ENVIRONMENTAL SOCIAL GOVERNANCE; THE NEW AGE OF CORPORATE GOVERNANCE IN GHANA

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ABSTRACT

Corporate governance is a core tenet of a company's existence. This lifelong principle propels the success of companies by ensuring that management is conducted effectively to yield profitability and longevity. Corporate governance is founded on three principles: the relationship between the company and its stockholders, the relationship between the company and its members and the relationship between the company and third parties. The last has merely focused on regulators disregarding society as a relevant third party. With the increasing awareness of global climate change and the emphasis on companies engaging in eco-friendly production, there has been a seismic shift in the traditional concept of corporate governance as society has leveraged accountability and responsibility from corporations. Presently, corporate governance has transcended private profits to include environmental and social factors. This article highlights the concept of environmental and social governance and its implementation in Ghana.

INTRODUCTION.

The corporate governance bandwagon began after the perennial expose of fraudulent corporate schemes. The integration of corporate governance principles was an immediate response to curbing the reckless attitude of over-zealous investors; this era was commonly described in the US as the 'bubble burst'. In a frenzy to prevent further financial losses, laws and policies were developed to focus on minimizing conflict of interest situations which clouded professional judgment. The 20th Century witnessed the emphasis on management principles due to an increase in the target market and the need to realize profits. Management was viewed as a concept which must be studied heralding the publication of literature on this subject. The concept of modern management became crucial after the publication of The Principles of Scientific Management by Frederick Taylor in 1911. Management concepts developed largely from economics and business and evolved over centuries. These concepts focused on organizing large corporate industries into divisions and did not include the board of directors or shareholders in its principles. The 21st Century on the other hand highlighted the lapses in the application of management principles to corporate systems with the Global Financial Crisis supplementing the need for corporate governance and principles tailored to the corporate systems. Though the theoretical aspects of corporate governance are new, its practice has been long evidenced by early merchants and monopolists.

The birth of the corporation was the birth of corporate governance. The French were the first to create a form of corporation which restricted the shareholder's liability. They limited the liability of investors but made directors personally liable for debts. Meanwhile, there was a debate in Britain about whether or not the French module should be adopted. Owing to the need to abolish the creation of companies by the state through charters, the British Companies Act of 1855 and 1862 made a company a legal entity, conferring legal rights of a real person. The company had a life of its own and shareholders were mandated to appoint their directors to stevedore the affairs of the company on their behalf. The outcry for corporate governance began when businessmen ventured into high-risk-taking operations to multiply returns without recourse to sound corporate governance principles that served as guidelines and shock absorbers. Consequently, this neglect led to the collapse of many corporations. Adam Smith, a moral philosopher best encapsulated the need for corporate governance when he stated that "*directors of companies, being managers of other people's money other than their own cannot well be expected to watch over it with the same anxious vigilance with which they* *watch their own*." [1] Corporate power grew extensively when the corporation became the source of economic concentration, increasing the power of corporations and making them at par with the State.

Traces of corporate governance in Ghana relate back to colonial times. Ghana as a British colony inherited rules and regulations mirroring British laws with Ghana's Companies Code 1963 largely based on the English Companies Act 1948. Ghana's economy in the 1980s, 1990s and 2000s highlighted the implementation of corporate governance principles. At present, the Bank of Ghana, Securities and Exchange Commission and Ghana Stock Exchange are a few regulatory bodies which have outlined various corporate governance principles.

On the other hand, Environmental Social Governance ("ESG") factors have fast risen to the top of the board agenda across all sectors with increasing awareness that a failure to address these matters may be detrimental to the finances and reputation of the company. Investor pressure, internal governance and the proliferation of regulatory requirements made it necessary to delineate ESG indicators. This article will look at the development of corporate governance, theories and philosophies on corporate governance, environmental social governance and the implementation of environmental social governance in Ghana.

