ON THE SPECIFICS OF CORPORATE GOVERNANCE IN IRAN AND THE MIDDLE EAST

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Abstract

Corporate Governance (CG) is not a new concept for the transition economies of the Middle East, but corporate governance is especially important since these economies do not have the long-established institutional infrastructure to deal with corporate governance issues. This article is presenting the results of our survey analyzing the status quo of Corporate Governance in Iranian companies. The survey questions cover aspects of Corporate Governance awareness, board of directors, control environment, transparency and shareholder- as well as stakeholder rights. We find several specifics that apply to other countries in the MENA region too. Empowering shareholders and stakeholder, offering Corporate Governance trainings and case studies in the region as well as establishing a culture of independent directors is the way forward.

Keywords: Corporate Governance, Middle East, Iran, Shareholder, Stakeholders

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1 Introduction

Corporate governance is not a new phenomenon in the transition economies of the Middle East. Corporate governance issues are especially important in these economies since these countries do not have the long-established (financial) institutional infrastructure to deal with corporate governance issues (Braendle and Noll, 2006 and compare Black et al., 2010 on Brazil).

Corporate Governance issues were not discussed before a series of emerging market crisis in 1997 (Sourial, 2004). All this has changed and corporate governance codes as a measure of dealing with each country's specific governance problems have been adopted by most of the MENA (Middle East North Africa) counties. In the framework of various public and private initiatives where the codes were discussed, this has resulted in improvements of formal legal rules as well as in the drafting of soft-law recommendations.

Especially the financial scandals at the beginning of the 21st century led to a huge number of corporate governance codes all over the world. As a common denominator they want to shape comprehensive standards of good governance. These are the avoidance of conflicts of interests and the request for disclosure and transparency (Braendle and Noll, 2005), the constitution of the board of directors of independent directors, managerial compensation, as well as the claim for shareholder rights (Becht et al., 2002).

In this contribution we want to discuss the specifics of Corporate Governance in the Middle East based on our survey of Iranian companies. Section 2 compares Corporate Governance in the Middle East (and Iran in special) with global CG standards. Section 3 discusses the key obstacles to corporate governance in Iran. Section 4 presents the highlights of the survey. Based on the results of the survey we discuss the implications and conclude with what should be done to improve corporate governance in the region (section 5).

2 Corporate Governance in the Middle East

2.1 The MENA Region

The MENA region consists of countries with significant distinctions in levels of per capita income and and are in different stages in economic development (McLellan, 2011). This is a fundamental fact regarding the aims and their implementation of Corporate Governance Codes in such countries.

The countries of the Gulf Cooperation Council (GCC) are economically forming one group. Because of their crude oil resources and the steady increase in oil prices these countries are generally in surplus and are net capital exporters (Piesse et al., 2011). The GCC is a trading bloc covering the six Arabian Gulf states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

A second group includes countries such as Egypt, Jordan and Morocco. These are net capital importers who have been engaged in economic reform programs since the mid-80s, largely with the help of the World Bank and the IMF and as well as major developed countries. For this group, securities markets are an integral part of widespread privatization programs and are relatively well developed in terms of infrastructure (Piesse et al., 2011).

The third group consists of eight countries that are either economically vulnerable due to political instability, or in the very early stages of economic development, or both. This includes Iran, Iraq, Lebanon, Syria, Algeria, Sudan, Libya and Yemen, as well as the West Bank and Gaza.

The focus of this paper is on the corporate governance system in Iran. Clearly Iran is not representative for the other countries in the region. But the choice reflects the fact many of the issues discussed for Iran can be applied to other countries in the region as well (Braendle, 2006).

2.2 Corporate Governance in Iran

Corporate Governance and its importance is a relatively new subject in Iran, having come to public attention with the first attempt by the Tehran Stock Exchange to develop the first draft of a code of Corporate Governance in 2004, which was based on OECD guidelines and was mainly benchmarked with Code of Corporate Governance in Malaysian Stock Market. In 2010, the Securities and Exchange Organization (SEO) completed and formally adopted the Code of Corporate Governance but implementation in the companies is not compulsory yet. In this period, there has also been a number of seminars, conferences and awareness raising activities on Corporate Governance. Meanwhile, SEO tries to improve the governance system of the listed companies and the market through separate bylaws such as Disclosure and Transparency bylaw. The OECD Principles of Corporate Governance was translated into Farsi in 2008 but discussion of Corporate Governance has mainly remained in the academic circles while major players have started to notice this concept.

Iranian companies have a one-tier board structure with Board of Directors, but some of the Iranian semi-government companies have a two-tier board structure: a Trustee Board and a Management Board. There are no independent directors in Iran yet. Board members are appointed not on the basis of their expertise and merits but because of their political connections and influence (Mashaveki and Bazzaz 2008). The board system is influenced by the ownership structure of the companies, which is characterized by a majority of small to medium-sized family-owned companies in the Middle East. “Within this structure, the roles and relationship between the family, board, shareholders, and management tend to be overlapping and unclear.” (IFC, 2011).

In its Doing Business report the World Bank (2011) provides a snapshot of the business climate in Iran by identifying specific regulations and policies that encourage or discourage investment, productivity, and growth. Key indicators and benchmarks are used to help measure the ease or difficulty of operating a business. Doing Business sheds light on how easy or difficult it is for a local entrepreneur to open and run a small to medium-size business when complying with relevant regulations. It assesses regulations affecting domestic firms in 185 economies and ranks the economies in 10 areas of business regulation:

Table 1. Doing business in Iran

Ease of Doing Business Rank	Starting a Business	Dealing with Construction Permits	Registering Property	Getting Credit
129	42	143	156	89
Protecting Investors	Paying Taxes	Trading Across Borders	Enforcing Contracts	Closing a Business
167	115	131	49	111

Source: World Bank (2011)

Investor/shareholder protection, including transparency issues is among other things one of the major drawbacks of Iran’s corporate governance system. The Table below shows general information on the structure of Iranian companies and their board of directors.

Table 2. Structure of Iranian companies

Percentage of ownership required to invite the General Assembly	Only holders of shares above 20 percent can call an extraordinary shareholder meeting
Board's system	one-tier Board
Independent board members	Uncommon in Iran
Board Committee	Uncommon in Iran
Disclosure of information about board and managers	In listed firms, records and qualifications of board and CEO should be reported.
Compensation of the board services	Board's fees and remuneration will be exposed cumulative.
Ownership Disclosure	Yes - but understanding the ownership structure and identifying ultimate owner is very difficult

2.3 The MENA Region compared to global corporate governance standards

Ever since the OECD published its Principles of Corporate Governance in 1998, most codes developed over the years follow these principles, which are mainly based on

- Ensuring the protection of shareholder rights, including the rights of minority and foreign shareholders, and ensuring the enforceability of contracts with resource providers (Fairness);
- Requiring timely disclosure of adequate, clear, and comparable information concerning corporate financial performance, corporate governance, and corporate ownership (Transparency);
- Clarifying governance roles and responsibilities and supporting voluntary efforts to ensure the alignment of managerial and shareholder interests, as monitored by boards of directors (Accountability) and last but not least
- Ensuring corporate compliance with the other laws and regulations that reflect the respective society's values (Responsibility).

These principles are non-binding and do not aim at detailed prescriptions for national legislation. Rather, they seek to identify objectives and suggest various means for achieving them. Their purpose is to serve as a reference point (OECD, 2004).

In 2005 the MENA-OECD Working Group on Corporate Governance comprised of MENA and OECD officials as well as other public and private sector actors was established. It represents a network of exchange for corporate governance priorities, a sharing of best practices and enables to evaluate the implementation of the principles in the region. The intention of the working group is to raise awareness of government structures and processes in this region, to improve the policies and environment for investments in this region.

3 Key obstacles to corporate governance in Iran

Out of what we have seen in section 2, the key obstacles of Corporate Governance in Iran – and this might be true for most Middle Eastern countries - can be divided into four separate categories:

- Capital market structure and situation
- Low awareness on Corporate Governance functions and benefits in various stakeholders
- Non-conducive business environment in Iran:
- Lack of institutional laws to fully support responsible business, property right and stakeholder rights.

Even though the infrastructural prerequisites for a functional capital market are in place in Iran, trading and liquidity are minimal and only a few Iranian companies have turned to the stock market as a source for their financial needs (CGIran, 2011). The authorities have put substantial efforts in later years to transform the capital market into a place to provide finance for the companies, though these efforts was fairly not conclusive while only 15% of the total market is being traded in the market in free float shares. Although the legal framework for Corporate Governance and investor protection has been strengthened, the majority of market and public players are lacking a thorough understanding of the concept. As a result, compliance with the new rules is low.

Another issue of concern again regards the lack of a proper Corporate Governance understanding and knowledge and therefore causes shaky and unreliable practices among the most important and influential parties.

But challenges are not limited just to the low awareness of the concept in the society and further resulting weaknesses and deficiencies are also challenging. More specific and concerning challenges may include: limited protection for small shareholders (Braendle, 2006), poorly defined roles and responsibilities for boards and related bodies, a dearth of independent members in boards, and poor compliance with disclosure requirements. Many companies do not publish financial statements on a regular basis; ownership is often not disclosed; and audit quality is mixed and tends to further complicate matters; there is no functional supervisory system for internal control mechanisms, just to name of few of the problems (McLellan and Moustafa, 2011).

Independent directors have not been permitted in law and such concept has not been popular or even known in Iran. The Commercial Law of Iran does not accept such director on the board as every board member has to be a representative to shareholders. Moreover, there is lack of legal support and flexibility to assure the independence of such directors (Chung et al., 2011).

Ownership structure is the next problem regarding Corporate Governance in Iran (OECD, 2005). Institutional investors and large stock owners have been pushing others' rights towards the benefit of themselves. Stocks have been focused in hand of special groups while the increased costs of representation have provided an atmosphere of opportunism for the majority shareholders. One can confidently state that the ownership structure -which is mainly based on concentrated ownership, has been pushing towards the interests of major shareholders. The problems related to this are widely discussed (Shleifer and Vishny, 1986).

Finally cultural issues might also act as barriers when moving towards a more sound market environment (Braendle, 2005 and Schein, 1992), therefore a more gradual approach towards implementing Corporate Governance practices is highly advisable. Concepts like transparency, responsible business, shareholder rights and accountability are not widely appreciated and the business environment in Iran does not directly reward practicing these concepts.

4 Survey on corporate governance in Iran

4.1 Survey setup

4.1.1 Methodology

The intent of this study is to cover the how's and why's of Corporate Governance practices in Iran. Hence this study not only highlights recent improvements in Corporate Governance regulations but also tries to address measures on different aspects of Corporate Governance and dig into important reasons behind Iranian Corporate Governance situation.

CGRDC in Iran has started research project with the objective of analyzing situation of Corporate Governance in the Iranian companies.

The design of the study is simple. It comprises of 91 questions aimed at probing the effectiveness of Corporate Boards in Iran. We selected 24 well-known companies from all sectors namely, listed companies, multinational companies (MNCs), private sector and family-owned companies.

These companies are regarding their ownership structure family firms, semi-governmental companies, listed on a public stock exchange, banks, insurance and joint venture companies from different sectors as can be seen in table 3.

