Corporate governance procedures underscore the complimentary relationships of different constituent stakeholders in corporation. The executives of corporations are not necessarily the owners of the company demonstrated by the agency theory. The real owners are the shareholders of the corporations who usually elect the board of directors, and, in turn, hire the managers as their agents to run the day-to-day activities of the company (Wheelen and Hunger, 2004). The agency theory postulates that top managers are, in effect, "hired hands" who more likely are interested in their personal welfare than in that of the shareholders. According to Wheelen and Hunger (2004), the agency theory helped to circumvent two potential problems inherent in the relationships between principals (owners/shareholders) and their agents (top management). The problem inherent in the agency theory may arise when the desires or objectives of agents and the owners' conflict or it is difficult or expensive for the owners to verify what the agent is actually doing. For instance, top executives could be more interested in raising their own salaries and increasing stock dividends than anything else. This problem becomes particularly apparent when the owners and their agents exhibit a different outlook of what constitutes risks and what does not.

There is no doubt that corporations are fundamentally central to the well-being of economies through trade, investment, employment opportunities, international relations and production of goods and services. The manner in which corporations are governed has become an issue of significant importance for investors, employees, creditors and the society (Tarinyeba, 2006). Corporate governance systems vary from one jurisdiction to another but also within a specific jurisdiction, overlapping features may be apparent (Gilson, 2007). Corporate governance systems are market-oriented or bank-based systems such as the USA and the UK. Typically, corporate governance systems in these countries have dispersed share ownership structures coupled with strong legal rules for minority shareholder protection and adequate enforcement mechanisms. Bank-based systems, on the other hand, have concentrated share ownership structures, weak capital markets and the bulk of corporate finance provided by banks. Germany has for a long time been singled out as a typical bank-based system (Jeremy *et al.*, 2000).

Legal rules and enforcement institutions are critical factors in fostering an environment of good corporate governance. These are important interfaces to ensure enforcement of engendered rules and principles. These rules vary from those relating to investor protection, standards of information disclosure, director's duties, shareholder rights and voting procedures. It is also important to devise other mechanisms and safeguards such as the threat of takeover to deter managers from conducting themselves in a manner that is detrimental to the interests of the shareholders (La Porta *et al.*, 1998; Wheelen and Hunger, 2004).

In the UK, there is a culture of enforcement of legal rules for shareholders protection. There is a market-based corporate governance system, where the principal source of external financing for corporations is the capital markets (Moore, 2010). In contrast, many countries have not had the corporate governance systems evolved along the USA and the UK trends. Thus, they have concentrated share ownership structures, and, in some cases, formal mechanisms of control are usually inadequate to protect the rights of the various stakeholders in the company (Boehmer, 2002). Even though formal corporate governance mechanisms are considered to supersede informal mechanisms, the role played by informal mechanisms cannot be completely ignored. They may sometimes play a more normative role than formal mechanisms, especially where there is a culture of not enforcing corporate law (Tarinyeba, 2006).

6. Corporate governance systems

Corporate governance involves both external and internal mechanisms designed to reduce agency costs (Wankel, 2009). The basic questions of corporate governance are in relation to distribution of power, benefit and the issue of corporate accountability. Corporate accountability is needed to address questions such as:

- *Q1*. Who controls the mission and actions of an organisation?
- *Q2*. Who is held accountable for the consequences of an organisation's actions or omissions (Nicholson, 1998)?

The internal corporate governance mechanisms are crucial in streamlining the relationships between various participants in an organisation such as controlling and minority shareholders and their relationship with the board. The external mechanisms, on the other hand, govern relationships between insiders and outsiders (the environment in which the corporation operates), such as investors, creditors and society in general (Wankel, 2009).

Corporate governance mechanisms are designed to ensure the following:

- the transparency and accountability of corporate managers;
- the independence of the board of directors from controlling shareholders; and
- the fair and the equitable treatment of shareholders (OECD, 2004).

The providers of capital, both debt and equity, may not necessarily form part of the management of a corporation and could lose their investment in the absence of adequate measures to protect them. Such measures ensure adequate and timely flow of information, especially financial information relating to the performance of the corporation. In addition, mechanisms to prevent managers and controllers from extracting private benefits of control from the corporation through self-dealing and to prevent majority or controlling shareholders from oppressing minority shareholders must exist. Mechanisms that encourage managers to work in the best interest of stakeholders must also be instituted. These are usually referred to as "bonding mechanisms", such as executive and board compensation schemes (Jensen and Smith, 2005; Wheelen and Hunger, 2004).

Most of the features of corporate governance systems have been incorporated into the principles on corporate governance and enacted in the code of Best Practice across jurisdictions such as the USA, the UK, Uganda and Kenya, among others (Tarinyeba, 2006). Most of these guidelines may not be enforceable; they are regulatory guidelines relating to structures and processes that companies may use to foster predetermined corporate objectives. In some jurisdictions, such as the UK, an attempt has been made to make them enforceable, for instance, by requiring listed companies to report on compliance with the code of Best Practice (Cheffins, 1999). The code of corporate governance principles provide guidelines on matters relating to the Code of Best Practices and Conduct (2002)[11]. To understand corporate governance systems, it is important to first examine the corporate structure through which many organisations are governed. The structure is constituted of the board, shareholders and employees, with each of these constituencies performing distinct roles.

6.1 The board of directors

The board of directors constitutes a group of people elected by the shareholders of a corporation to oversee the management of the corporation (Dine, 2005). In so doing, the shareholder have ultimate powers to control their investments (Wankel, 2009). The composition, size and structure of the board, method of appointment, policies on remuneration and self-dealing transactions, all have a direct influence on the kind of corporate governance system (Monks and Minnow, 1995). The five responsibilities for the board of directors are:

(1) Corporate governance framework is used to articulate an effective corporate strategy, overall direction, mission or vision of the organisation. Meanwhile, the non-executive directors must assure that the proposed strategy is credible and will generate returns to the Organisation (Keenan, 2004).

(2) It presides over the hiring and firing of the CEO and top management. This means that the board is responsible for assembling a competent team that will deliver the objectives of the organisation, even if it means taking radical steps to get the job done.
(3) The board controls, monitors and supervises top management to ensure assignments are properly performed and in a manner that compromise corporate objectives.
(4) The board reviews and approves the use of corporate resources – both human and physical. It is the responsibility of the non-executive directors to nominate a committee that considers and reviews the development plan for key managers, ensuring that salaries and compensation schemes are sufficient to attract and retain the desired skilled talents in an organisation (Keenan, 2004).
(5) It must always take into account in discharging its varied responsibilities the interests of shareholders – both institutional and non-institutional.