DEVELOPMENT OF CORPORATE GOVERNANCE

Corporate governance deals with the way power is exercised over corporate entities. It covers the activities of the board and its relationships with the shareholders or members, those managing the enterprise, and with the external auditors, regulators and other legitimate stakeholders.[2] It also refers to the system by which companies are directed and controlled.[3] The Bank of Ghana in its recent Corporate Governance Disclosure Directive defined corporate governance as "*the manner in which the business affairs of a Regulated Financial Institution is governed by its Board and Senior Management, including how its strategy and objectives are set; its risk appetite/tolerance is determined; its day-to-day business is operated; its interests of depositors are protected and shareholders obligations are met, taking into account the interests of other recognized stakeholders; are aligning corporate activities and behaviour with the expectation that it would operate in a safe and sound manner, with integrity and in compliance with applicable laws and regulations.*" [4] Good corporate governance allows board of directors to be free to drive their companies forward but exercise that freedom within a framework of effective accountability. [5]

Corporate governance is different from management. Management may be defined as that body of men who, in law, have formally assumed the duties of exercising dominion over the corporate business and assets.[6] The notable difference between both concepts is that while management deals with the day-to-day running of the company, corporate governance ensures that the running of the company is conducted effectively and in consonance with various laws and policies. The concept of corporate governance became prevalent when the corporate system evolved as the principal element in economic organization. The corporation is a means whereby the wealth of innumerable individuals has been concentrated into huge aggregates and whereby control over this wealth has been surrendered to a unified direction.[7] This

[1] Adam Smith, *The Wealth of Nations* (Revised ed. George J Stigler, University of Chicago Press, Chicago, 1776[1976])
[2] Bob Tricker, *Corporate Governance Principles, Policies and Practices* (3rd ed. Oxford University Press, Oxford, 2015) page 4
[3] Adolf A. Berle and Gardiner C. Means , *The Modern Corporation and Private Property* (New York, The Macmillan Company, 1932)
[4] Bank of Ghana *Corporate Governance Disclosure Directive* (2022) page 4
[5] Cadbury A. *Report of the Committee on the Financial Aspects of Corporate Governance*. London: Gee& Co. (1992) 1.1
[6] Adolf A Berle and Gardiner C. Means, *The Modern Corporation and Private Property* (New York, The Macmillan Company, 1932) page
[7] Ibid.

necessitated the emphasis on separation of ownership and control giving occasion to the layout of laws and policies to regulate the affairs of the company.

Corporate governance first came into vogue in the United States in the 1970s. The federal Securities and Exchange Commission ("S.E.C.") began to treat managerial accountability issues as part of its mandatory exercise. In 1974, S.E.C brought proceedings against three outside directors of Penn Central, a railway which had diversified into pipelines, hotels, industrial parks and commercial real estate, alleging that they had misrepresented the company's financial condition under federal securities law by failing to discover a wide range of misconduct perpetrated by Penn Central Executives. [8] The discovery of widespread illicit payment by US corporations drew S.E.C into corporate governance with the implementation of board-level changes such as adding outside directors and introducing audit committees.[9] Meanwhile, in the United Kingdom, Tricker undertook a study of the British Board structures intending to propose the establishment of audit committees but concluded that the concept of an independent director was not understood in Britain.[10] The report of the Committee of Inquiry on Industrial Democracy, 1977 was one of the serious studies of corporate governance in Britain. The Committee's proposal on the continuation of a unitary board with some employees as directors was rejected.

The 1980s witnessed the emphasis on the protection of shareholder interests[11] through voting rights as a form of corporate control by shareholders. The dilemma of how to balance limits on managerial discretion and small investor protection was ever-present thus the concern of early writers was the establishment of corporate suffrage where each member had a vote.[12] In a bid to reclaim corporate control, shareholders deployed take-over bids as a counter-hostility mechanism. Leveraged buyouts were associated with three large changes in corporate governance. First, it changed the incentive of managers by providing them with substantial equity stakes in the buyout company. The purpose was to give managers the incentive to undertake the buyout, to work hard to pay off the debt and to increase shareholder value. Second, the high amount of debt incurred in leveraged buyout transactions imposed strong financial discipline on company management. It was no longer possible for managers to treat capital as costless. On the contrary, failure to generate sufficient return on capital means default on the borrowed funds. Third, leveraged buyout sponsors or investors closely monitored and governed the companies they purchased [13] meanwhile in the United Kingdom, the Guinness case was an example of hostile takeovers in the 1980s. [14] The 1980s highlighted the lack of governance over management due to the dispersion of ownership and separation between ownership and control.

A Financial Times columnist observed in 1999 that the 1990s have been the decade of corporate governance.[15] The 1990s was the decade that first introduced corporate governance codes to correct the

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[8] Schwartz D.J, *Penn Central: A Case Study of Outside Director Responsibility Under Federal Securities Law* (UKMC Law Review, 45: 394-421, 1976)

[9] Sommer A.A, *The Impact of SEC on Corporate Governance* (Law and Contemporary Problems, 41: 115-45, 1977)

[10] Robert Ian Tricker is an expert in corporate governance.