Table 3. Participants in the survey

Name	Ownership/ Sector	Field of Activities
Mahan Investment Group	Family Owned Business (FOB)/ Service	Airline
Atieh Group	FOB/ Service	Business Consulting
AryaMachine	FOB/ Service	Heavy Machinery
Pasargad Bank	Listed/ Financial Services	Finance and Banking
Rail Niru	Private/ Service	Transportation
Behpakhsh	Private/Service	Distributer
Mashad Carpet	FOB/ Manufacturing	Textile industry / Carpet
Ezam Holding	FOB/ Manufacturing	Spare part
Tak Makaron	FOB/ Manufacturing	Food Producer
Fouman Chimi	FOB/ Manufacturing	Chemical producer
Pasargad trading	Private/ Service	Trade and investment
Parak software	FOB/ Service	Software Developer
SEMEGA	Semi Government/ Tourism	Tourism investment
Khazar Shipping Line	Listed/ Service	Transportation
Rahshahr	FOB/ Construction	Construction / Contractor
Sanat Madan Investment	Listed/ Financial Services	Trade and investment
SITCO/Espandar	Private/ Manufacturing	Cement
Hamkaran System	Listed/ IT	IT
Dadeh Pardazi Iran	Listed/ IT	IT
Torbo Compresor Naft	Semi Government/ Manufacturing	Turbine
Aria Pishro Gharn	FOB/ Oil	Oil Engineering
Dana Energy	FOB/ Oil	Oil exploration
Saderat Bank	Semi Government/ Financial Services	Bank
Samexon	FOB/ Construction	Construction / EPC Contractor

4.1.2 Objectives

The scope of this project entails developing measures to assess situation of CG in the country, including identification of knowledge and awareness of the responding managers and board members on concepts related to CG, as well as their opinion on benefits and challenges of implementing CG in Iran. Conducting this survey provides the opportunity to:

- Identify challenges and needs of several business sectors of the country
- Develop and implement concepts of CG in selected companies.
- Develop tools and guidelines for promotion and facilitating implementation of CG in different business sectors of the Iranian Economy.
- Facilitate development of related regulations on Corporate Governance in Iran.
- Identify practices that are fundamental to improving level of Corporate Governance in Iranian companies.

4.1.3 Questionnaire

The questionnaire is divided into the following 6 sections:

- Awareness and Commitment to Good Corporate Governance Practices
- The Board Responsibilities
- Control Environment and Processes
- Disclosure and Transparency
- Shareholders' Rights and the Key Duties of Owners
- The Role of Stakeholders in Governance of the Firm

The questionnaires were completed by the researchers in in-depth interview sessions with the study subjects.

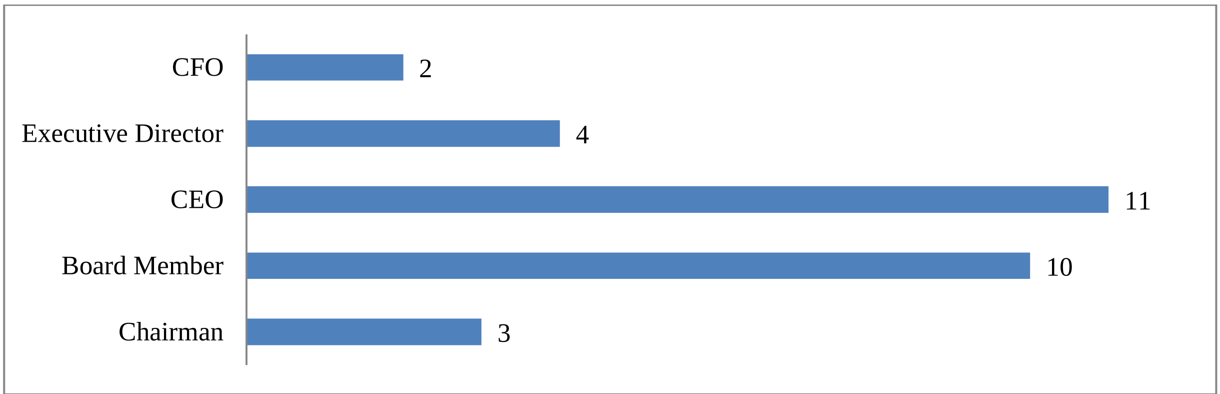
The main research questions were as follows:

- What aspects of Corporate Governance leads to improved business environment in Iran?
- Which aspects of Corporate Governance help enterprise managers to better run their company in the Iranian context?
- What are the stakeholder's expectations from mechanisms of Corporate Governance?
- What dare the challenges of the market regulatory bodies to develop proper regulations in regards to Corporate Governance?
- What are the main challenges and difficulties in implementing Corporate Governance mechanisms in different business sectors of the Iranian Economy (FOB, Listed, Government Owned, Quasi-Governmental)?

4.1.4 Respondents

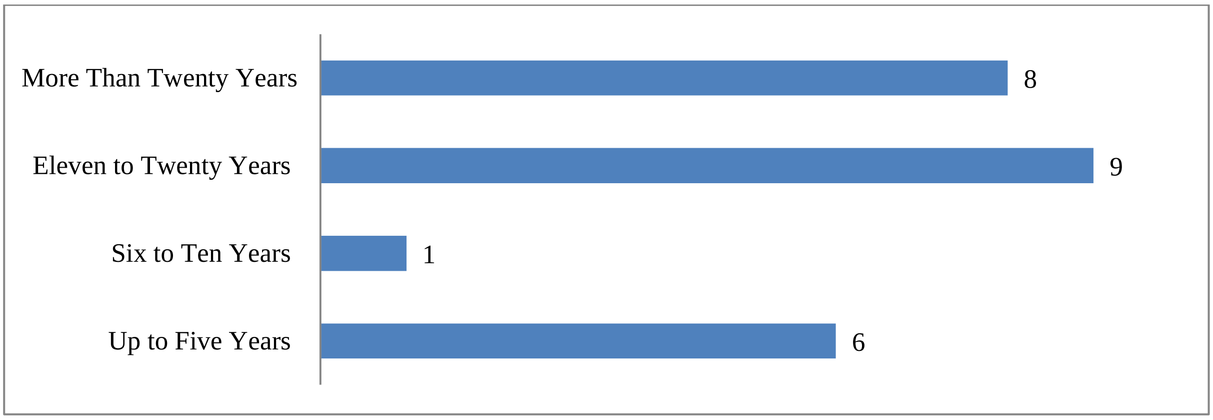
For the purpose of this study, convenient sampling method was used from 30 directors and C-level managers in 26 Iranian corporations. The rationale for deploying this method is that this research was an exploratory study and convenient sampling is most often used in such investigations. No specific industry had the focus of this research so that the results of this study would be generalized easier and would portray a better picture of the corporate governance situation in diverse industry sectors. Breakdown of the respondents by their positions are illustrated below:

Figure 1. Respondent's Position



Also the breakdown of the companies by their respective year of establishment is shown in the following graph.

Figure 2. Surveyed companies by year established



The design of the study comprised of 91 questions aimed at probing the effectiveness of corporate governance in Iran. We selected 26 well-known companies from all sectors: listed companies in the public sector, Multinational Companies (MNCs) and Private Local/Family Owned companies. These companies are combination of family firms, quasi-governmental, public stock exchange, banks, insurance and joint venture companies from different sectors. The survey conducted in 2011 included 30 managers (CEOs, CFOs, board members, chairmen)

The issues in questions are

• What aspects of Corporate Governance leads to improved business environment in Iran?

• Which aspects of Corporate Governance help enterprise managers to better run their company in the Iranian context?

• What are the stakeholder's expectations from mechanisms of Corporate Governance?

• What dare the challenges of the market regulatory bodies to develop proper regulations in regards to Corporate Governance?

A questionnaire divided into six sections was sent out to the above mentioned 26 companies, addressing the following issues which will be discussed in the following subsections:

• Awareness and Commitment to Good Corporate Governance Practices

• The Board Responsibilities

• Control Environment and Processes

• Disclosure and Transparency

• Shareholders' Rights and the Key Duties of Owners

• The Role of Stakeholders in Governance of the Firm.

4.2 Awareness and commitment to good corporate governance practices

In many countries, ratification and enacting codes of Corporate Governance in the capital markets are the main drivers for implementation of the concept of Corporate Governance practices in the business arena (see OECD, 2011); However, in Iran the code has not been implemented yet.

Our survey reveals that:

• 18 % of the respondents are familiar or knowledgeable with the concept of Corporate Governance and its principles, this number is 52% in Turkey, 59% in Pakistan (CG Iran, 2011), and 60% in the MENA region (IFC, 2008).

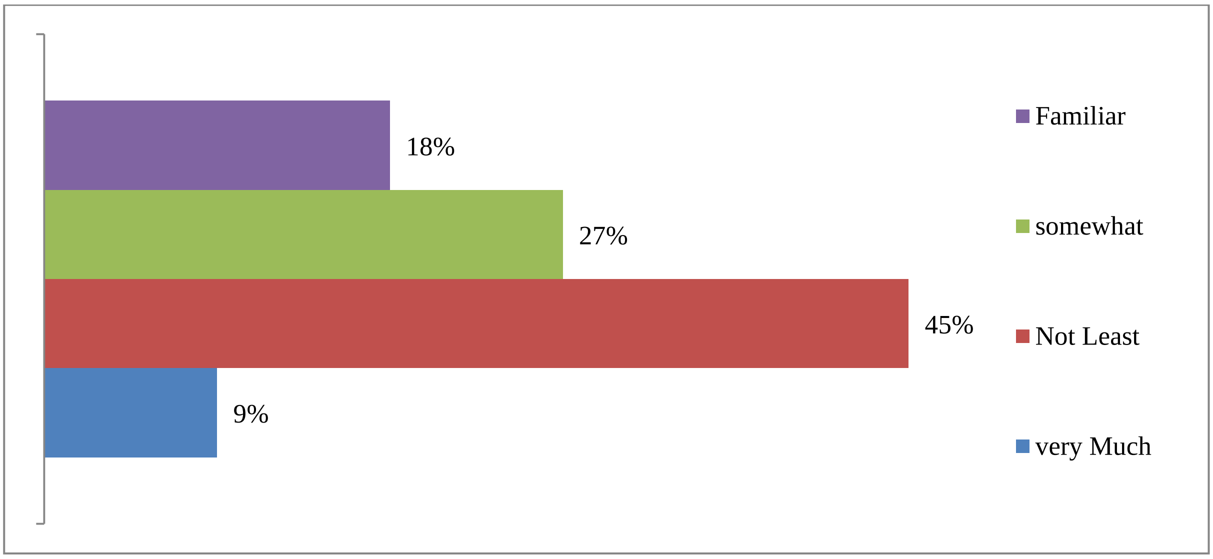
• 82% of the respondents accept that the main benefit of implementing Corporate Governance practices is compliance with the legal and regulatory requirements.

• None of the respondents have developed their own code or guideline for Corporate Governance, while 63% of their counterparts in Turkey and Pakistan have formalized codes of conduct and ethics (CGIran, 2011)

• A significant barrier in implementing good Corporate Governance was the unavailability of qualified staff and a lack of information/know-how as well as Lack of effective rules and regulations about Corporate Governance principles and practices, similarly, respondents in the MENA region have asserted that main barriers for effective implementation of CG are lack of qualified specialists and lack of information and knowledge of the subject (IFC, 2008).

As we see in the below graph, only 9% of respondents indicated that they knew Corporate Governance principles, specifically the OECD Principles of Corporate Governance. This was followed by 45% of the respondents not knowing much on the concept.

Figure 3. How familiar are you with Corporate Governance?



In addition to gauging awareness of good Corporate Governance practices, the survey sought respondents' views on the level of compliance with Corporate Governance best practices in their own companies.

Although still the principles/codes of Corporate Governance in the country have not been enforced, some companies- relying on managers' personal experiences, are taking advantage of management consultants in organizational longevity of organization and have implemented some of the aspects or principles of Corporate Governance in their companies. These activities are mainly in:

- Separation of CEO and managing director;
- Formation of audit and risk committees;
- Reporting of the financial director to the board.

Companies had adopted such Corporate Governance improvements as required by best practices; for example, while 9% had established board committees, 68% of the respondents have Separation of chairman and CEO , 73% of the respondents have not introduced independent non-executive directors to the board of directors, 86% have not established Board Evaluation Instructions, 60% have not established conflict of interest and related-party transactions administration procedures and 69% have not Implemented a formal remuneration system for executives.

Table 4. To what degree are international corporate governance standards followed?

Mechanisms on board selection criteria	13%
Nomination procedure	22%
Board committees (Internal Audit Committee, risk management, nomination and selection committee and ...)	9%
Developing compensation and remuneration mechanisms for board of directors and executives	31%
Board Evaluation Instructions	13%
Separation of chairman from CEO	68%
Independent and non-executive board members	27%
Developing procedures governing deals with related parties and preventing conflicts of interest	40%
Instructions for protecting shareholder and stakeholder rights	4%

Regarding barriers to improve Corporate Governance, 4% of the respondents did not identify any barrier to improvement as they believed every barrier has to be overcome and resistance is futile. Of the 96% of respondents who identified barriers, 77% mentioned unavailability of qualified staff to help with implementation of Corporate Governance practices and 68% stated lack of countrywide effective rules and regulations relating to Corporate Governance principles and practices as the barrier to improving Corporate Governance practices in the company. The other main obstacle identified by 18% of the respondents was that Corporate Governance identifies or discloses commercially sensitive information that cannot be shared with competitors. 9% asserted that the main obstacle to improvement of Corporate Governance practices was that they did not see any benefit in adopting such practices.