6.2 One-tier structure

- The board of a corporation is responsible for devising the sound management in which the company is governed. The corporate governance structure should enable the board to meet regularly and to closely monitor the performance of management. It should establish and communicate the strategic course of the firm.
- The board should include outside directors who are highly qualified and experienced for the position. They should be of a sufficient number and suitably independent to exercise objective oversight over management.
- The members of the board are responsible and accountable to the AGM. Their tenure, which should be set for a limited number of years, with the possibility for renewal, should be approved by the AGM.

6.3 Two-tier structure

- In a two-tier system, the principles under (1) above apply to the management board or the supervisory board, subject to the statutory provisions for the separation of their powers and for employee representation, if any.
- The board has the duty to present the company's accounts in a balanced and understandable way to the shareholders for approval. All information given to the market must be provided in a way that respects equal treatment of all shareholders. The board should report the strategy and the investment decisions of the firm in the annual report.

Perhaps it also needs to be noted that the role and responsibilities of the board may vary depending on individual jurisdictions. Different jurisdictions might operate different legal rules and procedures in relation to the role of the board of directors and other corporate officers.

7. The responsibility of individual directors

- There is a duty of loyalty, expressed by placing the organisation's interests above personal interests and avoiding conflicts of interest.
- The duty of care is manifested by the need to act prudently and in good faith, bearing in mind the organisation's best interests (Nicholson, 1998).

The UK's Financial Reporting Council set up its Combined Code on Corporate Governance in 2003 (ACCA, 2008). The code sets out its own view of the role of the board of directors: provide entrepreneurial leadership; set strategy; ensure human and financial resources are available to achieve objectives; review management performance; set the company's values and standards; and satisfy themselves as to the integrity of financial information and robustness of financial controls and risk management. The code also describes the role of chairman of the board of directors: the chairman leads the board, ensures there is a good relationship between the executive and non-executive directors and bears primary responsibility for communications and liaison with shareholders. The code further stipulates that the roles of chairman and chief executive should not be held by the same person. The chief executive is responsible for the day-to-day management of the company and carries out the decisions of the board. The code also requires there to be a balance between the number of executive and non-executive directors so that no individual or small group can dominate the board's decision-making (Financial Reporting Council, 2008).

There are three classes of directorship in the majority of corporations – non-executive directors (Neds), independent (shadow) directors and executive directors (Dine, 2005). Independent non-executive directors are free from any connection with the company and therefore are independent as far as their opinions and behaviours are concerned (Wankel, 2009). Directors can also be characterised by their level of involvement in strategic management issues commonly refereed to as "Board of Directors Continuum". There is a common law duty for a director of a company to act in accordance with the company's constitution and within the parameters of the powers given. Any action taken beyond the prescribed powers is void unless approved by shareholders in the general meeting (*Hogg* v. *Crompton*, 1967). This means that any reckless decisions taken by directors in the name of the company could be treated as personal decisions where the respective director has acted outside the scope of his/her prescribed powers. This would render the respective directors personally liable for any losses incurred by the company. The former executive of HBOS was fined £500,000 and banned from the industry for life for his part in the bank's downfall in 2010 (Daily Mail, 2012). Section 174 of the Companies Act (2006) in the UK requires directors of companies to exercise reasonable care, skills and diligence in discharging their duties. This duty is underpinned by two important factors:

(1) the general knowledge, skills and experience that could reasonably be expected of a director; and

(2) actual knowledge, skills and experience of the respective director (ACCA, 2009).

Therefore, even though directors of failed corporations tend to counter-argue that they were acting in the best interests of the company, they are required to demonstrate due diligence, care and requisite skills before they are let off.

7.1 Shareholders

Internal corporate governance in an organisation should be devised with mechanisms to ensure that there is a fair and equitable treatment of shareholders – minority and majority shareholders. The board of directors must ensure that there are adequate mechanisms in place to protect and facilitate the exercise of shareholder rights, such as secure methods of ownership registration, transfer of shares, the right to vote including voting by proxy and the right to share in the profits of the company (OECD, 2004; CACG, 1999), as well as the right to obtain accurate and timely information about the company. Shareholders in some jurisdictions have developed an active way of protecting their investment so that they realise their expectations in terms of profits. This is termed as "shareholder activism". Shareholder activism is the proactive attempt by equity investors, usually institutional shareholders such as large financial institutions, to change some aspect of organisation behaviour or governance as an alternative to just selling their shares (Gillan and Starks, 2000). Shareholder activism arises often due to the conflict of interests between shareholders and managers – exhibiting different outlooks on the perception of what are in the best interest of company (Gillan and Starks, 2000). Thus, large shareholders – both individual and institutional – have been motivated to participate in influencing the company's strategic direction. As shareholders continue to lose their equity due to recklessness of corporate executives, they will continue to take a more active role in corporate governance.

While the goals of activist shareholders vary, they primarily revolve around monitoring and attempting to bring about desired changes within firms believed to be pursuing goals that are not geared towards shareholder wealth maximisation. In other words, shareholder activism is meant to counteract the principal–agent relationship arising from the separation of powers (Black, 1998). Shareholder activism can take any number of forms, but typically includes proxy battles, publicity campaigns, shareholder resolutions, litigation and negotiations with management (Tirole, 2006). Shareholder monitoring and attempts to bring about normative changes in the company's corporate governance structure – perceived to pursue shareholders equity maximisation goals. The proxy process has provided shareholders with a formal mechanism through which concerns of corporate governance and performance can be raised (Stuart, 2000). Due to failure of corporate governance and the loss of shareholders equity, shareholders, especially institutional shareholders, have abandoned a passive traditional to take a more active role in corporate governance issues (Monks and Minnow, 1995).

In the wake of recent corporate failures (scandals), some shareholders have brought resolutions in companies such as the Goldman Sachs to challenge the bank's executive-pay policies (Economist magazine, 2012). The reckless behaviours of many corporate executives has also instigated the need for reforms (in some jurisdictions such as USA), to subject the pay of every senior executive of an American public company to a shareholder vote. The proposed reforms point to the need that all reward for long-term performance should be tied to performance of executive directors, that is, whether firms are satisfied with the services of the respective executives or not. More than 75 per cent of chief executives are said to have "golden parachute" severance deals worth at least twice their annual pay, regardless of their performance in failed companies. The dilution of shareholders powers is partly blamed for the increasing recklessness of corporate executives and subsequent failures of corporations in many jurisdictions.