[11] In the 1970s the theory of corporate governance was centred on the concept of separation of ownership and control with the seminal work of Adolf A Berle and Gardiner C Means contributing extensively to this development. However, in the 1980s law and economic scholars reiterated the need for shareholders to engage in corporate governance to protect their interests.

[12] Becht, Marco and Bolton, Patrick and Roell, Ailsa A., *Corporate Governance and Control* (Available at SSRN: https://dx.doi.org/10.2139/ssrn.34346, October 2002)

[13] Bengt Holmstrom and Steven N. Kaplan: *Corporate Governance and Merger Activities in the United States: Making Sense of the 1980s and 1990s* (The Journal of Economic Perspectives Vol. 15 No.2 pages 121-144, American Economic Association, 2001)

[14] This was one of the famous British share trading fraud scandals which occurred in the 1980s. Guinness shares were inflated in order to assist in its takeover by the Scottish drinks Distillers.

[15] Financial Times; *Moves to Halt Another Decade of Excess* (Financial Times, August 5 1999) 10

anomalies in corporate systems. Hostile takeover bids ended with anti-take-over legislation such as control share acquisition laws, freeze-out laws, poison pill endorsement, and voting right provisions among others. The first corporate governance code in the United Kingdom was the Cadbury Report (1992) produced by a committee chaired by Sir Adrian Cadbury on the financial aspects of corporate governance. The report called for the introduction of an audit committee, division of responsibilities between the chairman of the board and chief executive, use of remuneration committees, the introduction of a nomination committee with independent directors to propose new board members and the wider use of independent non-executive directors. In the United States, taxation and regulation were implemented as forms of corporate governance.[16] In 1992 S.E.C. required public companies to provide more detailed disclosure of top executive compensation and its relation to firm performance, particularly stock performance. Corporate governance in the United States was focused on mandatory compliance with legislation. In 1998, the Organisation for Economic Co-operation and Development (OECD) proposed the development of global guidelines on corporate governance and encouraged other states to adopt same. They highlighted the need for transparency and accountability, the responsibilities of the board, the role of stakeholders and the rights of shareholders.

The 21st century embraced various corporate governance codes and principles with various states implementing relevant laws to address various corporate governance crises. An example is the US Sarbanes-Oxley Act, 2002 which governs all listed companies. Despite this improvement, the 21st century witnessed corporate governance failures such as the collapse of Enron (one of the largest companies in the United States) due to heavy indebtedness and dubious corporate governance attitudes among its executive directors[17] and the 2007 Global Financial Crisis. Corporate governance continues to be a work in progress as the greed of man is a constant barrier to realizing the various corporate governance objectives.

THEORIES AND PHILOSOPHIES OF CORPORATE GOVERNANCE.

Many corporate governance theories have evolved over time. They include agency theory, stewardship theory, stakeholder theory, resource dependency theory, transaction cost theory, and political theory. These theories are entrenched in the conceptual prism of corporate governance; the relationship between stakeholders, directors and other interested parties.

Agency Theory

Agency theory has its root in economic theory and was espoused by Alchian and Demsetz and further developed by Jensen and Meckling. Jensen and Meckling's paper on agency cost theory[18] is the most cited in corporate research[19]. This theory refers to where stakeholders hire agents i.e. company executives to perform services on their behalf including decision-making. The agent acts in the interest of his principal i.e. stakeholder. The agency theory was developed to address the separation of ownership and control which estranged stakeholders from the activities of the company leading to corporate autocracy and the loss of income due to the discretion of directors. This circumstance rendered the stakeholders voiceless with no one securing their interests after investing huge sums of money into the company, therefore, necessitating intervention.

[16] Examples include the Securities Exchange Act of 1934 and the Investment Advisors Act of 1940.
[17] Enron used Mark to Market accounting technique to hide its losses and appeared more profitable than it was. This accounting technique measures the value of a security based on its current market value instead of its book value. A major player in Enron's scandal was its accounting firm, Arthur Andersen LLP who overlooked Enron's scheme.
[18] Jensen, Michael C.&Meckling, William H. *Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure* (Vol.3(4) 1976) pages 305-360
[19] This theory has been cited in most research papers to examine the impact of board structure and ownership by stakeholders on the firm internalization decisions.