Table 5. Barriers to improve CG practices

Lack of effective rules and regulations	68%
Due to information disclosure and transparency as a part of Corporate Governance, we prefer to keep our financial information away from competitors and rival stakeholders	18%
We don't find any use in it regarding the Iranian legal and business structure / We simply don't see any value engaging with it.	9%
Lack of professional experts and consultants	54%
Lack of knowledge and expertise available to the company	77%
I do not see obstacle	4%

For an overwhelming majority (77%) of the respondents, the most important benefit of adoption of Corporate Governance practices was improved strategic decision-making process. Meanwhile, we can see that the perceived benefits of Corporate Governance are closely followed by improved risk management system and improved brand and credibility, each 72% and 68% respectively. It should be noted that the bottom three perceived benefits are also indicative. Defending shareholder's rights and information disclosure and transparency as important goals of Corporate Governance are fully underestimated and a major benefit pertaining to better access to capital is unrealized the most.

Table 6. Benefits of adaption of CG practices

Increasing information disclosure	50%
Improved brand and credibility	68%
Improved risk management system	72%
Compliance with legal and judicial requirements	59%
Defending Shareholders Rights	50%
Improved strategic decision-making process	77%
Better access to capital and foreign partners	40%

4.3 Board Responsibility

Traditionally and also based on the Iranian commercial law, the board is responsible for executive and strategic duties (but in practice mainly administrative/executive tasks). However, the power structure in Iranian companies is very centralized, with little delegation of authority to lower management levels. Both in private and government-owned companies, the managing director's approval is needed for nearly all decisions with legal or financial liability on the company.

Iranian companies have a one-tier board structure with Board of Directors, but some of the Iranian semi-government companies have a two-tier board structure: a Trustee Board and a Management Board. In the one tier board companies, election of board members is made by the General Assembly and in semi-governmental companies; selection of the management board members is done by the Trustee Board. In semi government companies, the Trustee board is supposed to oversee the work of the management board, while the management board carries out the day-to-day operations of the company. Practice however varies greatly across companies, with Trustee boards playing little role in operation of some companies, while working full time in others and engaging in day to day management.

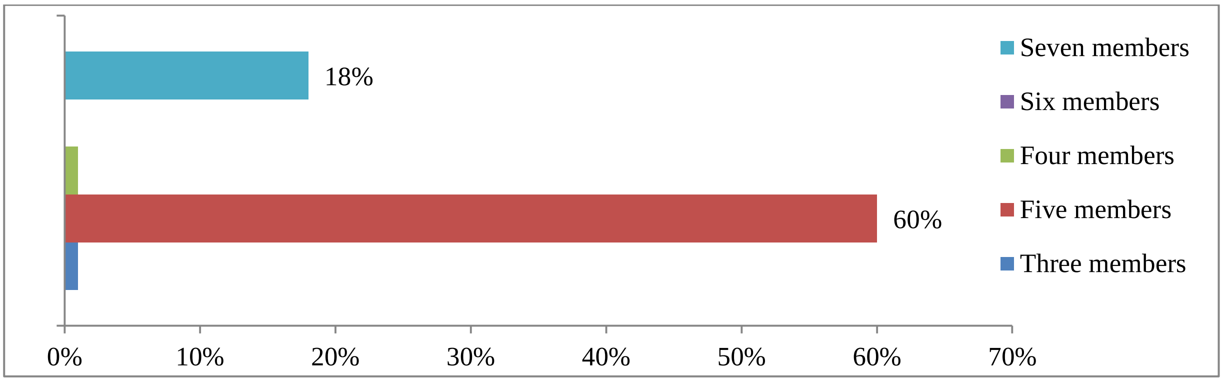
Regarding the number of board members, good Corporate Governance practices require that boards be large enough to encompass individuals with a range of specific skills on finance, legal and commercial affairs. On the other hand, smaller boards are more efficient (Becht et al., 2002). Meanwhile, the corporate law in Iran requires a minimum of two board members.

In our survey board of 3 and 4 members had 6% of the total each. The highest number of members recorded was five, found in thirteen of the surveyed companies and 18% had a board of 7 people.

Even though the definition of independent director was given in the questionnaire and explained during the process of interview, a majority of respondents did not understand the definition. For them, a non-executive director who did not work full time for a company was an independent director. A majority of the respondents expressed that it is difficult to find any non-executive directors and impossible to find independent non-executive directors.

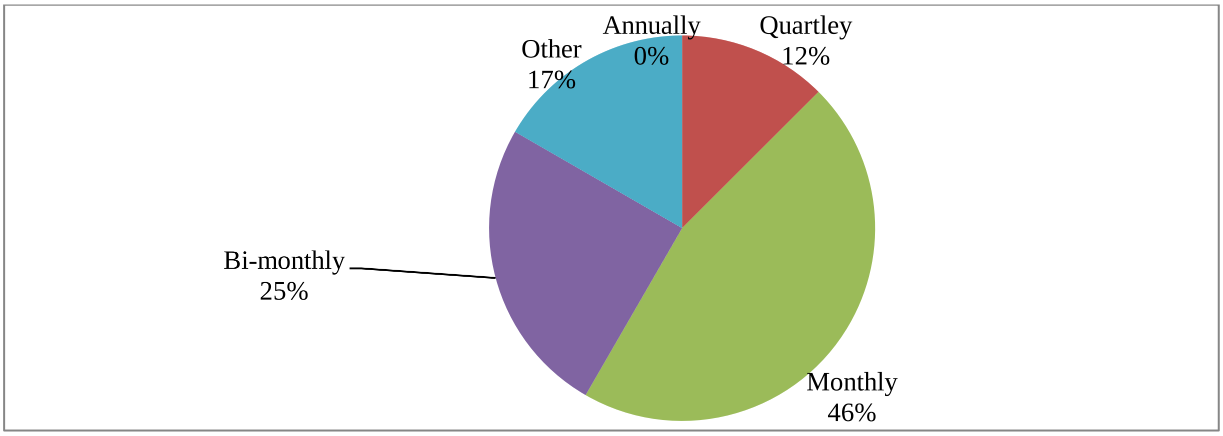
The Companies Ordinance requires that the directors of a public company meet at least once every year, and 100% of the responding sample stated that they complied with this. On the other hand, the Code of Corporate Governance recommends having a meeting every month.

Figure 4. Number of board members



The board of directors met on average 10 to 14 times a year, in 46% of the surveyed sample, and followed by around 6 times a year (25%). Meanwhile 91% stated that the directors are furnished with background material one week before the meeting, as required by law. In a considerable part of companies, 17%, it is not clear whether board meetings are not held or they do not document the meetings.

Figure 5. Frequency of board meetings

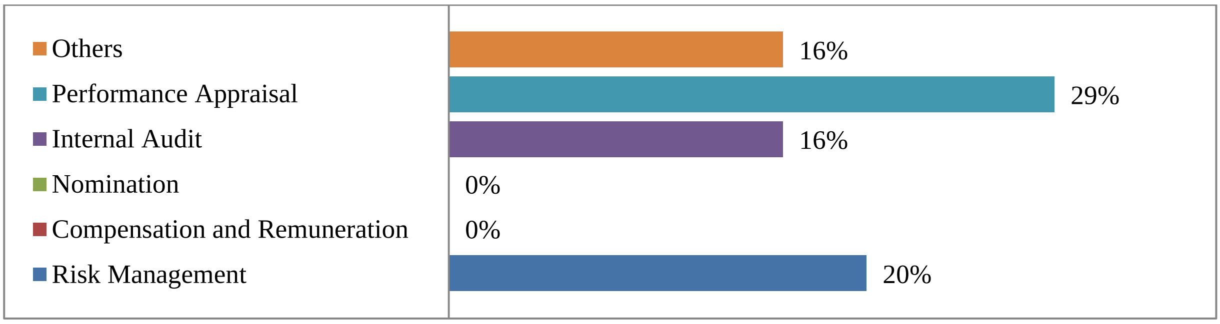


100% of the surveyed sample stated that the board was responsible for electing, appointing and dismissing the chief executive. The board of directors is responsible for setting the remuneration of the CEO. A majority 88% of the sample thus expressed that the board was responsible for approving the remuneration of the CEO. 33% of the respondents did not reply to the question relating to approval of the succession plan, while 33% stated that the board was responsible for the succession plan. By-laws or statements in which the board functions were described in details were not identified in the companies in this study. Board's duties and responsibilities are mainly confined to what is described in the commercial law and company's statutes. Only in one of the quasi-governmental companies (4%), there existed board duties booklet, which was handed in to them upon selection. This is while about 60% of the companies in the MENA region have developed their own board charter (IFC, 2008). An overwhelming majority (83% of the companies) stated that the board was responsible for setting the corporate strategy.

SEO has obliged all listed companies through a by-law that the CEO and chairman of the board have to be separated. Perhaps, that is why separation of CEO and chairman position with 66% is the most common phenomenon of CG practices in our sample of Iranian companies. The same practice is also dominant in the MENA region with more than 80% of companies have different CEOs than their chairs (IFC, 2008). Board committees play an important role in Corporate Governance best practices, and respondents were asked whether they had established or planned to establish the committees, generally considered necessary for adequate Corporate Governance. Although the Commercial law does not require specific supervisory board committees, a number of companies reported that they had established some committees.

The most prevalent existing committee was the performance appraisal committee (29.0%), followed by the risk management committee (20%), Internal- and Audit committee (16.0% each). However, an important point is that these committees were mainly established by CEO and usually board members are not members of this committee. This is while in the MENA region about 80% of the companies have audit committees (IFC, 2008).

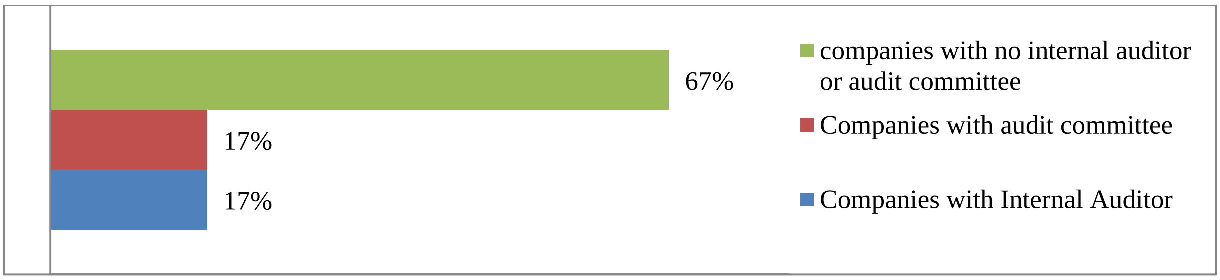
Figure 6. Prevalence of Board Committees



4.4 Control environment and processes

In our survey we found that 17% of the companies used internal auditors inside their organizations while 17% of them have formed an audit committee. The majority of the companies have neither an internal auditor nor an audit committee.

Figure 7. Prevalence of Audit Committees resp. Internal Auditors



We can see from the figure below that the internal auditor of the responding companies performs a number of functions where the most common are to perform regular and extraordinary inspections of the company's operations, to ensure compliance of the board of directors and executive bodies with legal requirements, charters and by-laws, and to develop policies and procedures for internal control and risk management.