Experience from the UK (which introduced say-on-pay in 2002) suggests that American shareholders can expect more improvements in the responsiveness of executives. While few pay packages have been voted down by shareholders, it is now routine for British executives to consult investors on pay policy long before it goes to a vote. This has created a much better working environment between managers and shareholders. Corporate executives in USA are, however, less inclined to this relationship. This has been manifested in this year's American shareholder voting: resolutions pressing companies to disclose their political donations. Such resolutions have proliferated since a Supreme Court decision last year to overturn restrictions on corporate political spending. Citigroup's bosses, for example, have opposed a motion from some shareholders calling on them to disclose the bank's donations (Economist Magazine supra).

Although some conspicuous improvements have been demonstrated in the UK, institutional shareholders are urged to do more to hold company executives to account. The "FairPensions", a lobby group, has recently issued a report calling for tightening of the fiduciary-responsibility law for pension funds, insurers and other big investors who manage people's money. The group wants to force these to play a fuller role in corporate governance and to disclose how they vote their shares. A similar change is said to be underway in America, including within the SEC (Economist magazine).

Further reforms would be welcomed to keep entrenched managers in some firms on tenterhooks to make sure that they deliver services in the interests of shareholders and not theirs. It is anticipated that the say-on-pay and other recent reforms to corporate governance would give shareholders powers on previously "untouchable" corporate executives. These reforms are proposed to make sure that there is a streamlined mechanism of disclosures and transparency in the way corporations are managed.

7.2 Disclosure and transparency

Transparency involves presenting an elaborate degree of clarity, openness, measurability and verifiability of information from the corporation to all the stakeholders. This is the based on agency and legitimacy theories, whereby an appointed agent needs to demonstrate that they have exercised due discretion in the execution of the principal's best interests (Nobes and Parker, 2002).

Disclosure and transparency are the key underpinnings of corporate governance, as they enable investors to make informed decisions and scrutinise companies more thoroughly (Dine, 2006). But these tools also contribute to efficient working of the market economy by increasing investors' confidence. Most guidelines such as those enunciated by the Cadbury Committee on the Code of Best Practice (2003) provide for minimum standards of information disclosure to the board as well as outside investors. The availability of accurate and timely information about the company is a key investor protection mechanism, especially in relation to material information such as financial information. Transparency and Disclosure underpin many corporate governance systems around the world to protect business from the indisputable temptation of corporate insiders to loot business treasuries, a phenomenon that often goes undetected. Disclosure is a way to protect investors and shareholders against self-dealing the use of corporate assets for personal gain (USA Securities and Exchange Commission, 2010). The ability to "follow the money", or construct an "audit trail", is the first defence against system irregularities and can have an impact on good governance. Therefore, disclosure acts as a preventive mechanism and builds confidence in all stakeholders (Wankel, 2009).

7.3 Investor confidence

Until recently, corporate governance was not a major concern in the majority of developed economies because of existence of strong legal frameworks – which ensure adequate measures for the protection of shareholders and adequate disclosure standards, as well as the market discipline imposed on corporate insiders by capital markets, labour, products markets and market corporate controls. Following the wave of corporate scandals, especially in the USA, investor confidence needed to be rebuilt; hence, the increased focus on corporate governance, as well as shift from market regulation towards an increased government oriented regulation to corporate activities. The Sarbanes–Oxley Act (Pub. Law No. 107-204, 15 U.S.C.), for example, was enacted in response to corporate failures such as Enron; its aims was to improve corporate governance and restore investor confidence (Romano, 2000). Therefore, managers of corporations are witnessing a new regulatory regime characterised by rigorous corporate governance standards to ensure increasing transparency, disclosure, accountability and effective board performance.

7.4 Enhanced corporate performance

In all countries, institutions of corporate governance are utilised to foster two overriding functions: to enhance performance and to ensure conformance of corporations to corporate rules and high ethical standards. Corporate governance facilitates and stimulates the performance of corporations by creating and maintaining a business environment that motivate managers and entrepreneurs to maximise an organisation's operational efficiency, returns on investment and long-term productivity growth. Furthermore, corporate governance institutions ensure corporate conformance with investors' and society's interests and expectations by limiting the abuse of power, the siphoning of assets, the moral hazard and the significant waste of corporate controlled resources. It revealed deficiencies in corporate management with regard to oversight of executive officers, lack of clear internal controls and weak regulatory policies. Thus, there was an apparent need to monitor and scrutinise the executive officer's behaviour to ensure corporate accountability and provide cost-effective protection of investors' and society's interests instead of corporate insiders (Charles Oman).

A healthy and competitive corporate sector is a fundamental factor behind the success of economies and markets (Levitt, 1999). Countries are beginning to acknowledge that just as public governance is an important facet for the public sector, corporate governance is important for the private sector. Countries also realise that good governance of corporations is a source of competitive advantage and, therefore, critical to economic and social progress. This is not only for purposes of attracting foreign capital but also to broaden and deepen local capital markets as well by attracting local investors. If local markets are to grow, corporate governance standards must be improved to give investors confidence and to encourage them to provide capital (Carlin and Mayer, 2000).

8. Corporate governance model guidelines in the UK

The corporate governance system in the UK ascribes great responsibility to the board of directors but holds them accountable to shareholders. Corporate governance system in the UK has evolved through rules, ethics and procedures – both statutory and ethical. This framework creates guidelines but also provides sanctions against executives, if they are found to have infringed corporate rules and procedures. This framework is condensed in Tables I-VIII.