Agency theory focuses on how to build an incentive and follow-up system to prevent the agents from risking the principal's assets and how a representative system reaches the most efficiency under imperfect circumstances[20] because its major problem was how to ensure that the agent acted in the interest of the principal. To address the problems associated with agency theory, there are two mechanisms proposed; independent director and remuneration and rewarding benefits for managers. The 1992 Cadbury Report defined independence as, '*independent of management and free from any business or other relationship which could materially interfere with the exercise of independent judgment apart from their fees and holding*'. Rewarding directors may ensure that the interest of the shareholder is promoted however, this may raise conflict with respect to solidarity with the company in itself.

Agency theory is applied in the corporate and commercial world in performing and executing contracts and transactions among others. It is equally applied in other facets of life when divesting capacity in a third party(agent) to carry out acts on behalf of a principal and such acts are binding on the principal. Although the agency theory was developed to serve as a bridge between the company and stakeholders, its main objective was to ensure agents acted on behalf of and in the interest of their principals which may not reflect the interest of the company.

Stewardship Theory

Stewardship theory has its roots in psychology and sociology and is concerned with appointing good managers. A steward protects and maximizes shareholders' wealth through firm performance because by doing so the steward's utility functions are maximized.[21] Stewards are equally employed in the company to protect the make profits for the shareholder. Unlike the agency theory, stewardship theory does not stress on the perspective of individualism[22] but of management being stewards, faithful servants to shareholders. While agency theory looks at the individual as an economic being[23] the stewardship theory recognizes the importance of structures that empower the steward and offers maximum autonomy built on trust.[24]

Stewardship theory focuses on extrinsic and intrinsic motivation and not on management conducting its activities in good faith for profitability and recognition. This theory operates in countries like Japan. The stewardship theory highlights how executives and managers act in fulfilling the objectives of the company.

Stakeholder Theory

Stakeholder theory is an interplay of various disciplines which extends corporate accountability towards stakeholders such as owners, lenders, suppliers, customers, communities and society. The stakeholder theory focuses on multiplying the resources invested in the company to yield profitable returns for interested parties. Initially, managerial discretion rendered most shareholders without dividends and other financial gains because managers preferred to exercise their discretion by investing in other ventures as opposed to declaring dividends. Thus, in a bid to compel managers to yield profits, shareholders in the 1980s involved other parties to have an interest in the company. Managers were forced to yield profits for all stakeholders because such failure rendered managers personally liable.

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[20] Benjamin Coriat & Oliver Weinstein, *New Theories of Enterprise, translated from the original: Les Nouvelles Théories De L'entreprise* (The Knowledge Publishing House, 1995) page 139

[21] Davis J.H Schoorman and Donaldson L, *Towards a Stewardship Theory of Management* (Academy of Management Review, Vol. 22) pages 20-47

[22]Donaldson. L and Davis. J. *Stewardship Theory or Agency Theory: CEO Governance and Shareholder Returns* (Academy Of Management Review, 1991 Vol. 20, No. 1)

[23] Agyris, C. *Some Limits of Rational Man Organizational Theory* (Public Administration Review,Vol. 33 1973) pages 253-267

[24] Ibid.18

The stakeholder theory is broader than the agency theory because whereas the agency theory focuses on advancing the interests of stakeholders, the stakeholder theory looks at advancing the interests of all other relevant third parties. This theory protects third parties such as stockholders and ensures individuals with an interest in the company are reliably informed about events that affect their interest.

Resource Dependency Theory

This theory focuses on the role of the board of directors to provide resources for the firm through external services. Sometimes this theory is realized by appointing external directors from various professional fields to provide an array of services for the company. An example of such is by appointing external directors who are lawyers, accountants, auditors and many more.

Directors under this theory play an active role in obtaining, securing and deploying the resources. Directors may be classified into four categories; insiders, business experts, support specialists and community players such as political parties and leaders of social organizations. All categories put together optimizes the output of the company.

An example of the application of this theory is where a company is a party to a major merger and acquisition transaction and employs the services of an external lawyer with expertise in merger and acquisition to properly advice on the said transaction. This theory protects the general interest of the company and assesses the risks a company may face under certain circumstances. However, the advice of such external services may not necessarily be binding on the company. Where executive interests supersedes that of the company, this theory fails to serve its purpose.