4.5 Information disclosure and transparency

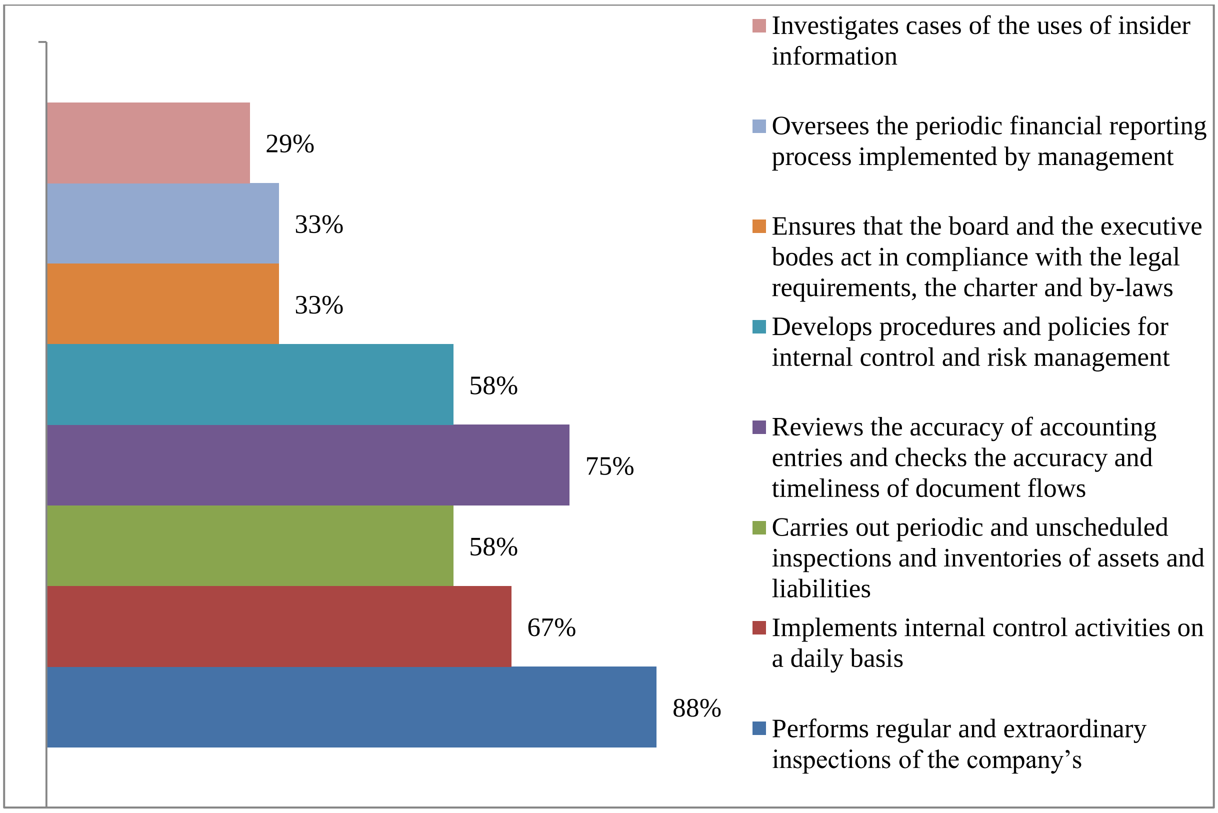
Effective disclosure, which includes financial disclosure and transparency, is fundamental to good Corporate Governance and essential for building investor confidence. Information transparency is also necessary for capital market efficiency. Since business entities only assume information disclosure costs, disclosed information is usually less than satisfactory. More disclosure results in less uncertainty but for this purpose, a cost-benefit limit should also be considered.

Banks and companies which are considered Public Interest Entities use National Accounting Standards (NAS[5]). Larger banks and some other companies, usually with foreign investment or control,

[5] The National Accounting Standards (NASs) issued by the Islamic Republic of Iran Audit Organization (IRIAO) are based on International Financial Reporting Standards (IFRSs), formerly known as International Accounting Standards (IASs), issued by the International Accounting Standards Board. IFRSs are being constantly reviewed and revised to keep up with changes in global financial practices and trends. Consequently, to remain in compliance, the IRIAO has been introducing new projects for incorporating revisions into NASs. According to IRIAO website, as of February 2009, amendments of NASs aimed at harmonization with international standards were in process. On its website, the IRIAO accounted for 9 NASs which made "minor departures" from the revised IASs, and 10 IFRSs that had not been adopted as of February 2009. In a May 2007 self-assessment report prepared for the International Federation of Accountants, the Iranian Institute of Certified Accountants noted that the IRIAO had established convergence of national auditing standards with International Auditing and Assurance Board pronouncements as a formal objective. To keep up with the revisions in ISAs, the IRIAO, according to the Iran Daily 2005 article, prepared seven new standards and was in the process of revising existing standards.

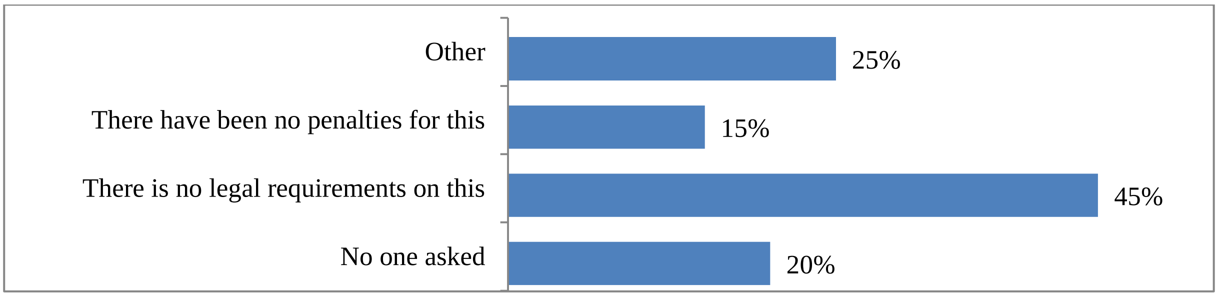
have made progress in implementing IFRS, but other companies have not. Many companies still do not comply with NAS and use tax accounting for their reports. All listed companies are required to publish audited financial statements that include a balance sheet and income statement.

Figure 8. Functions of internal auditors



In our survey we saw that only listed companies published their financial statements and annual performance reports and none of the other surveyed companies tended to publish their annual or financial reports. The main reason for non-disclosure of the voluntary information outlined above, provided by 83% of the respondents was the absence of any legal requirement to do so.

Figure 9. Reasons for non-inclusion of information in annual reports (SCALE IS MISSING)



4.6 Shareholder and stakeholder rights

- 46% of the respondents stated that more than 50% of all shareholders attended the last AGM.
- Electronic voting mechanisms are not used by any of the respondents;
- With respect to treatment of shareholders when changes of control occur, 91% did not have clear policies and none had block-voting mechanisms. Only in one company use of Silent Voting mechanism have been noticed.
- Evidence was found of an increasing number of related-party transactions among responding

companies, with 80% of the respondents stating that under a governing document or law it was mandatory to disclose related-party transactions. In addition, 67% stated that the related-party transactions should be verified by the external auditors

- According to by law of behavior in TSE accepted upon entering the market, companies are to treat all shareholders' rights equally. This by law also requires the companies to ensure availability and presence of all shareholders in the General Assembly, to ensure presence of CEO, board members and auditor in the General Assembly meeting, to allocate enough time for shareholders' questions and to disclose the dividend in the meeting.
- Regarding the dividend, listed companies on the average divided and distributed 80% of their annual profit between shareholders, but generally there are no way for a minority shareholder to affect the amount and distribution method of the profit to be divided.
- In order to help foster shareholder activism, shareholder institutions are beginning to play a crucial role in providing a platform to initiate collective shareholder activism. Re-activation of Individual Shareholder Association is one of the key initiatives recently
- The response showed that just one company has a Board-approved CSR policy whereas many public sector entities do not

Regarding stakeholders, there is no provision in the law requiring that board members treat all stakeholders fairly. However, some companies started some initiatives on the protection of stakeholders' interest. Examples could be defining code of conduct or code of ethics, preparing consumer-rights guideline, putting helpdesks where necessary, considering anti-bribery or anti-corruption guidelines, etc. Meanwhile, there is no requirement for labor to be represented on the board or in management.

Table below summarizes the availability and prevalence of different codes and guidelines:

Table 7. Availability of codes and guidelines

Code of Conduct	8%
Code of Ethics	13%
Consumer-rights Guideline	13%
Anti-Bribery	0%
Employees Representative on Board	4%

5 Implications and conclusion

Iran's capital market works with fairly low liquidity and Corporate Governance principals are often interpreted, illustrated, applied and implemented by the dominant shareholders.

Meanwhile, there is no clear division or difference of roles and responsibilities between shareholders and board of directors as board members directly represent shareholders. Minor shareholders do not have an effective or prominent role in Corporate Governance system or decision-making in General Assemblies.

The above survey gives an idea of what needs to be done in terms of Corporate Governance in Iran – but not limited to Iran, as the other MENA countries face similar challenges:

- Shareholders should proactively engage in governance of the company.

Dialogue between board members and shareholders needs to be strengthened or in some case formed and there should be a regular reporting mechanism to let shareholders keep their working contacts through a possibly reporting line with the board members.

- Establishment of independent or non-executive directors

Independent or non-executive directors should be included in the board of directors. It is suggested that the difference between 'non-executive' and 'independent' needs to be clarified.

There is considerable resistance to the idea that a non-executive director is not necessarily independent, nevertheless, this is an important distinction. Also non-executive board members should be capable of positively affecting executive directors or CEO to further engage in governance of the company.

- Independent non-executive directors should be included in the audit committee of the board.

The survey results indicate that considerable progress has been made in establishing audit committees in Iranian listed companies but this committee should include board members, non-executive managers, and also the internal auditor should be appointed by chairman and report to the chairman. Best practice, however, calls for an audit committee to be exclusively composed of independent directors; in most emerging markets, an argument can be made to aim for audit committees that are exclusively composed of non-executive directors. The inclusion of executives as members of the audit committee runs counter to good Corporate Governance practices. Thus there is a need to encourage companies to include non-executive directors as members of the audit committee.

- Iran's resources of competence in Corporate Governance should be developed.

It can be concluded from the survey that there is a dearth of appropriate skills to exploit best practice in

Corporate Governance. Although we need experts on Corporate Governance to expedite and facilitate adoption and expansion of Corporate Governance practices in Iran, we also need qualified directors with various set of skills to form the boards.

- Establishment of a nominations committee of the board should be considered.

33% of the respondents were of the opinion that the board is responsible for succession planning, as indeed in an overall sense. One the other hand there is no job market in Iran for the director, although the SEO has made a decision to implement a bylaw to ratify the qualification of the board member of listed company and put few regulations on the composition of the board. The board can set up a nominations committee largely comprising independent directors, to come up with a policy for board succession and search for new directors. For public companies, even those with a significant or majority family shareholding, this is important as well. It is recommended that Iran should develop best practice guidance on nominations committees of the board.

- Board and director evaluation should be developed

Only 17% of the respondents stated that the board had conducted a formal evaluation of its performance in the previous two years. Best practices however suggest that the performance of the board, of the board committees, of individual directors and board committee members, and of the chairs of boards and their committees should all be assessed at least annually.

Institutional investors should play an active role in implementation of Corporate Governance practices. Our survey noted a level of unease on the part of companies about the role of institutional investors. Successful Corporate Governance addresses the behaviour of stakeholders with respect to the companies in which they have stakes.

- Research on board meetings and board behaviour should be conducted.

In terms of the agenda, frequency and notice of the board meetings, compliance with the Code of Corporate Governance is common. It is recommended, however, that further research would be useful to determine whether Iranian boards are effective at determining the direction of the entity, overseeing management, and accounting effectively to their owners. These research studies should concentrate on reviewing board meeting practices and assessing the effectiveness of board meetings, the quality of discussions at these meetings and the appropriateness of their agendas.

- Enforcement should begin

In developing and implementing Corporate Governance, it is more reasonable to start from financial institutions. The Central Bank of Iran can pass regulations for approval of financial institutions' board members. For example, they can enforce that those with no professional financial management experience cannot enter the boards of these institutions. There might be some easier method of approaching such problems, like using some incentive based schemes to promote and internalize Corporate Governance in organizations. One of such schemes which are widely popular throughout the world is based on ranking organizations based on their Corporate Governance practices. We lack such a mechanism as for the moment in Iran.

Legislatures, regulatory bodies, courts and self-regulating professional organisations must establish, monitor and enforce legal norms actively and even-handedly. Private associations and institutes must develop and promulgate codes of conduct, particularly with respect to corporate directors, that raise expectations for behaviour and generate formal and informal sanctions for failure to meet these expectations.