It needs to be noted that the ability of a country to harness laws (including corporate governance rules and systems) depends on the prevailing legal and, to some extent, its policy regulatory environment. Not surprisingly then is that the legal environment in Uganda (as in other less-developed economies) is characterised by a less robust legal system compared to developed countries (Mugarura, 2012). As a result, the implementation of normative regimes including corporate governance regimes has been undermined by a weak regulatory environment nationally. The laws governing corporate governance systems in Uganda are generally slack due to the foregoing environment. Some of the operative laws antiquated and not properly suited to her contemporary economic and social challenges. For instance, companies are incorporated and regulated under the Companies Act (1948) of the laws of Uganda – a re-enactment of the English Companies Act 1948[12]. This law has now been replaced by the "Uganda Companies Act", 1961 (Uganda Law reform commission). Uganda,

	Compliance requirements	Penalties
Law	The law must always be obeyed	Penalties for infringement of the law may be civil or criminal. Civil remedies may allow the company to recover funds from directors who breach their legal obligations. A fine and/or imprisonment might result from certain criminal infringements
Corporate governance	The stock exchange rules require listed companies to comply with the Combined Code 2003 (see below) If a listed company does not comply, it must specify the provisions with which it has not complied, and give reasons for its non-compliance. Unlisted companies are under no obligations to comply, although it is considered Best Practice to do so	There are no formal penalties for non-compliance. However, the company may suffer loss of reputation and receive bad publicity
Ethics	It is said that ethics begin where the law ends. If an action is legal, individuals generally have freedom of choice as to their conduct. However, good ethical behaviour may be above what is demanded by the law. Accountants and solicitors are expected to follow the code of ethics published by their respective professional body	An individual who behaves unethically may suffer loss of reputation, dismissal from their job and sanctions may possibly be imposed by their professional body including being struck off

Note: The history of corporate governance in the UK
Source: Adopted from the ACCA (2009)

Table I.
Manual handbook

Table II. The Cadbury committee

	The UK corporate governance framework
Set up in May 1991	The Financial Reporting Council (FRC), the London stock exchange and the accountancy profession
Objective	To help raise the standards of corporate governance and the level of confidence in financial reporting and auditing by setting out clearly the respective responsibilities of those involved and what was expected of them
Publication	A code of Best Practice (1992) was designed to achieve the necessary high standards of corporate behaviour
Recommended	It is desirable to separate the role of chief executive and chairman The board should include sufficient non-executive directors for their views to carry significant weight An audit committee should be appointed to review the financial statements before their submission to the full board A remuneration committee consisting wholly or mainly of non-executive directors should set remuneration of executive directors The imposition of a three-year maximum term on executive directors' service contracts
Outcome	The stock exchange required all listed companies to state whether they had complied with the code and to give reasons for any areas of non-compliance. It also required the company's statement of compliance to be reviewed by the auditors before publication

Table III. The Greenbury report

	The UK corporate governance framework
	The CBI was set up in 1995
Objective	To draw up guidelines on directors' remuneration which was perceived to be excessive and did not seem to be linked to the company's performance
Publication	A Code of Best Practice in determining and accounting for directors' remuneration
Outcome	All listed companies registered in the UK were required to comply with the Code. Their annual reports had to include a statement about their directors' remuneration. Any areas of non-compliance had to be explained and justified

Table IV. The Hampel report

	The UK corporate governance framework
Issued	January 1998
Objective	To restrict the regulatory burden facing companies and substitute broad principles (rather than detailed regulations) where practicable
Summary	A board must not approach the various corporate governance requirements in a compliance mentality: the so-called "tick-box" approach. Good corporate governance is not achieved by the substance as well as the letter of all Best Practice pronouncements
Outcome	After publishing its report, the Hampel Committee drew up a sing Combined Code of Best Practice, incorporating the Cadbury, Greenbury and Hampel recommendations

	The UK corporate governance framework
Objective	To combine the accepted principles and Best Practice guidelines of Cadbury, Greenbury and Hampel into a single code
Outcome	The stock exchange listing rules require a listed company in the UK to include the following in its annual report and accounts: A narrative statement of how it has applied the principles set out in the Combined Code, providing explanation which enables its shareholders to evaluate how the principles have been applied A statement as to whether or not it has complied throughout the accounting period with the Combined Code provisions. If it has not complied, it must specify the provisions with which it has not complied, and give reasons for any non-compliance. This approach to compliance is known as "comply or explain"

Table V. The 1998 combined code

	The UK corporate governance framework
Issued	In 1999 by the ICAEW
Objective	To give additional guidance to listed companies on how to implement the provisions of the Combined Code dealing with internal control
Summary	The board should look forward and not just consider past performance. Companies should keep their shareholders informed about risks. Directors should be aware that the company must continually adapt to its changing environment Risks should be reviewed regularly
Outcome	The Turnball guidance is appended to the 2003 Combined Code

Table VI. The Turnbull report

	The UK corporate governance framework
Issued	2003
Objective	To develop guidelines for making non-executive directors more effective
Outcome	Most of the reports recommendations were either written into the 2003 Combined Code or included in the Best Practice guidelines that are appended to it

Table VII. The Higgs report

	The UK corporate governance framework
Issued	2003
Objective	To give guidance to company boards in making suitable arrangements for their audit committees and to assist directors serving on audit committees in carrying out their role
Outcome	The reports' recommendations are appended to the 2003 Combined Code

Table VIII. The Smith report

then being a British protectorate, was governed by the laws passed by the British Parliament at Westminster but re-enacted through the Ugandan National Parliament as a matter of procedure. This Companies Act (1961) creates a distinction between private limited liability companies and public limited companies. It provides the framework for different types of companies to operate. For instance, a corporate organisation formed by seven or more persons will be a private limited company; a company formed by any two or more persons will be a private company. Only a few companies incorporated in Uganda are registered as public limited liability companies. The majority of companies in Uganda are private limited liability companies which have an upper limit of 50 members and are not allowed to raise capital through public offerings.

Companies which are incorporated in Uganda such as banks are governed by the Memorandum of Association (Company's Act, 1961) and Articles of Association as stipulated by this same Act. The former provides for the framework of establishing a company with regard to its objectives, capital structure and physical location. The foregoing framework articulates the relationship between different constituent stakeholders in a corporation, but also provides mechanisms pertaining to conducting meetings, quorum, notices for meetings and payment of dividends. The power to execute the day-to-day business of a company is vested with the board of directors. The directors are appointed by shareholders at an annual general meeting and are responsible for giving strategic direction to the company, hiring senior management, monitoring the activities of the company, ensuring compliance with laws and regulations and overall management through board decisions and meetings.