Transaction Cost Theory

The transaction cost theory was first initiated by Cyert and March in 1963 and later developed by Williamson in 1996.[25] This theory consists of law, economics and organizations and highlights organizations as the current source of allocation of resources. It attempts to view the organization as a body comprising of different views and objectives. The transaction cost theory focuses on how a firm can maximize efficiency by minimizing transactions. Williamson defined transaction costs broadly as the costs of running the economic system of firms. Transaction costs include; bargaining costs, opportunity costs, search costs and policing or enforcement costs.

This theory operates as a check on the expenditure of the company to maximise profits. Where a company is in need of raw materials to carry out production, this theory ensures that the procurement of such materials is done to alleviate excess costs on items such as transportation or storage. However, an over reliance on this theory may lead to the purchase of cheap raw materials which result in low quality production because quality production may be viewed as an opportunity cost under transaction cost theory.

Political Theory

This theory highlights the allocation of corporate power, profits and privileges which are determined by the Government in power. The influence of Government in corporate governance renders internal corporate governance policies meaningless as the firm is largely compelled to make decisions based on the dictates of the Government. In recent years there has been infiltration of Government in the affairs of organizations giving rise to the exploration of this theory.

This theory greatly affects the performance of companies because every company operates in a State governed by laws which are supreme and binding. When the Government rolls out policies and Parliament enacts laws which affect companies negatively, their performance and lifespan is truncated. An example of

[25] Williamson, O. *The Mechanisms of Government* (Oxford University Press, Oxford 1996)

how Government policies affect the affairs of companies in Ghana was when the Bank of Ghana issued Public Notice No. BG/GOV/SEC/2017/19 on 11th September 2017 revising the minimum paid up capital from one hundred and twenty million Ghana cedis (GHC120,000,000) to four hundred million Ghana cedis (GHC400,000,000). This policy led to the collapse of many banks such as Heritage Bank, Beige Bank, Construction Bank among others due to their inability to raise the necessary minimum paid up capital.

ENVIRONMENTAL SOCIAL GOVERNANCE.

Environmental Social Governance is a concept of corporate governance that focuses on responsible capitalism. ESG is a framework that addresses how a company's activities affect the environment, how it addresses social problems such as societal inclusivity and how its governance prevents bribery and corruption and other governance-related issues. ESG has been adopted as a risk assessment tool to assess present and potential risks the activities of corporations pose to the environment, society and its governance. The term Environmental Social Governance was first mentioned in the 2006 United Nations Principles for Responsible Investment report titled "Who Cares Wins". In June 2004, a group of twenty financial institutions with combined assets of over six trillion dollars published and publicly endorsed a report facilitated by the United Nations Global Compact titled; Who Cares Wins: Connecting Financial Markets to a Changing World. The focus of the report was to provide a series of recommendations to address the central issue of integrating Environmental, Social and Governance value drivers into financial market research, analysis and investment. At the time, the report was a mainstream avant-garde to institutionalise environmental social and governance drivers for long-term investment. ESG deals with the sustainable and ethical impact of a company's corporate financial interest and is deployed as a risk assessment tool in assessing the risk the activities of a company pose to the environment, society and its internal governance mechanism. Though ESG drivers are non-financial performance indicators, their role is to ensure accountability and systems to manage a corporation's impact such as carbon footprints and its effort towards diversity and inclusion.[26] ESG drivers served as the shift from a purely market-oriented system to a sustainably inclined system.

The term ESG is often used to illustrate how corporations address climate change, improve the working conditions of employees and protect society vis-à-vis its governance. The concept of ESG acknowledges that man is a part of biodiversity which is under constant depletion by its activities resulting in mankind-related issues such as poverty, lack of shelter and livelihood amongst others. The concept further acknowledges that failure to address issues with respect to the environment and society will lead to the threat of survival of man through natural disasters such as wide spread fire outbreaks, floods, earthquakes and impair society's well-being. The concept also insulates corporate governance principles within companies. ESG understands that neglect for the environment and society is evidently mankind's doom thus tasking corporations to report on the environmental and social impact of their activities on the environment and how they protect the rights of their employees and society and its governance.[27] Importance is equally placed on social equity in corporations and how a company addresses diversity and ensures inclusivity of minor groups.

The concept emboldens protecting the environment and mankind through Conventions on Climate Change. The Paris Agreement is a legally binding international treaty on climate change adopted by 196 Parties at COP 21 in Paris on 12th December 2015 and entered into force on 4 November 2016. The objective of this Agreement is to reduce the global peaking of greenhouse gas emissions as soon as possible to achieve a

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[26] https://www.techtarget.com/whatis/definition/environmental-social-and-governance-ESG >> accessed 2nd May,2023.