- Education

Educational institutions should promote research on, and the teaching of, professional and managerial ethics. Institutions throughout government and society must educate and train people ranging from judges to regulators to managers to retail investors. Investment advisors and business media must constantly weigh information provided by companies and probe for additional information of interest to investors.

To a large degree, raising awareness means convincing people that Corporate Governance is in their self-interest. Many business leaders and controlling shareholders are thus being challenged to re-think their relationships with their companies and with the minority shareholders who lay claim to partial ownership in them. Such re-orientation in thinking requires not only a strong national commitment to Corporate Governance, but one that is also broad-based.

Thus the following approaches are recommended:

- The first focuses on director training and to make available material on functions, benefits, aspects, best practices, guidelines and case studies on Corporate Governance to provide understanding on how Corporate Governance can address some of the companies' issues.
- A second set of recommendations seeks to reduce or eliminate ambiguities by tightening standards for director independence, by making shadow directors liable for their actions, by increasing sanctions for violations of duties of loyalty and care and by advocating definition of a core set of related-party transactions (such as company loans to directors and officers) that should be prohibited entirely.
- Empowering shareholders to seek remedy for violations of their rights and to ensure director accountability. Mechanisms to discourage excessive legal action should not prevent or discourage collective action by shareholders with meritorious claims.

Finally and perhaps most importantly, Iranian business environment and its key players should distinguish between those entities who perform responsibly and those who do not, so that good Corporate Governance can bring about competitive advantage to the capital market and ultimately boost the investors confident.

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CORPORATE GOVERNANCE COMPLIANCE AND ITS EFFECTIVENESS IN THE NIGERIAN BANKING INDUSTRY

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Abstract

This paper examines the extent of compliance to the Central Bank of Nigeria (CBN) 2006 Corporate Governance Code by 24 Nigerian commercial banks and reveals a compliance level of 76.6%. The major non-compliance areas include non-constitution of a board committee consisting of non-executive directors, that regulates the compensation for executive directors, and the non-inclusion of independent directors on the main boards of many banks. Furthermore, the analysis shows that the benefits resulting from the changes for compliance outweigh the additional layers of supervisory checks and bureaucratic overbearing associated with the Code. The Code has brought about more effective corporate governance, accountability and greater transparency despite a low frequency of supervision and examination of the banks by the CBN.

Keywords: Corporate Governance, Compliance, Banking, Nigeria

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1 Introduction and Rationale

Fundamentally, the origin of corporate governance issues has been attributed to the emergence of modern firms, in which there is a separation of a firm's equity ownership from its management that gives rise to a conflict of interests (e.g. Berle & Means, 1932; Jensen and Meckling, 1976). Consequently, there is a continuing interest among academia and policy makers to strengthen corporate governance mechanisms, hence protect the interest of firms' different stakeholders. For instance, in the UK, the collapse of Polly Peck and Coloroll in 1990, and BCCI and Maxwell Communications Corporation in 1991 led to the first major attempt to reform and improve corporate governance with the publication of the Cadbury Report in 1992.

Additionally, in the USA there were a series of major corporate failures and disasters at the beginning of the new century, notably Enron in 2001 and WorldCom in 2002, which further helped to underscore the importance of effective corporate governance to protect investors and other stakeholders. Further, the current debate that is raging on about banks' bailouts and bonuses, following the collapse of Lehman Brothers in 2008 and the subsequent un-abating global economic recession, has shockingly exposed the huge divergence between the interests of shareholders, other connected stakeholders and the wider society on one hand, and those of corporate managers on the other. Many academic research papers about corporate governance have been spurred by these corporate failures and scandals as well as the banks' failures in Asia and Russia during the 1990s.

However, much of the literature on corporate governance has addressed the issues of confronting companies and firms in the non-financial sectors. These studies have taken the principal-agent problem, in which the principal is the owner/shareholder of the firm and the agent is the manager/employee of the firm, as the starting point of analysis, (e.g. Kern, 2006; Keasey et al., 2005; Stenberg, 2004; Sundaramurthy, 1996). In his study, Kern (2006) argues that the traditional model of the principal-agent problem fails to take account of the important role that financial regulation can play in representing stakeholder interests in the economy. However, he also noted that following the USA savings and loan crisis in the 1980s, and the Asian financial crises in the 1990s, most experts recognised that effective prudential regulatory regimes for the banking sector require strong corporate governance frameworks for banks and financial institutions.

There are now some studies that deal specifically with corporate governance in banks (Belkhir, 2009; Kaymark and Bektas, 2008; Turlea et al., 2010). This paper seeks to contribute to the growing research by focusing on the compliance level and the effectiveness of the Central Bank of Nigeria's 2006 Code of Corporate Governance for Nigerian Banks. More crucially, this study is important because, as Kern (2006) and Mülbert (2009) argue, the corporate governance of banks and financial institutions is an important area of financial regulation, as a result of the universal risks that banking activities pose for the economy and society at large. Nigeria is no exception to such risks. Moreover, Nigeria has by far, the biggest economy in sub-Saharan Africa, and hence any crash of its banking and financial industry will have a devastating effect on the other economies that make up the Economic Community of West African States (ECOWAS). The continuing crisis in the Euro and the wider European Union (EU) only serves to buttress this point.

Lastly, our study is also important because over the last 5 years there has been a great loss of confidence in Nigerian commercial banks by both customers and investors alike, due to the banking scandals and failures of 2009 and 2011. Although much has been written on corporate governance reforms in Nigeria recently (Adekoya, 2011; Dabor and Adeyemi 2009; Adekoya 2011), we are unaware of any journal paper that took our perspective. By investigating the extent of compliance with the CBN's 2006 Code of Corporate Governance, this study helps to answer whether the continuing low confidence in the banks is justified or whether the Code has succeeded in curbing the worst abuses of the banks and in providing greater protections to all stakeholders.

2 Background

According to Central Bank of Nigeria (2011), in 1986 there were only 40 banks in Nigeria, but the number had tripled to 120 by 1992. However, according to the same CBN Report, by 1998 the number of banks in operation had declined to 89 as a result of the liquidation of 31 terminally distressed banks. The rapid growth and the failures that followed have been attributed to a lax regulatory regime by the CBN and weak internal corporate governance structures of the banks (Okorie and Oyewole, 2011).

The CBN response to the banking failures was to increase the minimum capital requirement (capital base) of all commercial banking institutions in Nigeria from its level of ₦10 million in 1989 to ₦500 million with effect from December 1998. This fifty fold increase in the capital base of banks was soon followed by a much more significant increase, and banking consolidations engineered by the CBN. The Central Bank ratcheted up the minimum capital requirement to ₦25 billion and required compliance by the end of 2005. This had the intended consequence of forcing weaker banks to liquidate or seek mergers. The massive banking consolidations that followed resulted in the number of banks in Nigeria shrinking further from 89 in 1998 to only 25 by the end of 2005, and as of 2011, the number has fallen to 24.

Despite the increase in the capital base to ₦25 billion, the global financial crisis that started in 2008 exposed the fragility of a number of Nigerian banks. Some had to be bailed out in 2009, and again more recently in 2011, by the CBN through the Assets Management Company of Nigeria (AMCON). These banks were found not only to have liquidity and inadequate capitalization to absorb their huge losses, but also had very weak internal corporate governance structures that manifested themselves in all kinds of management abuses and excesses. The worst of the abuses and excesses led to the sacking of eight CEOs and some of their senior management team by the CBN, and their arrest and prosecution by the Economic and Financial Crimes Commission (EFCC), and their subsequent convictions by the courts.

Previously in 2004/5, a regulatory investigation by the CBN looked into the conduct and the internal corporate structures of various banks and revealed shocking weaknesses and abuses in the way Nigerian banks are managed and controlled, which left many of them in a perilous state of financial distress. The major corporate governance weaknesses uncovered by the investigation included boardroom rifts arising from conflicts between the boards of the banks and the management, lack of board oversight functions, self-centred conduct of some board members, and concentration of powers on chairman or managing director/CEO. The major abuses were manifested in the form of poor compliance with prescribed internal controls and operation processes, poor risk management procedures, resulting in substantial levels of non-performing loans including insider-related credits, and gross flouting of banks' own lending guidelines. The CBN investigation also found that the fragile states of some banks were further compounded by shareholders' demands for ever-increasingly huge dividend payouts, and big depositors threatening to switch their deposits to other banks unless they received higher rates of interest. From this investigation, the CBN concluded that there was an urgent need to review some of the existing regulatory provisions of internal corporate governance for Nigerian banks. The review gave rise to the 2006 Corporate Governance Code guidelines, which was reviewed in 2012.

Despite the massive publicity generated by the Code, and the uncompromising measures taken by the CBN against erring banks and their boards, we are unaware of any journal paper that examined the level of compliance and the effectiveness of the Code. This study attempts to bridge this gap. The compliance with the Code is examined using the whole population of 24 commercial banks currently operating in Nigeria, while the effectiveness of the Code is examined based on Guaranty Trust Bank PLC.

3 Literature Review

3.1 Agency Theory and Corporate Governance

Agency theory suggests that a corporation's framework consists of a relationship of agreements between the owners of the business, known as the principals, and managers of that business, referred to as the agents (Jensen and Meckling, 1976). Sundaramurthy (1996) argues that agency problems emanate because contracts cannot wholly stipulate the duties and commitments of parties to the contract, which provides the opportunity for agents to make choices and decisions, concerning the use of corporate resources, that profit them personally at a cost to the firm. Similarly, Roberts (2005) suggests that it is the combination of assumed autonomy and self-interested motivation that creates the problems within agency relationships.

In the main, agency problems arise because managers possess superior and more information than the owners of the firm. This 'information asymmetry' unfavourably affects the owners' ability to determine whether or not their benefits are being properly pursued by managers (Sarens and Abdolmohammadi, 2011). Furthermore, the structure of dispersed ownership that the agency theory brings about means that the shareholders' ability to exercise absolute control on how the business is run is greatly impaired (Jensen and Meckling, 1976; Ntim, 2009). Thus, both the origins and potential consequences of agency problems, in turn, raise the issue of corporate governance and board accountability.

There have been various definitions of the term 'corporate governance' as it emerged as a distinct area of study over the last two decades (Ntim, 2009). The Cadbury Report (1992) in the UK defined corporate governance "as the system by which companies are directed and controlled" (para.2.5). This definition provides only a narrow characterisation of corporate governance. A much broader definition is provided by Gospel and Pendleton (2005, p.3) who defined "corporate governance as a relationship between three sets of actors or stakeholders (capital, management and labour), which is concerned with who owns and controls the firm, in whose interest the firm is governed and the various ways (direct and indirect) whereby control is exercised". A similar broader definition is also favoured by the OECD (2004, p.11), which sees corporate governance as involving "a set of relationships between a company's management, its board, its shareholders and other stakeholders' as well as providing the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined".

Although the broader definition is now favoured by most countries, differences exist among them about how best to implement and achieve effective corporate governance. In the next section, we briefly examine the various models of corporate governance that have been suggested in the theoretical literature.

3.2 Models of Corporate Governance

3.2.1 Shareholding Model of Corporate Governance

Fundamentally, the 'Shareholding Model' of corporate governance assumes the parochial interest of the owners of the business where the underlying focus is maximising the shareholders wealth (Rossouw,2005; Macey and O'Hara,2003; Jensen and Meckling, 1976).The model is also known as the Anglo-American model and tends to derive from the narrow definition of corporate governance. It neglects the interests of other wider parties associated with the firm such as customers and the local communities.

Moreover, the inevitable conflict of objectives remains in this model. Since shareholders (principals) have to give the control of their business to a few executives (agents) to manage the corporation on their behalf, there is a potential threat that these agents will seek personal benefits to the disadvantage of the owners –principals (Keasey et al., 2005; Jensen and Meckling, 1976). The Cadbury Report (1992) suggests a resolution of this agency problem by recommending the introduction of a corporate governance code of ethics and conduct that is underpinned by the universal corporate values of accountability, discipline, fairness, independence, responsibility, and transparency to regulate director and managerial behaviour.