8.1 Corporate governance issues in some companies in Uganda

A typical Ugandan public limited liability company is constituted with the provisions to be governed by both executive and non-executive directors. The traditional role of non-executive directors is to monitor full-time executives and to ensure that the objectivity and independence doctrines required under the Companies Act are adhered to. The Ugandan Companies Act 1961 stipulates a requirement for a particular number of directors to be either executive or non-executive directors. However the corporate governance guidelines recommend the appointment of a non-executive director as a matter of good practice, but not binding on the companies. Thus, the structure of ownership and control of public companies in Uganda is characterised by the existence of controlling shareholders – who wield excessive powers. The majority of companies have a controlling shareholder which is a characteristic of jurisdictions with weak legal systems and dictatorship (La Porta *et al.*, 1999); the lack of adequate investor protection laws to regulate issues such as information disclosure; to foster shareholder access to the ballot; and enforcement of fiduciary duties inhibits the use of equity finance. Majority of controlling shareholders are individuals rather than institutions contrary to the position proposed by the Combined Code (2003) in the UK. In the majority of less-developed countries, there are weak legal systems to provide adequate safeguard for various constituent participants. For example, there are very weak sanctions regimes available in Uganda against corporations which flout regulatory standards or procedures. The penalties for non-compliance with regulatory standards are too minimal to have any deterrent effect. For instance, the penalty for failure to file an annual return is a daily fine, equivalent of US$0.05, US$1.0 for failure to hold an annual general meeting and a 12-month imprisonment term for failure to keep proper books of accounts and audits all required by law. Another common challenge is that due to lack of resources and widespread corruption, laws generally and corporate laws specifically are difficult to enforce by law enforcement authorities. In both the foregoing sanctions regimes, rules would have been enacted to protect executives who, on many occasions, are either wives or relatives of politicians who enact the laws. This issue was highlighted by the failure of corporate governance in Enron. It transpired that the board members had a significant relationship with executive and politicians who were also shareholders. This is said to have contributed to the failure to more proactive in the administration of effective oversight procedures (Peter Grosvenor Munzing, 2003).

It can also be inferred from the foregoing scenario that the legal system in Uganda is very slow given that corporate governance framework is based on an antiquated colonial law of Companies Act (1961). A good law must reflect changes in the society and many changes would have taken place since the foregoing Act was first enacted and those changes should always be reflected and applied in the governing law.

8.2 Contrasting Mobile Telephone Network Uganda and defunct Bank of Credit and Commerce International in UK: the transnational context

This section contrasts corporate governance experiences in Uganda and in the UK in the purview of two corporations – a South Africa Mobile Telephone Network (MTN) based in Uganda and the defunct Bank of Credit and Commerce International (BCCI) (1991) in the UK[13]. MTN correlates good corporate governance and corporate success, while BCCI correlates how failure of corporate governance can trigger a range of catastrophic consequences in a corporation. While the BCCI is seemingly superseded by most recent corporate governance scandals, it is still unique and worthy of exploration on issues of corporate success and failure.

The MTN Uganda is a subsidiary of the MTN Group (South Africa) and is effectively controlled through a series of external investment companies, which hold 97 per cent of its share capital. These companies are MTN International (Mauritius), Telia Overseas (Sweden) and Tri-Star Rwanda[14]. In this company, the board of directors and senior management are custodians of the company which is one of the largest companies in Uganda. The board is responsible for formulating strategic plans, monitoring operational performance and determining policies and processes to ensure integrity of the company's risk management systems among other duties. In keeping with its vision and strategy, MTN Uganda Limited subscribes to the principles contained in the Code of Corporate practices and conduct recommended by King II and complies with other legislative requirements. The oversight role of the board's work is done by evaluation committees (King II, King Committee on Corporate Governance, 2002). Evaluation committees are charged with the following responsibilities:

- an assessment of the performance of board members; and
- an assessment of the performance of board committees and an evaluation of their terms of reference.

8.3 Delegation of duties and risk management procedures

The tradition in management is that duties and powers can temporarily be delegated but the responsibilities have got to be retained. The board retains effective control with the help of a well-developed governance structure of board committees that specialise in specific areas of the business. Certain authorities are delegated to the CEO to manage the day-to-day business affairs of the company. The delegation of authority is reviewed periodically to ensure it remains aligned and relevant in relation to the rapid growth of the Company.

8.4 Governance structure in Mobile Telephone Network

The interview conducted with the CEO of MTN Uganda revealed the following findings. These findings were also corroborated by some of the data we were given access to in the course of carrying out this study. The interview was conducted focusing specifically on three aspects – management, audit function and employees satisfaction – in the organisation. The first two of three of these aspects are part of the corporate governance structure and the last one (employees) was used as a reflection of this structure on employee satisfaction.

The board of directors at MTN Uganda performs its duties through committees of experts, which comprise non-executive directors. The MTN also has executive directors, steering committee and the tender committee (chaired by an independent non-executive chairman). These committees are primarily operational in nature, comprising senior management. There is full disclosure and transparency from these committees to the board. Each committee's authority and the manner of discharging its responsibilities are directed by a mandate:

- audit committee (Audit);
- risk management and compliance committee (Risk);
- nomination, remuneration, human resources and corporate governance committee (NRHR & CG);
- tender committee (Tender); and
- executive and steering committee (Exco).

This structure is largely replicated in MTN subsidiaries and associates. In the smaller entities, the audit committee additionally assumes the responsibilities of the risk management and compliance committee.

8.4.1 An insight into human resource practices. The impact of MTN Uganda on the labour market cannot be underestimated. In addition to its direct employees, MTN Uganda outsources some work on information technology, switching systems and fibre optic cable installation in Kampala. Thus, it also creates employment opportunities indirectly through its franchise system or as providers of ancillary services such as the sale of mobile phones and accessories, phone repairs, advertising and events promotions and many other less obvious businesses.

MTN Uganda is one of the best employers for graduates, partly because of its wide market share in the country, relatively better remuneration; but, we should not forget that there is a high level of unemployment in Uganda and lack of industries to provide alternative employment opportunities. In Uganda, the per capita income averages US$215 per year; MTN Uganda pays yearly salaries which range from US$5000 for support staff to more than US$25,000 for managers (interview generated). This pay structure, coupled with the growing local significance of the company, has attracted some of the best skilled talents in Uganda. MTN employment policy is fairly diverse, designed to represent different ethnic groups for vacancies that require particular language skills and regional knowledge.