[27] The Double materiality information requires corporations to report on how sustainability issues affect the company's performance (the outside-in perspective) and how the company impacts people and the environment (the inside-out perspective).

climate-neutral world. The Agreement is a five -year cycle of increasingly ambitious climate action carried out by countries who submit their plans for climate action known as nationally determined contributions. Countries communicate how they intend to reduce their Greenhouse Gas emissions and how they intend to build resilience to adapt. The Agreement further provides financial, technical and capacity building for countries that need it. It empowers developed countries to provide financial assistance to less endowed and more vulnerable countries. The enhanced transparency framework is currently a key element requiring countries to report transparently on actions taken and progress in climate change mitigation and adaptation.[28] The United Nations Sustainable Development Goal 13 on Climate Action stipulates the need to take urgent action to combat climate change and its impacts. Towards the achievement of this goal, United Nations Development Programme "UNDP" focuses on reducing greenhouse gas emissions and strengthening resilience from negative climate impacts.

ESG trends emerged in 2017 with examples of the proxy season where the State Street Global Advisors voted against the re-election of directors at four hundred companies that failed to make efforts to appoint women to their all-male board. This trend highlighted the Social strand of ESG criteria on inclusiveness and diversity. ESG further became relevant when ExxonMobil[29] shareholders defied management and voted to disclose the impact of its energy activities on climate change. This proved that investors and shareholders were concerned about how the activities of the company impacted society. The World Economic Forum and the International Business Council under the chairmanship of the CEO of Bank of America alongside the big four accounting firms; PwC, Ernst&Young, Deloitte and KPMG established a set of twenty-one specific metrics for companies to report their results.

The relevance of ESG in our current dispensation was captured in a KPMG Report[30] which revealed that individuals are concerned about environmental and social factors with purchases based on a company's approach to reducing environmental risks with millennials and Gen Zs leading this front. With the increase in investor data, index-providing rating agencies created their own ratings to evaluate ESG factors. Some major rating agencies for ESG are MSCI, Sustainalytics, RepRisk, ISS, and Refitiv. These ratings are designed to help investors identify and understand financially material ESG risks to a business. Companies are required to make full disclosures of risk-related activities. Adherence to environmental social governance is necessary as mandatory disclosures are becoming legal requirements. ESG drivers secure long-term investment and create trust in investors and consumers. The environmental strand of ESG ensures that the activities of a company do not negatively impact the environment while the Social strand of ESG looks at the company's diversity, inclusivity, work policies, wages and their human rights. Both elements help investors decide whether investments will serve long-term benefits. In the UK, listed companies or companies with minimum employees of five hundred are required to mandatorily report on their environmental, social governance activities.[31]

RECENT ESG DEVELOPMENTS.

The Global Reporting Initiative (GRI) is a non-profit body that provides detailed reporting standards to enable organisations to report on the impact of their activities on the environment, economy, people and human rights and how it manages those impacts. The reporting standards apply to various sectors and industries to enable sustainable reporting and transparent disclosures. The International Financial Reporting Standards (IFRS) is a non-profit body that equally provides accounting and sustainability disclosure standards. The OECD Due Diligence Guidance for Responsible Business Conduct is a set of non-binding recommendations addressed to multinational enterprises by governments on responsible business

[28] The Paris Agreement 2015
[29] ExxonMobil is an American multinational oil and gas company.
[30] KPMG Report (Me, My Life, My Wallet) 2021
[31] This requirement is in line with the recommendations of the Task Force on Climate-Related Disclosures.

conduct emphasising the need to undertake due diligence[32] to identify, prevent, mitigate and account for how they address these actual and potential adverse impacts in their own operations, supply chain and other business relation.

The European Union Corporate Sustainability Reporting Directive 2022/2464 which entered into force on 5th January, 2023 requires large companies and listed companies to publish regular reports on their environmental, social risks and how their activities impact people and the environment. The European Union passed Regulation (EU) 2019/2088 amended by Regulation 2020/852 on sustainability-related disclosures in the financial services sector. The Regulation lays down harmonized rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products.[33] Some of the principles highlighted are; principle to do no significant harm, transparency of sustainability risk policies, transparency of adverse sustainability impacts at entity level, transparency of remuneration policies in relation to the integration of sustainability risks, transparency of the integration of sustainability risks amongst others.