Again, the shareholding model posits that many of the agency problems can be resolved by the introduction of efficient contracts to govern the relationship between owners of capital and labour (Jensen and Meckling, 1976). It opposes the intervention of central authorities and government as such interventions usually distort free-market operations. Taking the rational economic model as its cornerstone, it assumes that factor markets (e.g., capital, managerial labour and corporate control) are efficient, and therefore argues that self-regulation, backed by additional voluntary mechanisms that includes a voluntary corporate governance code, are more effective in reducing differing activities of managers (Keasey et al., 2005).

However, a major and undermining weakness of the shareholding model lies in its near total exclusion of the social, ethical and moral responsibilities of the firm as an important societal institution, and the narrowness of the model's concept of stakeholders (Rossouw, 2005; Keasey et al., 2005). Furthermore, Stenberg (2004) criticises the inherent weaknesses of this model because shareholders' lack sufficient power to control management and prevent misuse of corporate resources. Theoretically, the maxim of shareholders primacy connotes that firms exist to maximize shareholders wealth and that residual powers lie with the shareholders to appoint and dismiss managers who run their corporation during annual general meetings (AGM). However, Stenberg (2004) argues that, in reality the exercise of such powers is constrained by procedures that govern corporate processes.

3.2.2 Stakeholding Model of Corporate Governance

According to Keasey et al. (2005), Rossouw (2005), and Stenberg (2004), the 'Stakeholding Model' is an all-inclusive model in which the board of directors of a firm are not only answerable to the shareholders (owners), but also to the other participants that include contractual stakeholders (customers, employees, suppliers, creditors and bankers amongst others) as well as non-contractual stakeholders (media, special interest groups, local communities, professional bodies, the state, government of the day and the society at large). Similarly, for Fama (1980), the Stakeholding Model explicitly suggests that the agency relationship cannot be limited to the shareholders (principals) and managers (agents) as the major participants, but includes other stakeholders who also influence the corporation. Still in the vein, Jensen (2002) and Ntim (2009) see the firm as consisting of different social groups, with each group making its own contributions by way of resources, and in turn, expecting their interests to be enhanced.

Therefore, unlike the shareholding model, the Stakeholding Model strongly advocates the inclusiveness of identifiable stakeholders rather than advancing the parochial interest of the shareholders. The model suggests that the way a corporation treats its stakeholders reflects its ethical standard and this should be done through the identification of its stakeholders and the stakeholder engagement. The content of the stakeholder engagement is generally described as an obligation to inform stakeholders about the company's performance (Rossouw, 2005). Equally, the framework of the Stakeholding Model promotes closer contact between all stakeholders (shareholders, creditors, managers, employees and suppliers) as well as the integration of business ethics as a solution to achieving a balance among the various stakeholder interests (Ntim, 2009).

However, the Stakeholding Model's strong stance on balancing the differing interests of the various stakeholders may reduce its appeal to equity investors and skew sourcing of capital towards more debt than equity capital (Ntim, 2009; Stenberg, 2004). It has also been argued that the model runs contrary to the principal concept of business. In other words, its insistence on firms finding an ideal balance of distribution of benefits to all stakeholders may conflict with the idea of business, which involves the investment of shareholders' capital in a modern firm to primarily maximise its long-term value (Sternberg, 2004; Jensen, 2002). Also, the definition of who 'all stakeholders' are is seen as rather ambiguous since the concept of stakeholders encompasses the generality of those whose conduct influence or are influenced by the business (Sternberg, 2004).

3.3 Empirical Studies on Corporate Governance Compliance

There have been quite a few empirical studies of compliance with corporate governance codes by listed companies and the effectiveness of the codes in various countries (e.g. Aguilera and Cuervo-Cazurra, 2009; Arcot et al., 2010; Werder et al., 2005; Ntim, 2009; Price et al., 2011). Since the Cadbury Code became public in 1992, McKnight et al. (2009) examined 221 non-financial UK PLCs and the findings showed improved corporate performance by companies which adopted the Code. Arcot et al. (2010) examined the effectiveness of the 'Comply or Explain' approach to corporate governance in the UK. They found an increasing trend of compliance with the Combined Code and a frequent use of standard explanations in case of non-compliance for 245 non-financial companies for the period of 1998-2004. Werder et al. (2005) studied compliance level of 408 firms listed at the Frankfurt Stock Exchange and found that the German Corporate Governance Code truly stimulates changes in corporate governance practices because corporations absorb adaptations to stipulated principles that were not adopted in the past.

For studies in emerging markets, Price et al. (2011) document a significant increase in compliance over 2000–2004 for Mexican PLCs. However, they found no association between the governance index and firm performance, nor is there a relation with transparency. On the contrary, Ntim (2009) reveal that compliance with the affirmative action and stakeholder corporate governance provisions impacts positively on the performance of South African listed firms. Similar evidence was documented in Wahab et al. (2007) and Kouwenberg (2006) for Malaysian and Thai listed companies respectively, as the compliance of the corporate governance codes lead to increased firm valuation. Chen and Nowland (2011) examined the effectiveness of corporate governance codes in four East Asian markets over the period 1999-2009 and found significant improvements in code compliance, but not all can be attributed to the introduction of code recommendations. Aguilera and Cuervo-Cazurra (2009) reviewed the literature on codes of good governance covering 64 countries and conclude that despite the criticism that the codes' voluntary nature limits their ability to improve governance practices, codes of good governance appear to have generally improved the governance of countries that adopt them, although there is need for additional reforms.

According to Wanyama et al. (2009) and Okike (2007), weak corporate governance has been the bane of many organizations in both developed and developing countries, including Nigeria where corruption is endemic. This has led to a situation where companies continuously flout regulations because enforcement apparatuses are unstructured and ineffectual. Thus, the institution of a regulatory code geared towards corporate governance is not enough, but more importantly, is the drive to implement compliance alongside the corporation laws.

3.4 Corporate Governance Frameworks in Africa and Nigeria

According to Rossouw (2005), the introduction and pursuit of effective corporate governance has been bedevilled by many obstacles in Africa, most prominent of which are the lack of effective regulatory and institutional frameworks that can ensure the enforcement of the standards of good corporate governance. Nevertheless, there have been some exceptions among Africa's 53 countries, notably South Africa's (1994 'King I' South African Corporate Governance Report; 2002 'King II' South African Corporate Governance Report; 2009 'King III' South African Corporate Governance Report), Ghana's (Manual on Corporate Governance 2000), Kenya's (Private Sector Corporate Governance Trust 1999), Malawi's (Corporate Governance Task Force,2001), Mauritius' (Report on Corporate Governance 2003), and Uganda's (Manual on Corporate Governance and Codes of Conduct), and of course, Nigeria's (Code of Corporate Governance 2003, and Code of Corporate Governance for Banks 2006).

In Nigeria, prior to the return of the country to a democratic form of government in 1999, corporate governance reforms were usually exercised through military decrees. The most notable of such decrees was the Corporate and Allied Matters Decree in 1990, which was renamed Corporate and Allied Matters Act (CAMA), when the country returned to civilian rule. This law governs and regulates all corporate matters relating to profit and non-profit organisations in Nigeria. It also set up the Corporate Affairs Commission (CAC) which has wider powers and more authority than the now defunct Company Registrar it replaced. It supervises, regulates and resolves all 'corporate' related matters in Nigeria. The CAMA has been criticised, for instance by Adekoya (2011), for lacking sufficient stakeholders' input and parliamentary scrutiny when it was promulgated. Nonetheless, the Act addressed some of the lapses and loopholes that were noted in the 1968 Company's Act. The Securities and Exchange Commission 2003 Corporate Governance Code was introduced to supplement the effectiveness of the CAMA (Amaeshi and Amao, 2008; Wilson, 2006; Amao, 2002).

The Banks and Other Financial Institutions (BOFI) Act of 1992 conferred the exercise of statutory regulatory powers over all banking and non-bank financial institutions on the Central Bank of Nigeria (CBN). The CBN 2006 Code of Corporate Governance for Banks supplements the effectiveness of the BOFI Act of 1992; it arose out of a number of considerations, including the weaknesses that were identified in the 25 mega banks that emerged from the banking industry consolidation exercise 'engineered' by the CBN in 2005.

Page 2 of the Code provides the rationale for the introduction of the new corporate governance as follows:

"In Nigeria, a survey by the Securities and Exchange Commission (SEC) reported in a publication in April 2003, showed that corporate governance was at a rudimentary stage, as only about 40% of quoted companies, including banks had recognized codes of corporate governance in place. Specifically for the financial sector, poor corporate governance was identified as one of the major factors in virtually all known instances of a financial institution's distress in the country."

"Yet, the on-going industry consolidation is likely to pose additional corporate governance challenges arising from integration of processes, IT and culture. Research had shown that two-thirds of mergers, world-wide, fail due to inability to integrate personnel and systems as well as due to irreconcilable differences in corporate culture and management, resulting in board and management squabbles. In addition, the emergence of mega-banks in the post consolidation era is bound to task the skills and competencies of boards and managements in improving shareholder values and balance same against other stakeholder interests in a competitive environment. A well-defined code of corporate governance practices should help organizations overcome such difficulties."

Page 10 of the 2006 Code of Corporate Governance describes the key areas of critical importance and enhanced supervision that require strict compliance by the banks. Furthermore, the Code suggests that the agency problems of banks in Nigeria stem from lapses in the structure of board of directors. Consequently, it stipulates that:

"The board should have full and effective oversight functions over the bank, constitute a board that has numbers of non-executive directors exceeding that of executive directors with all directors being knowledgeable in business and financial matters with requisite experience as well as an effective and efficient sub-committees of the board that will include audit, credit, remuneration and risk management."

However, despite the provisions of the CBN 2006 Corporate Governance Code, the Code acknowledges that there are still challenges facing the prudential regulation of the Nigerian banking industry. These include 'technical incompetence of board and management, relationships among directors, inadequate management capacity, insider-related lending, and ineffective board/statutory audit committee', amongst others. Similarly, Adekoya (2011) and Okorie and Oyewole (2011) argue that a combination of intractable institutional and cultural problems, in general, continue to impede the effective implementation of corporate governance in Nigeria, including a weak regulatory framework, institutionalised corruption, collapse of moral values, falling standard of education and wide spread poverty caused by high unemployment. Even setting these intuitional/cultural challenges aside, Rossouw (2005) argues that corporate governance codes in Nigeria tend to follow the Anglo-Saxon non-inclusive Shareholding Model, and therefore do not explicitly commit the board of directors to be accountable other stakeholders as well, which for the banks would include the wider Nigerian economy. He notes that this contrasts with the Stakeholding Model (Agle et al., 2008) which is the dominant model of corporate governance codes adopted by South Africa (e.g. 1994 King I Report on Corporate Governance and 2002 King II Report on Corporate Governance).

4 Research Methodology

As mentioned earlier in Section 2, this study took a two-pronged approach. First we investigated the extent of compliance to 22 provisions of the CBN 2006 Code. We used the entire population of the 24 commercial banks that emerged after the 2005 banking consolidation and bank bailouts of 2009 and 2011. A questionnaire survey is one approach that could have been used to gather data on the compliance levels of the banks to the Code, but this was not adopted on the grounds of low response rate and low level of reliability on the responses (Gillham, 2000). Instead, the data for this analysis came from the 2010 annual reports of the banks exclusively. Secondly we used telephone interview and examined the effectiveness of the Code using Guarantee Trust Bank PLC. The interview is suited as it leaves significant room for interviewees to volunteer information and describe their own experiences to the subject (Jankowicz, 2005).