To foster a sense of corporate family and belonging, social functions are organised regularly, and free SIM phone cards are provided to spouses of employees. This is an incentive which has been found to have a positive correlation with corporate performance and employee satisfaction (McDonald, 2003). However, the most significant tensions are a result of an organisational culture that remains entrenched in the apartheid system of the South African expatriate staffs who own the company (highlighted by local employees view on management on disparities in relation to varying pay scales). Local employees see expatriates as domineering, protecting an investment in a risky area from corrupt locals, including politicians as well as employees. While the company operates an open-door policy through letter writing to the CEO, there are no regular staff meeting to thrash out creeping differences and concerns of employees. This has precipitated an environment of accusation, counter-accusations and workplace manoeuvring. In terms of corporate governance, the foregoing challenge is likely to undermine transparency as key facet of good corporate governance ion an organisation.

8.4.2 The employee's factor and corporate governance at MTN Uganda. The MTN Uganda management makes corporate governance issues a responsibility of every employee by sensitising employees against unpalatable behaviour and by asking them to desist from corrupt practices and to observe the strict conduct codes the company has developed as part of its transparency procedures.

The views of employees are solicited as an input towards policy-making through a "letter to the CEO"; and the company also has an "open-door policy" through which employees can raise governance issues directly with senior management. However, this has been criticised as a façade as many of the employees concerns are said not to be properly addressed despite the organisation operating an open door access to the CEO policy[15]. The general staff meetings are said to take place after two years, hence making their input scant. There is apathy and a "culture of silence" for fear that over-utilization of the open-door policy by employees could imperil their jobs.

8.4.3 The audit function. The company has a very proactive audit department, circumscribing the business of the company. The auditing function of the organisation should be proactive where possible involving employees for effective information disclosure. There should be an internal monitoring committees of experts whose advice is based on the need to foster management (McDonald, 2003). This will greatly improve the level of trust in the process.

The monitoring committees should provide assurance and advice on good management practices and ensure corporate governance processes are correctly evaluated and reviews carried out with management and departments of the organisation. Adopting a more open approach in formulation of policies helps facilitate corporate accountability and transparency and fosters corporate success (KPMG, 2000; Lindow and Race, 2002).

The global economy has complicated dynamics encompassing a wide range of legal, market, political and policy issues. But equally, global processes are sustained by the ability of companies to establish in different jurisdictions. For market economy to function properly based on the ability to attract foreign capital, national legal systems will have to be adjusted to create an attractive environment for investors. Making investment decisions entails taking into consideration a wide range of other factors not least whether there is a stable political and economic environment to guarantee the security of their investments. There is also a need for changes in property rights (in relation to issues such as land ownership), rights of shareholders (owners) of companies in countries where they have invested. The stability of the legal system will not only include the constitution and laws (such as immigration[16], tax laws, etc.) but also accounting systems and regulations governing the official listing of securities on the stock exchange (Norman Mugarura (2010). The corporate governance structures of a country are very important indicators of the credibility of the economy as a whole and of the financial market system in particular.

Furthermore, the modern globalisation dynamics such as improved technological environment has made the corporate governance system a global phenomenon. Interlocking directorates and multinational board membership are facets of modern multinational companies. Thus, the corporate governance mechanisms have become an imperative in streamlining the relationship between different constituent parties in an organisation in this global environment (Johnston, 2004). Good corporate governance matters are more emphasised by investors in jurisdictions with a weak legal system as mechanisms to protect shareholders' rights. However, it needs to be noted that however robust an organisation is, in terms of its good corporate governance structure, in the contemporary era, its fate might also be dictated by external influences such as the global factors. This has been manifested recently, whereby economic troubles in the US economy have come to have a direct bearing on operations and stability of corporation in the UK and beyond.

As noted earlier, the failure of the corporate governance systems in one country can potentially trigger catastrophic consequences not only in one jurisdiction but also in others. It is now common knowledge that with globalisation, crises generated from one place can be easily transmitted through the global system to infest healthy economies. It also needs to be noted that failure of corporate governance can also create an environment for scoundrels to exploit those predicaments to their advantage. Criminals can also easily exploit the foregoing weaknesses to invest dirty money into the system with ease (Ryder, 2008). For instance, the banking scandals in 1990s had far-reaching consequences for jurisdictions beyond where they were committed. These scandals were highlighted by the failure of Barings Bank and the Mexican Bank's involvement in laundering illicit proceeds of drug trafficking. There was also the Bank of New York's alleged involvement in laundering for the Russian Mafia, and obviously the highly cited case of the BCCI. In some of the foregoing cases, the board was either complicit to corporate fraud or the auditors were compromised and were able to provide their functions to those failed organisations. The global factor has also been manifested by a relaxed culture spurred by a less hands-on approach to let markets have an upper hand. For instance, since the adoption of the Drug Trafficking Offences Act (DTOA), there was a lax culture of ignoring to prosecute money laundering in the financial sector. The downside is that criminals would have studied the system to identify any loopholes to exploit. This is particularly so at the placement stage of money laundering when illicit proceeds of crime first "splash" into the system. Thus, the BCCI scandal demonstrates how criminals can masquerade themselves as the much-sought investors to consolidate their criminal enterprises using a liberal market system as a cloak. The global structure of the BCCI was manipulated to ensure that illegal operations of the bank remained beyond the scope of supervisors and regulators. The above case is also important to demonstrate how poorly supervised bank establishments can be infiltrated and exploited for criminal purposes.

The BCCI scandals demonstrated the extent to which corporate governance failure can trigger challenges to destabilise the wider economy. It can also have far-reaching consequences for shareholders, executives, employees and governments (Bosworth-

Davies (1997). The BCCI was a global bank, made up of multiplying layers of entities, related to one another through an impenetrable series of holding companies, affiliates, subsidiaries, banks-within-banks, insider dealings and shareholder (nominee) relationships. With this corporate structure of the BCCI and shoddy record-keeping, regulatory review and audits, the complex BCCI family of entities created was able to evade ordinary legal restrictions on the movement of capital and goods as a matter of daily practice and routine. Because the BCCI operated fundamentally without clear government oversight, it provided an ideal mechanism to facilitate illicit activity by others, including activities of many governments' officials whose laws BCCI was breaking (Bosworth-Davies, 1997).