The European Union also implemented taxonomy for sustainable activities. In furtherance of the various European Union climate and energy targets for 2030 the EU has directed investments towards sustainable projects and activities in order to make economies, businesses and societies resilient against climate and environmental shocks. The EU Regulation 2020/852 introduces taxonomy in classifying which economic activities are sustainable. For an economic activity to be considered environmentally sustainable it should establish environmental objectives such as; climate mitigation, climate adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems. EU Regulation 2020/852 is supplemented with Commission Delegated Regulation (EU) 2021/2139 which provides the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.

The European Commission adopted the Delegated Act supplementing Article 8 of the Taxonomy Regulation which requires large financial and non-financial companies to provide information to investors about the environmental performance of their assets and economic activities. This Regulation ensures transparency. Non-Financial undertakings are in particular required according to Article 8(2) Taxonomy Regulation to disclose the share of their turnover, capital and operational expenditure associated with environmentally sustainable economic activities.

In the United States, the Securities Exchange Commission proposed climate disclosure to improve sustainability reporting of company-climate-related risks. This proposal would require domestic or foreign registrants to include climate-related information in their registration statements and periodic reports including climate-related risks and their likely or actual material impacts on the registrant's business strategy and outlook, the registrant's governance of climate-related risks and relevant risk management processes, the registrant's greenhouse gas emissions, which, for accelerated and large accelerated filers and with respect to certain emissions, would be subject to assurance, certain climate-related financial statement metrics and related disclosures in a note to its audited financial statements and information about climate-related targets and goals and transition plan, if any.

[32] OECD Due Diligence Guidance outlines a five-step due diligence approach; identify and assess adverse impacts, provide for or corporate, cease, prevent or mitigate, track and communicate.
[33] Article 1 European(EU) 2019/2088

DEVELOPING ESG UNDER GHANAIAN LAW.

The Ghanaian legal system has focused on the traditional concept of corporate governance by delineating the various roles of executives and members of the company towards curbing conflict of interest situations. The Companies Act, 2019 (Act 992) is a key legislation with respect to the governance of companies. The Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) is the Act that regulates the activities of banks, specialised deposit-taking businesses and financial holding companies and outlines various corporate governance measures such as disclosure of interest, restrictions on advance against security of own shares, restrictions on transactions with an affiliate, financial statements, among others. The Bank of Ghana Corporate Governance Disclosure Directive equally provides detailed corporate governance obligations for banks, specialised deposit-taking businesses and financial holding companies.

The Environmental Assessment Regulations, 1999 is the Regulation that governs the issuance of an environmental permit for activities which negatively affect the environment. Regulation 1 prescribes that a pre-condition for the commencement of certain activities is the issuance of environmental permit-these activities are agricultural and related services, mining including milling, quarrying and oil wells, manufacturing, non-metallic mineral products, wholesale trade such as petroleum products, economic services administration, accommodation, food and beverage services. These industries are required to provide a scoping report[34] Other legislations which deal with the protection of the environment include Environmental Protection Agency Act, 1994 (Act 490), Land Use and Spatial Planning Act, 2016 (Act 925) among others.

Legislations such as Labour Act 2003 (Act 651), Labour Regulations, 2007 (L.1 1833) and National Pensions Act, 2008 (Act 766) as amended protect employee interest, promote fair compensation and prevent discrimination in job selection criteria. Data Protection Act, 2012 (Act 843), Cybersecurity Act, 2020 (Act 1038) and Electronic Transactions Act, 2008 (Act 772) protect the rights of individuals in the technology space. These legislations encapsulate the 'S' strand of ESG.

Despite the above regulations, the concept of ESG is holistic and cannot be addressed piecemeal. The best way to implement ESG is to embed ESG in all disciplines in achieving a more holistic approach.