Table 1. Nigerian Banks Corporate Governance Code Compliance

Provision	Corporate Governance Code Requirements	No. of Compliance Banks	Compliance Level %
1	Chief Executive Officer (CEO) 10 year tenure	22	92%
2	CEO and Chairman separation	24	100%
3	Non-relation of CEO and Chairman	24	100%
4	Board committee composition	24	100%
5	Board directors qualifications and knowledge	23	96%
6	Non-involvement of Chairman in board committees	18	75%
7	Biography of directors	24	100%
8	Percentage of non-executive directors	24	100%
9	Quota of non-executive members as independent directors	9	38%
10	Frequency of board meetings	20	83%
11	Training and education of directors on oversight functions	14	42%
12	Determination of remuneration of executive directors by non-executive directors	7	29%
13	Non-executive directors limitation to sitting allowances, directors fees, travel and hotel expenses	11	46%
14	Statutory returns by banks to CBN shall be certified by CEO and Chief Finance Officer(CFO)	23	96%
15	Details on activities of board committees	24	100%
16	Full disclosure of all directors and their companies/entities/persons related to them shall be made in CBN returns	17	71%
17	Members of audit committee shall be non-executive directors and ordinary shareholders appointed at AGM	24	100%
18	Appointment of external auditors shall be approved by the CBN	24	100%
19	External auditors shall render risk management and internal control compliance returns to CBN	20	83%
20	Tenure of external auditors shall be for a maximum of 10 years	24	100%
21	5 year financial reporting summary standard	24	100%
22	Details of shareholding structure	21	88%
Total			76.6%

5 Data Analysis

5.1 Findings on Corporate Governance Compliance

Essentially, the CBN 2006 Corporate Governance Code sets out explicit principles under which its guidelines are underpinned, namely: Leadership, Organizational Effectiveness, Remuneration, Industry Transparency and Accountability, and Shareholders Relationship.

Each of the above guidelines is then divided into 22 provisions for which compliance is required by the CBN. Table 1 provides the detailed list of the provisions and the results on the compliance levels with each provision by 24 banks.

Firstly, the result shows that the overall compliance level with 22 provisions of the Code is 76.6%. This compares favourably with the 40% compliance level by Nigerian listed companies, including banks, to the Code of Corporate Governance in Nigeria, according to a 2003 study by the Nigerian Securities and Exchange Commission. The difference suggests that the extent of compliance with corporate governance for Nigerian banks has improved significantly over 7 years between the SEC study and this study. However, it could also be due to survivorship bias in that SEC's study included a number of financially distressed banks which have since ceased to operate in the wake of CBN's sweeping banking reforms of 2005 and 2009, whereas this study does not.

We will now proceed to discuss our results by the five categories of the Code as outlined above in Section 5.1.1. The results for Leadership and Organizational Effectiveness are summarized graphically in Figure 1, but are discussed separately.

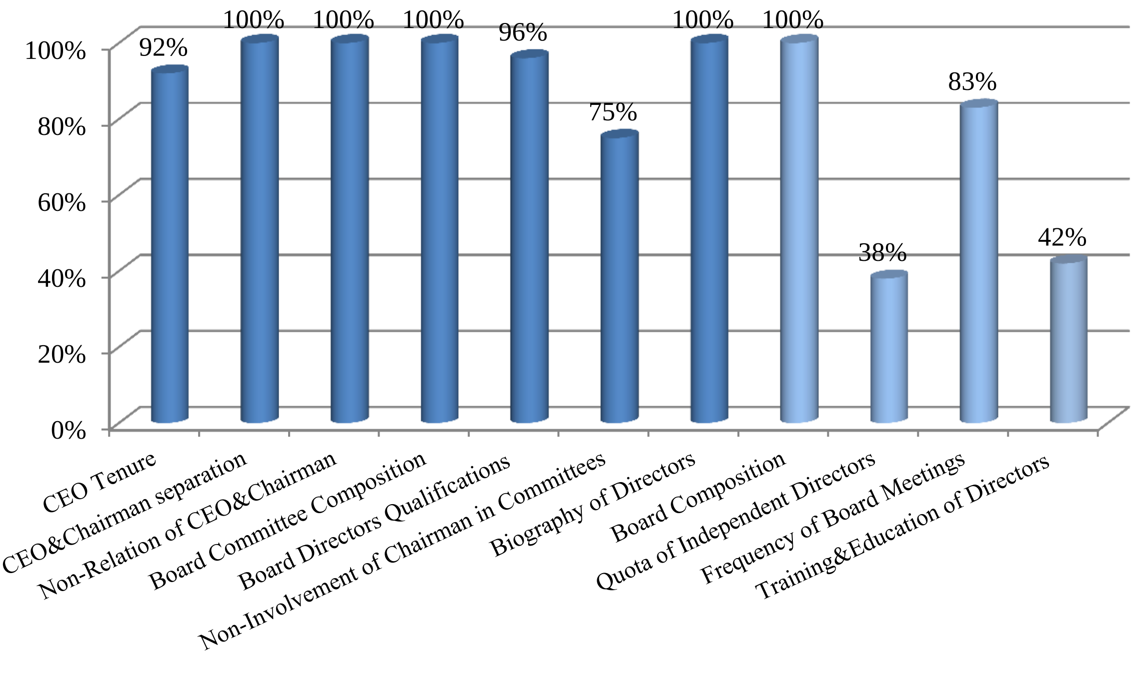
5.1.1 Leadership and Organizational Effectiveness

Leadership. This aspect of the CBN Code (provisions 1–7 in Table 1 above) stipulate that a bank shall be constituted by a knowledgeable and efficient board of directors which is collectively responsible for the long-term success of the company. The board's responsibilities are geared towards providing a financial and strategic focus for the bank. The directors shall act in the general concern of all stakeholders of the bank.

The Leadership provisions aim to reduce the possibility of power being concentrated on one person or connected persons by: (i) separating the positions of Chairman and CEO, (ii) prohibiting members of the same extended family from occupying the positions of Chairman and CEO or an executive director of a bank at the same time, (iii) limiting the tenure of the CEOs to a maximum of 10 years, and (iv) barring the Chairman from serving simultaneously as chairman and a member of any of the board committees.

The compliance levels of some of the Leadership provisions are shown graphically in Figure 1 below, but more comprehensively, as can again be seen from Table 1, all 24 banks (100%) complied with four out of the seven Leadership provisions, 21–23 banks (92–96%) with another two provisions, and only 18 banks (75%) have complied with the requirement that bars the chairman of the board from sitting on board committees. This means that 6 banks have been unable to curb the overbearing influence of their board chairmen on the various committees as stipulated by the CBN Code, which is a concern.

Figure 1. Leadership and Organizational Effectiveness Compliance



Organizational Effectiveness. This aspect of the CBN Code emphasizes the relevant structure necessary for the board to operate in an effective way to ensure a high efficiency in their functions. The provisions on Organizational Effectiveness also aim to reinforce independence of the boards by stipulating that the number of executive directors (EDs) should not exceed that of non-executive directors (NED) out of a maximum board membership of 20, with at least 2 of the NEDs representing no special interest groups, and hence independent. Furthermore, while the Code insists on adherence to corporate governance principles as a necessary tool for successful performance of boards, it is often not a sufficient condition. Hence, the need for boards to adopt various measures and structures in adhering to these corporate governance principles to ensure the banks' successful performance becomes mandatory.

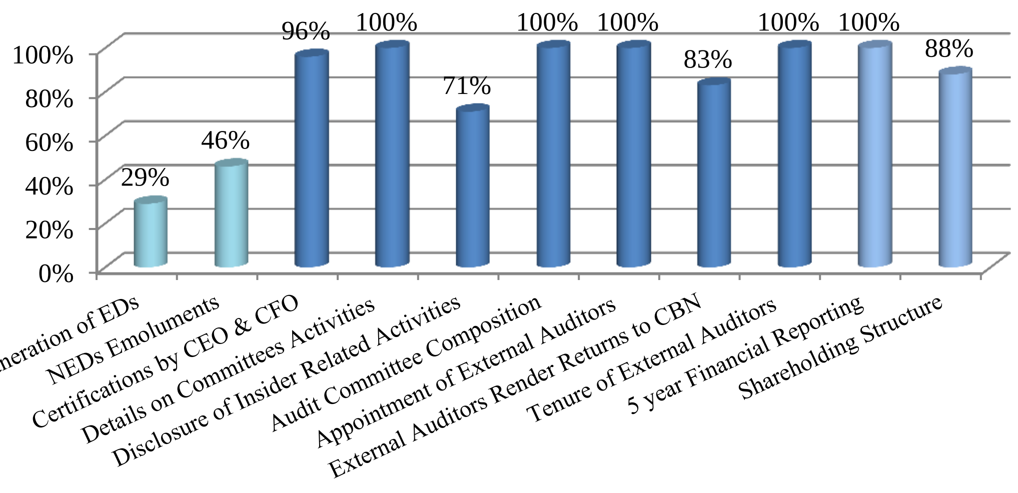
The Code on Organizational Effectiveness is underpinned by the four remaining provisions in Figure 1. 100% of banks have complied with the requirement that the number of EDs should not exceed that of NEDs. The compliance levels regarding frequency of board meetings and training and education of directors are 83% and 42% respectively. It means that 20 out of 24 Nigerian banks complied with the requirement to hold no less than four unvarying board meetings over the course of a financial year, and also gave sufficient advance notification for all board meetings as stipulated by the Code. On the other hand, only 10 banks complied with the provision to budget and train their directors annually on developments regarding their oversight functions, thereby raising questions on how effective the directors have been in discharging their responsibilities. Only 9 banks out of the 24 (38%) have complied with the provision on the quota of non-executive members as independent directors, which is quite concerning. It is very important that the board should have a sufficient number of independent NEDs so that no individual or small group of individuals can dominate the board's decision making.

5.1.2 Remuneration, Industry Transparency and Accountability, and Shareholders Relationship

Remuneration. There are two requirements (provisions 12 and 13 in Table 1) to the CBN Code relating to directors' Remuneration. Firstly, the Code emphasizes "a strict independence in the determination of the remuneration packages for EDs by recommending the constitution of a committee of NEDs only that shall determine the remuneration of executive directors, and that the remuneration must not be overly bogus but must be made attractive such that it entices, retains and stimulates the directors in driving the strategic focus of the banks. However, this remuneration shall be aligned with the current strength and profitability of the banks". Secondly, the Code stipulates that the remuneration of NEDs themselves in any financial year shall be limited to a sitting allowance, directors' fees, and reimbursement of travel and hotel expenses.

As can be seen in Table 1, our analysis shows that only 7 banks (29%) complied with the first requirement on directors' remuneration, and 11 (46%) with the second requirement. These results are also shown graphically in Figure 2 below. Respectively, they represent the first and third lowest levels of compliance with the CBN 2006 Corporate Governance Code, and suggest that the problem of excessive executive pay and 'gravy train' for NEDs, which led to this aspect of the Code, might still be prevalent in the Nigerian Banking industry.

Figure 2. Remuneration, Industry Transparency and Accountability, and Shareholders Relationship Compliance



Industry Transparency and Accountability. The aspect of Industry Transparency and Accountability of the CBN Code covers seven different requirements (see provisions 14–20 in Table 1), and stresses that shareholders and potential investors will build confidence if due process and internal control mechanisms are built into all the procedures of the bank. Therefore, it recommends that core attributes of sound corporate governance practices such as industry transparency, due process, data integrity and disclosure requirements that are essential to instilling stakeholder confidence must be injected into the corporate structure of the banks.

As can be seen from both Table 1 and Figure 2 above, our results show 100% compliance levels with four out of the seven requirements relating to the CBN Code on Transparency and Accountability**,** namely provisions 15, 17, 18 and 20. These results are quite important; the first implies that all 24 banks provided full disclosure to their stakeholders on the detailed activities of the various board committees, which ought to help build greater confidence on the boards of the banks; the second that all the banks have constituted Audit Committees whose members are drawn from the NEDs and ordinary shareholders appointed at AGM, thereby ensuring unfettered independence of this important committee of the banks' boards from their management teams, while the third and fourth suggest that arms-length relationships exist between all 24 banks operating in Nigeria and their external auditors, and hence on the various reports produced by the auditors on the banks.

Of the remaining three provisions 14, 16 and 19, as can be seen from Table 1 or Figure 2, the compliance levels were 96%, 71% and 83% respectively. Given the importance or significance of each of these requirements, perhaps 100% compliance levels should also be demanded not just expected. For instance, 96% compliance level with provision 14 means that the statutory returns and other financial information submitted by one bank to the CBN were not signed off or certified by the Chief Executive Officer and Chief Finance Officer of the bank as stipulated by the Code. The implication is that the stakeholders of the bank could not be certain whether or not the reports contained any untrue statements of material fact, as of, and for the periods presented in the reports.

Similarly, it is very concerning that only 17 banks (71%) complied with the provision on full disclosure of all directors' activities, their companies, entities or persons related to them. In other words, 7 banks did not comply with this requirement. It is of utmost importance that stakeholders are informed of such insider-related information in the returns made to CBN such that it reveals transparency in the banks' activities. This can undermine confidence in the share prices of the banks.