The BCCI was established in 1972[17]by a group of bankers from Pakistan, with financial and technical support from America and major investment by the ruler of Abu Dhabi and the wealth of citizens of Saudi Arabia. It was said that, by 1990, it had stated assets of US$20bn, spread in over 70 countries and was the largest private bank in the world. By this time, the bank had split into two companies with BCC FA based in Luxembourg and BCCI Overseas based in the Cayman Islands under the Luxembourg holding company BCCI Holdings. The object of this structure was to avoid supervisors' scrutiny by fragmenting itself into obscure financial centres, while maintaining a close link with customers who could put large deposits at the bank's disposal (George Walker, 2001).

The most noticeable aspect of corporate governance failure of BCCI was that the supervision of the bank did not fit within the model on which the Basle Committee had focused – that is, the parent bank subject to supervision in one country, with branches and subsidiaries subject to supervision in the host country (Walker, ibid). The BCCI highlighted inherent weakness in the regulation of financial markets in the UK. It is said that financial services legislation in the UK ignored money laundering and regulatory agencies were not given adequate enforcement powers or even clear legislative mandate to deal with money laundering-related exigencies.

Second, the BCCI scandal underscored how criminally minded international bankers could outwit regulators and accountants with national remits. The BCCI, with its Luxembourg registration, London Headquarters, Middle Eastern shareholders and worldwide operations, was regulated by everyone but no-one[18]. It therefore became apparent that the law-enforcement authorities needed to reconstruct the financial trail to prosecute the supposed launderers. The structure of the bank[19](Walker, 1992) and the fact that financial institutions do not always maintain the requisite records of verified customer identification data relating to the parties involved in executing wire transfers, made it difficult to prosecute culprits involved in the BCCI financial abuse conundrum.

Following the US authorities' operation code-named "Operation C-Chase", the accounts of BCCI in Florida and Panama were implicated in the transfer of drug-related sales, while certain BCCI officials had also offered to launder money through other BCCI international offices (Walker, 2001). Bank officers received cash undercover, which they wired to various branches around the world, notably in Europe – London, Paris or Luxembourg. These branches would then issue certificates of deposit in branches nearer home in the Bahamas or Barbados. The traffickers could then take out loans at these branches with the certificate of deposit as collateral and the loans would be repaid from the original deposits by the bank (Walker, 2001). Law-enforcement authorities were faced with the challenge of different legal systems with its attendant procedural approaches of foreign jurisdictions. The legal and regulatory differences also meant that information gathered by businesses and professions in relation to financial transactions that were carried out from country to country could not confidently be utilised to construct the money trail after it had been routed through foreign jurisdictions (Hughes, 1992).The conviction of the bank for money laundering charges further undermined the bank from salvaging its reputation. It added plausibility about it as a dirty bank and created negative public relations for the bank. As such, the BCCI was forced to close its Florida office (Passas, 1996).

In relation to the bank's delinquency in money laundering, the relaxed supervisory environment by the BCCI was vehemently exploited for drug trafficking and using the bank as a conduit to move illicit proceeds about. But also the BCCI as a global bank appeared to solicit close relations with organised criminals[20]. Second, there was a glaring failure on the part of the regulators of the bank to provide adequate supervisory oversights for branches that operated in their jurisdiction but were incorporated in other jurisdictions[21]. The complex global structure of the BCCI was exploited to perpetrate fraud, corruption, insider dealing and money laundering (Kern *et al.*, 2006).The Bank of England argued that it had failed to act earlier than it did under the UK law because it was not the home country supervisor, as the BCCI was wholly owned by a Luxembourg holding company. This seemingly justified the Bank of England's inaction, as it had no responsibility for overseeing BCCI's global activities, which were administered mainly from the London office (*Three Rivers District Council* v. *Governor and Company of the Bank of England* (No. 3) [2000] 2 WLR).

The BCCI's global structure also sheds light on the supervisory challenges faced by transnational operations of financial conglomerates[22]. The segmented corporate structure of the bank ensured that corporate records were spread worldwide and that the regulation and audit trail was fragmented across different jurisdictions, without any single jurisdiction having consolidated access to all the bank's records. To compound the problem, the BCCI ensured that all important documents were kept in jurisdictions that adhered to strict bank secrecy and were thus protected by it (IMF, 2006). The structure of the bank was designed to ensure that bank operations remained beyond the reach of any prosecuting authority or jurisdiction, as lamented by the New York District Attorney, "here you have financial statements, profit and loss filed in Washington, filed in Virginia, filed in Tennessee, filed in New York and audited by auditors who are beyond the reach of law enforcement" (The BCCI Affair, 1992). International financial conglomerates today are providing an array of products and services, including not only the traditional offering of loans and deposits, but also, *inter alia*, insurance, investment services, tax and estate planning. (Pooley, 2003). Modern financial institutions conduct diversified operations across borders to diversify their earnings and enhance profits. The liberalisation of restrictions on capital flows across national borders has also increased international lending and deposit taking. It would seem that adopting a global AML/CFT framework would afford countries an opportunity to prosecute alleged money laundering offences.

9. Conclusion

I presume that this paper has proffered an intelligible analysis of corporate governance issues both at a multilayered level. It provides an exposition of corporate governance issues in a cross-jurisdictional context. The focus has been to explore the role of the board, shareholders and employees and the audit function. The board remains a critical component to the stability and success of corporations. It is the board that presides over important policy decisions to steer the corporation to its predetermined objectives. The board also ensures that employees are sensitised and sanitarised against behaviours capable of being detrimental or undermining corporate success. Because there is a complimentary relationship between different constituent stakeholders in a corporation, the audit committee should be consulted in formulating policy decisions, as it also plays an important role in the implementation of policy decisions. As elucidated in our earlier analysis, prior consultation by executives in MTN in Uganda has been an important factor behind its success. As regards the audit committees, they should be equipped with the mandate to continuously evaluate and contribute towards improvement of corporate systems, group and individual units using a systematic and well-thought-through approaches. The involvement of the audit committees will improve perceptions of diverse stakeholder groups and enhance transparency and accountability of all stakeholders. Similarly, the board should be regularly consulted to foster harmony, objectives and understanding of the mission of the organisation to different stakeholder groups.