ESG can be implemented in Ghana through;

a. Sustainable Reporting

Sustainability reporting should apply to all mining companies and other companies with a minimum of one hundred and fifty (150) employees, banks, specialized deposit-taking institutions, insurance companies, listed companies and financial holding companies. Companies are required to release a yearly sustainable report on how their activities affect the environment and how they have addressed the issues of diversity and inclusivity specific to the prejudices prevalent in their geographical location. The report should also highlight their commitment to doing no significant harm to society and the environment. A company's report should also focus on how it addressed inclusivity with respect to minority groups as well as remuneration policy. A thorough complaint procedure should also be disclosed with respect to how complaints are reported and handled in the various institutions. Where a company is undertaking a project such as the establishment of a factory, the report should disclose the geographical state of the land procured for the project, species on the land, whether the project demanded obstructing waterway or driving away of habitats on the land and the trees that were cut to undertake the project. In such instances, the company must undertake to preserve biodiversity by planting trees and ensure the safe relocation of species to another habitat with the help of national third-party organizations.

[34] Scoping report gathers and analyses information on the extent of the proposed project and its effect on the environment.

b. Registration Forms

The Registrar General's Department forms for registration for companies should include a form for all mining companies and other companies with a minimum of one hundred and fifty(150) employees, banks, specialized deposit-taking institutions, insurance companies, listed companies and financial holding companies on how their activities would pose an adverse threat to the environment as well as the commitment of these institutions to climate change prevention and mitigation and doing no significant harm to the environment.

c. Green Bonds

The Government can encourage climate action from companies through green bonds. Green bonds represent a form of debt financing for undertaking environmental projects. They are designated bonds intended to encourage sustainability and support climate-related or other special environmental projects.[35] This would serve as a form of incentive for climate action conscious institutions seeking to protect the environment. These bonds should equally come with tax incentives to enhance their attractiveness to some investors by providing tax exemptions and tax credits.

d. Sustainability Consultant

Companies should have a climate change consultant who shall be a member of the board of directors to advise the company on the impact of their activities on the environment. The sustainability consultant shall work in conjunction with the risk assessment and project management team in detailing sustainability metrics that align with the vision and mission statement of the company.

e. Non-Discrimination and Equal Opportunities

Every company must report the working ratio of men to women and that of other minority groups within the organization. Discrimination imposes an unequal burden on individuals and unfair opportunities despite individual merit.

f. Loan Requirements

Banks and specialized deposit-taking institutions must obtain an environmental social commitment draft from borrowers who obtain loans to undertake a construction project, finance mining, and other large-scale financial activities. This draft must outline in detail the project, the time frame for the project, changes to the environment due to undertaking the project such as sand mining, deforestation etc and the commitment to restore and preserve a portion of the biodiversity.

g. Health and Safety

Companies must include in their sustainability report health and safety measures as well as insurance policies that cover the health and safety of their employees. The company must identify existential threats to the health and safety of its employees and outline how it addresses these threats.

h. Anti-Corruption

Companies must outline how they manage potential corruption. Corruption practices include bribery, facilitation payments, fraud, extortion, money laundering or offer or receipt of an inducement to do something illegal. Anti-corruption practices must include how companies prevent corruption practices in supply chains and third parties.

[35] https://www.investopedia.com/terms/g/green-bond.asp >>> accessed 2nd May, 2023.

CONCLUSION.

Due to the present challenges the world and the human race face, ESG must be prioritized. The World Economic Forum in its Global Risks Report 2023 identified that in the span of ten (10) years the ten (10) major risks the world will face are ESG-related issues. These risks range from failure to mitigate climate change, failure of climate change adaptation, natural resources and extreme weather events, widespread cybercrime and cybersecurity and geoeconomic confrontation among others. These risks demand immediate attention and positive responsive acts and measures in preventing greater future losses, instability and pandemonium.

ESG transcends traditional corporate governance principles and holds companies accountable. The concept critically examines the impacts of the activities of companies beyond their internal space by including the environment, society and other governance key indicators such as anti-corruption and payments to the government. The concept further promotes transparency of a company's activities through disclosures. Although the concept continues to evolve, the European Union is spearheading legislation on ESG.

As a developing country blessed with natural resources and market-oriented potential, the topic of ESG cannot be overlooked in Ghana. ESG equally serves as a risk assessment tool for many corporations and Small and Medium -Sized Enterprises in optimizing productivity and mitigating losses. With the advent of Green Bonds, companies in Ghana can tap into financing projects that will serve long-term value.

It is noteworthy that the concept of ESG has received several backlash and criticisms with reluctance from some states in the U.S. to pass legislation on ESG on grounds that the concept seeks to undermine the interests of shareholders. Despite the various criticisms levelled against the concept, one thing is certain; the present and future challenges necessitate that the environment, society and governance-related issues are safeguarded to protect the people and environment and provide an enabling environment that secures a company's longevity.