Lastly, 83% compliance level with provision 19 means that, for 17% of the banks (4 banks), the external auditors did not or could not report on the risk management and internal control practices of the banks, which were mandated to do by the CBN. This is a serious breach of the CBN 2006 Corporate Governance Code that needs to be investigated further but we were unable to do so due to data limitations. It also challenges the 100% compliance levels that were reported with regards to provisions 15 and 17.

Shareholders' Relationship. The aspect of Shareholders' Relationship of the Code emphasizes the need for an on-going interaction of the board members and the shareholders with a view of keeping the shareholders abreast of developments and progress as well as understanding the current issues and concerns that the shareholders might have. The key requirements here are: provision 21 which mandates the banks to adopt a 5-year financial reporting summary standard to enable shareholders and other potential investors undertake a trend analysis of the health of the bank, and provision 22 which requires detailed disclosure of the shareholding structures of the banks, with equity holding of 10% or more by any single investor subject to CBN's prior approval.

Table 1 shows that the compliance level with provision 21 was 100%, but only 88% with provision 22. Since the ownership structures of Nigerian banks have become a matter of general public interest in the country since the banking consolidation of 2005, it is curious why 3 banks did not disclose their ownership structures and why the CBN did not force the disclosure.

5.1.3 Summary of Findings on Compliance

Table 1 shows 22 different provisions to the CBN Code which Nigerian banks are expected to comply with and report on. Our analyses show that only 10 (less than half) of these were complied with by all 24 banks operating in the country. In other words, none of the banks was found to have complied with all the requirements of the Code. The worst areas of non-compliance (those with less than 50% compliance), which give reasons for concern, are on the determination of directors remunerations by NEDs (29% compliance rate), the appointment on independent NEDs to the Board (38%), training and education of directors on oversight function (42%), and limiting the attendance allowance of NEDs to actual expenses incurred (46%). Other areas with less than 100% compliance, which also raise concerns, are directors' disclosure on connected companies/persons (71%) and non-inference of the chairman on board committees' activities (75%).

In effect, some of these compliance findings from the 24 Nigerian banks as well as extant empirical studies threw up some key areas of interest and importance that formed the framework for the interview questions put to some high ranking key officers of Guaranty Trust Bank PLC and their responses and analysis are presented in the following section.

5.2 Analysis of the Effectiveness of the Code

Our analysis of the compliance levels with CBN 2006 Corporate Governance Code by Nigerian banks presented above has thrown up some key areas of interest and importance which need further investigation. In this section, we present the views of senior officers from Guaranty Trust Bank PLC on the reasons for the low compliance levels with some of the key requirements of the Code, and on the overall effectiveness of the Code.

The choice of Guaranty Trust Bank PLC is based on three important factors. Firstly, it is one of the few new generation banks in Nigeria which survived the 2005 banking consolidation as an independent bank by embarking on a rights issue of over ₦11 billion to satisfy the new CBN minimum capital requirement of ₦25 billion. It was incorporated in 1991 to provide commercial and other banking services.

Secondly, Guaranty Trust Bank PLC has stock market listing outside the country. In 2007, the Bank entered the history books as the first and only Nigerian financial institution so far to undertake a US$350 million regulation S Eurobond issue and a US$750 million Global Depositary Receipts (GDR) Offer on the London Stock Exchange. The bank presently has an asset base of over 1 trillion naira, shareholders' funds of over 190 billion naira and employs over 5,000 people in Nigeria, Gambia, Ghana, Liberia, Sierra Leone and the United Kingdom (Guaranty Trust Bank, 2011).

So the Guaranty Trust Bank PLC is relatively young compared to some other banks, such as First Bank of Nigeria PLC, which has been in existence for more than a century. We interviewed four key officers from Guaranty Trust Bank PLC, using semi-structured interview questions. In order to ensure strict anonymity, the names of the officers interviewed have not been given but their ranks have:

1. Respondent I (Financial Control 'FINCON'& Strategy Group)
2. Respondent II (Systems & Internal 'SYSCON' Control Group)
3. Respondent III (Deputy Managing Director, Subsidiary)
4. Respondent IV (Managing Director, Subsidiary)

All four interviewees were interviewed separately but were asked the same questions. The questions were divided into themes for the purpose of clarity, with the relevant areas of the Corporate Governance Code making up the themes.

Theme I probed the reasons for low compliance in some areas of the Code;

Theme II analysed the weaknesses of the Code and their effects;

Theme III focused on the general effectiveness of the Code;

Theme IV sought the officers' view on the likely improvements to the Code.

Theme I: Compliance issues with the Code

Question 1: The compliance level of banks in Nigeria has been very low on the aspect of training and education for board directors; what are the possible reasons for the non-compliance?

The responses to this question identified four main possible reasons, namely, "*the cost implications ....for the erring banks*" (respondent 1), "*we know it all attitude, and no monetary incentive attached to the training*" (respondent 3), and "*lack of time by board members to attend the trainings even when they are organised*" (respondents 2 and 4).

Question 2: The appointment of independent directors into the board is one that has revealed very low compliance by Nigerian Banks; what would you attribute this low compliance to?

The interviewees independently suggest that there is a fundamental flaw in the business ethics of the Nigerian businesses, including banks, which make them flout the laws of the land that they are not happy with. Hence, the unanimous reason given for low compliance on this aspect of the Code is that the unwillingness of board directors of banks to appoint persons to the board who do not have direct or indirect pecuniary interests in the businesses. Yet this is actually the essence of this particular requirement.

Question 3: Has the guideline on splitting the roles of CEO and Chairman been a bane or boost to the smooth operations of the banks' business?

The general consensus from the respondents is that splitting of roles of the CEO and Chairman has been a great boost to the banking industry in Nigeria. To quote respondent 3, "*without a shadow of a doubt, the duality of roles between the CEO and Chairman has been very beneficial compared to the perceived erroneous bane expressed by some sections owing to the bureaucratic and conflicting tendencies this split may bring about*".

Question 4: It has been asserted that most of the banks in Nigeria disclose full compliance in their reports, but that this is not really the case in practice. What's your opinion about it?

The interviewees are of the opinion that cases of false accounting do exist in the Nigerian banking industry as in other countries. Respondent 1 also expressed fears about the integrity of the external auditors in their responsibilities, observing that "*over the years, CBN examinations have revealed as much that false reporting does exist, which again raises questions about the external auditors' integrity*". However, all four respondents believe that the trend is getting better as CBN continues to intensify the implementation of the code.

Theme II: The weaknesses of the Code and their effects

Question 5: Do you think the CBN 2006 Corporate Governance Code is strong enough to supervise and monitor the banks' activities?

The respondents expressed support to the general strength of the Code but also noted weakness in the CBN's approach to its supervision and monitory. For instance, while respondent 3's answer to this question is *"Yes",* he however, observed that "*the frequency of supervision and examination must be quicker and more aggressive as the CBN cannot afford to wait a long time for examination as has been the case".* Similarly, Respondent 4's answer to the question was *"Yes with code, but No with the frequency of the implementation of the Code and the examination and monitoring of the banks".*

Question 6: Do you feel the CBN Code has done enough to protect the interests of all stakeholders especially the minority shareholders in its current framework?

Three interviewees were of the view that the Code has done enough to protect all stakeholders on the wider scale, but not conscious and explicit enough for the minority shareholders. This is articulated in the response of the Respondent 1, which is quoted below:

"Yes it does for stakeholders, but I think the current CBN code does not specifically protect the interest of the minority shareholders. However, the insistence on independent directors and the full disclosure of the banks activities as required by the Code ultimately protects all stakeholders including the minority shareholders."

However, just one interviewee disagreed that the Code protects the stakeholders adequately.

Theme III: The general effectiveness of the CBN 2006 Corporate Governance Code

Question 7: What is your general assessment of the CBN 2006 Corporate Governance Code as a guideline for the operation the Nigeria Banking system?

All four respondents agreed that the Code has been very effective in bringing sanity to the banking industry in Nigeria. However, while noting that the Code has been effective, respondent 2 also added that the "*CBN needs to emphasize on more stringent punishment against erring banks"*, while respondent 3 also observed that "*there are still cases of unethical procedures which should come with a severe punishment"*. None agreed to elaborate on the non-compliances that should merit such severe punishments or what the stiffer punishment should be.

Theme IV: The improvements to the Corporate Governance Code in Nigeria

Question 8: Lastly, what, if anything, could be done to improve the Corporate Governance Code on banks activities?

The unanimous view of the respondents is that having a Corporate Governance Code is not enough. Their two principal recommendations for improving the Code centre on the need for stiffer penalties for non-compliance, and more robust and frequent examination and monitoring of the banks by the CBN, in order to forestall a crisis such as has already been experienced severely. Respondent 4 also suggests giving the Code the 'Force of Law' as in the USA.

Summary of Findings on Effectiveness of the Code

Essentially, the responses of the interviewees to the three questions under Theme I show that while the duality requirement has generally been a force for good in the Nigerian banking industry, contrary to the initial scepticism in the industry, on the other hand, there remains a culture of low ethical standard and poor professional attitude to business which have resulted in some banks flagrantly flouting some requirements of the CBN 2006 Corporate Governance Code. This finding is consistent with Wanyama et al. (2009) and Okike (2007), who reported that pervasive corruption and weaknesses in the underlying frameworks in developing countries have hampered attempts to improve corporate governance practices. It also indicates that the mere introduction of detailed governance codes does not necessarily mean that de facto practices will improve.

Two major weaknesses of the Code were identified by the interviewees, namely, lack of regular policing of the Code by the CBN, and absence of proportionate punishment for non-compliance as the USA Sarbanes-Oxley Act, both of which tend to encourage non-compliance. As the respondents recommended, the CBN must be prepared to sanction erring banks more severely to compel compliance. The interviewees therefore recommended "*the frequent, quicker and more aggressive policing of the Code by the CBN to ensure sustained transparency and accountability in the industry*, and the introduction of *stiffer penalties for erring banks*". It is quite revealing that similar recommendations were made by Okike (2007), who among other things, suggested the removal of the "*current institutional weakness in regulation, compliance and enforcement of standards and rules by revising the antiquated penalties stipulated in the CAMA 1990, making them more realistic; strengthening the enforcement mechanism by enhancing the capacity of the relevant regulatory and professional bodies as well as establishing an independent regulator for corporate reporting and governance in Nigeria*". It seems that, few years later, the same issues remain.

On the theme of the overall effectiveness of the Code, overwhelming responses of the interviewees believe that the CBN 2006 Corporate Governance Code in the Nigerian banking industry has brought about improved accountability and transparency in the operations of the banks. However, there was also concern that the Code lacked explicit protection for minority shareholders and other stakeholders. This appears to be the consequence of the Anglo-American Shareholding Model of corporate governance adopted by the Code. Nonetheless, one respondent observed, "*the insistence on independent directors and the full disclosure of the banks activities required by the Code* *ultimately protects all stakeholders including minority shareholders."*

6 Conclusion

The paper investigated the compliance levels and the effectiveness of CBN 2006 Corporate Governance Code for the Nigerian banking industry. The results found that compliance levels of the 22 provisions of the Code ranged from 29% to 100%, with an overall compliance level of 76.6%. This compares with 40% compliance rate obtained in a 2003 survey by SEC for all listed companies in Nigeria, which included banks. The major non-compliance issues (in which less than 50% of the banks reported compliance) relate to the determination of directors remunerations by NEDs (29% compliance rate), the appointment of independent NEDs to the Board (38%), training and education of directors on oversight function (42%), and limiting the attendance allowance of NEDs to actual expenses incurred (46%). In addition, fear has been expressed by the respondents about the integrity of some external auditors. However, the respondents believe that the trend is getting better as CBN continues to intensify the implementation of the Code.

Notwithstanding the above, this paper concludes that there seem to have been great improvements on the corporate governance practices of Nigerian banks since the implementation of the CBN 2006 Corporate Governance Code. However, there is still much room for improvement especially in the areas of the enforcement of the Code by the CBN as well as in taking appropriate sanctions against defaulting banks and their external auditors, without which compliance may deteriorate and hence undermine confidence which is gradually returning to the Nigerian banking industry after the various bailouts in 2009 and 2011.

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