While past performance of the company is essential, effective corporate governance systems should internalise the past and present environments (such as globalisation). I very much agree with the dictum that “globalisation has become a fact of life”, and failure of a local corporation could have far-reaching ramifications for the success and failure of other unsuspecting companies farther afield. It can, therefore, be argued that robust corporate governance systems should reflect the internal and external environment in which modern corporations operate. Companies are no longer localised in terms of their needs and management styles. Managerial decisions are no longer influenced only by what happens within the local environment but also by events and developments farther a field. Corporations have become transnational in nature which signifies that they should be governed taking into account both the municipal and foreign laws of where they are registered and of places where the company is located. Therefore, the global environment should be internalised by organisations in formulating their corporate government’s structure and mechanisms.

In my contention, internal corporate policies should be periodically reviewed to reflect changes in environments within which modern corporations operate. Policies, which are not regularly reviewed and updated, are likely to be superseded by changes that no corporation can afford to ignore. The nature of corporate behaviour responsibilities should be documented in the audit charter and approved by the audit committees. Companies should adopt clear a mechanism through which to communicate their objectives and performance targets. Communication and interpersonal skills are important for auditors to be able to discharge their responsibilities, especially of building relationships with the board’s audit committees. To enhance management perception of corporate behaviour value addition, Auditors should be assigned to high-visibility missions and encouraged to play a public role in the organisation. Corporate behaviour audit management should continuously scan the internal and external environment to identify the future needs and resources the organisation requires to compete effectively. Finally, this article has using various examples demonstrated how the success and failure of corporate procedures can play out in promoting or undermining the stability of corporations.

Specific skills training, especially academic degree programmes should focus on developing requisite ethics on corporate governance and regulation of market. There is a need for ethics training of corporate executives so that they are prepared to foster corporate objectives and caution societies against mischievous behaviour of some elements. Corporations are important facets for development and the way they are managed is a matter of government's concern. They create revenues in taxes, jobs for the populace and play a fundamental role in stabilisation of markets. All executives of corporations should undergo specific and tailored ethics-training programmes as part of corporate strategic leadership initiative. In my view, lack of ethics training component in the delivery of many degree programmes is responsible for the raging corruption, fraud, money laundering and other manifestations of corporate failures perpetuated by corporate officers. There is a need for sensitisation of all corporate executives on the importance of good corporate governance not only in the individual companies where they are used but also in their influence on the wider economy. Some executives as demonstrated earlier in the case of Uganda have treated corporate assets as personal by overlooking prudential and important ethical guidelines. This usually happens because executives get to a stage and see themselves (albeit wrongly) as so powerful to literally deal with corporation in any way they choose as if to suggest that they own corporations.

Notes

1. This should not be sensationalised as long as whoever is appointed in a respective office is qualified for it. Besides there is an adage that "success in life is as much about not only what one knows, as the people he knows (contacts)." The fact remains that corruption distorts labour markets by sidelining the forces of demand and supply in job allocations. This can be manifested by a situation where the well-qualified are pushed to the sidelines of the market while elevating cronies and close associates of those in high political positions. This situation was highlighted by the East Asian financial crisis in 1997/8 and as a matter of fact it was said to have been one of the causes of the crisis.
2. Marc T. Moore "International Congress on Comparative Law: National Report on Corporate Governance in United Kingdom, available on Google scholar at www.googlescholar.co.uk (date visited 10th January 2012).
3. The vast majority of formal statutory rules in the UK regarding corporate governance are set out in the Companies Act 2006; and some are based on the governmentally provided Model Articles. The Company Act provides rules in relation to shareholders rights in general meetings, the duties and enforcement of director's duties and minority share shareholders.
4. As a general rule of agency law, principals are responsible for the actions of the agents as long as they act within the delimitations of their prescribed authority.
5. This explains the issue of toxic assets in the USA which came about by careless lending whereby lenders were not able to sell the repossessed assets.
6. HSBC started as a the Hong Kong and Shanghai Banking Corporation in the Far East before its parent company was set in London (UK) in 1991.

7. Kirema 2005.
8. Members of the board were approached directly to approve loans; appointments were based on nepotism and other forms of corruption.
9. There was a tradition of chits literally flying around to circumvent established norms which precipitated an environment of abuse of power.
10. I have already highlighted this issue in relation to the USA, where corporate failure substantially contributed to the financial crisis (2007-2010) witnessed recently.
11. All companies registered in the UK are required to comply with the code as a listing requirement. Smaller companies not able to comply with the code immediately would have to give their reasons of non-compliance as an alternative.
12. The UK model law on which "the Ugandan Company Act 1948" was based been amended four times: in 1985, 1989, 2006 and 2010 to align it with changes in the regulatory environment. Uganda just like any other less developed country should replace outdated laws to ensure that they are aligned to contemporary changes in the society.
13. Much of this information on corporate governance mechanisms operated by MTN in Uganda was generated by our proxies through an interview conducted with management; but also some of their findings corroborated through internet sources.
14. See MTN available at: www.mtn.ug.
15. For instance, there are disparities in the pay structure between top executives and lower-tier staff of MTN even though the company is making billions of profits from their products in Uganda.
16. Asian immigrant (investors) residents in Uganda have recently petitioned the government asking it to streamline its immigration laws in relation to the status of the investors' families and dependents. They argue that children who are born in Uganda and those who have lived in the country for over 20 years should be granted the right to acquire the Ugandan citizenship. Apparently, Asian children born in Uganda – who have never lived in the parents countries of origin are not allowed to acquire Ugandan citizenship and yet have never lived in their parents countries of origin. Asian investors (immigrants) have asked the Ugandan Government enact laws allowing their children, dependents and those who have lived in Uganda for a long time to acquire the Ugandan citizenship. See, the Daily Monitor (daily newspaper in Uganda) of 21/05/2012.
17. It grew to be the largest private bank in the world, expanding from 146 branches in 32 countries to over 400 branches in 73 countries by 1977.
18. The US took unilateral action, amending its International Banking Act 1978 to bolster the Federal Reserves' authority over foreign bank operations. See above *note* 213.
19. The segmented structure ensured that corporate records were spread worldwide and the regulation and audit of the BCCI was fragmented across different jurisdictions without any single jurisdiction having consolidated access to all bank records.
20. In 1988, seven officials of the bank were arrested in Tampa on charges of drug trafficking and money laundering.
21. This occurred in context of the Bank of England's efforts to supervise the London branch operation of BCCI. It had operated for many years with its principal place of business in

London, where it administered a global web of affiliates and holding companies registered in Luxembourg and the Cayman Islands.

22. This term is used to describe multifunctional financial firms that often serve as holding companies for subsidiaries and affiliates which provide a wide range of financial service activities.

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