CORPORATE GOVERNANCE PRACTICES AT MHASIBU INVESTMENT COMPANY LIMITED, NAIROBI

BY

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A Research Project Submitted to the School of Business in Partial Fulfillment of the Requirements for the Award of the Degree of Master of Business Administration (MBA) by the University of Nairobi

OCTOBER 2012

DECLARATION

This dissertation is my original work and has not been presented for a degree in any other university.

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This dissertation has been submitted for examination with my approval as a university supervisor.

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ACKNOWLEDGEMENTS

Special thanks to my supervisor, Mr. Jeremiah Kagwe whose guidance facilitated the realization of this work. His invaluable critique and inputs in terms of material, discussions and time was helpful in making me appreciate the purpose of academic writing and opportunities that the same avail in future.

I would also like to express my sincere gratitude to the Company Secretary of MICL who availed time from his busy schedule to be interviewed as the key informant of the company, as well as members of the board of directors who allowed me to study their company and availed secondary data which was useful for this study. Their co-operation made this work a success.

DEDICATION

To God almighty giver of life and creator of all that is seen and unseen.

ABSTRACT

Corporate governance refers to the process by which organizations are directed, controlled and held to account. It encompasses authority, accountability, stewardship, leadership direction and control exercised in the organization. Corporate governance practices are more of a way of business life than mere legal compulsion, the ideals corporate governance practice are transparency, accountability, disclosure and value creation, this leads to particular practices such as prohibition of insider trading, board independence etc.

The research was undertaken in order to understand corporate governance practices at MICL, a private investment company which offers collective investments to members in diversified Investment portfolios. MICL was formed by members of Mhasibu Sacco in order to explore investment options by pooling resources together for investment purposes.

Data for the study was collected from both secondary and primary sources. Secondary data was obtained from publish annual reports, audited accounts, brochures, investor briefs, returns submitted to the registrar of companies as well as the company's website. Primary data was collected by a face to face interview with the company secretary of MICL using a key informant checklist, the company secretary was identified as the key informant of MICL since he custodian of corporate governance practices of MICL and plays a major role in making sure that MICL complies with governance and legal requirements.

The research findings showed that corporate governance practices put in place by MICL are, the independent structure of the board, the composition of the board, committees formed by the board and corporate reporting. The chairman of the board and the board of MICL practice corporate governance in their oversight role at MICL.

Further the research also showed factors influencing corporate governance at MICL, this were identified as internal and external factors. Internal factors are those factors that are as a result of the companies own doing, the company has influence over and have been put in place by the company itself, the external factors are those factors which the company has no control or influence over but affect the company directly.

Corporate governance practices by MICL are not without challenges, the challenges are occasioned by lack of fully documented corporate governance practices and policies. However the board of MICL has undertaken it upon itself to make sure that new board members are oriented on corporate governance and understand their responsibility to the stakeholders as well as legal requirements.

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LIST OF ABBREVIATIONS AND ACRONYMS

AGM	Annual General Meeting
CEO	Chief Executive Officer
ICPAK	Institute of Certified Public Accountants of Kenya
KAIG	Kenya Association of Investment Groups
MICL	Mhasibu Investments Company Limited
OECD	Organization for Economic Cooperation and Development
OTC	Over the Counter Facility
SACCO	Savings and Credit Co-operative Society

CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

Corporate governance has received increasing attention during the last two decades (Tricker, 1996, Keasey, 1999). The notion of corporate governance can be dated back to 1932, when Berle and Means (1932) argued about the separation of corporate control and ownership that causes executives, rather than owners, to determine the firm's strategic development. Nowadays corporate governance is focusing on the relationships and interactions among some different actors of the firm: shareholders, boards of directors, senior managers and other corporate stakeholders (Cochran and Wartrick, 1988, Tricker, 1996).

There has been renewed interest in the corporate governance practices of modern corporations since 2001, particularly due to high profile collapses of a number of large corporations, most of which involved accounting fraud. Corporate scandals of various forms, for instance, the Enron Corporation and World Com in USA, have maintained public and political interest in the regulation of corporate governance. In Kenya, a number of problems relating to corporate governance have been identified. The problems range from errors to outright fraud. The origins of the problem range from concentrated ownership, weak incentives, poor protection of minority shareholders, to weak information standards (Mwaura, 2007). Private firms are at higher risk of being affected by corporate governance weaknesses because they are not obligated to make public disclosures. The case of Mhasibu Investment Company Limited is analyzed to highlight on corporate governance practices of private firms.

The implication of corporate governance in MICL is due to the significance of such investment groups in Kenya. They are powerful investment vehicles that the government is now looking to tap into for some of the big projects under vision 2030. There are currently an estimated 300,000 groups, which collectively hold a combined asset base of at least Ksh 300-billion. The groups have matured over the years, with some registering as companies. Kenya's biggest private equity company, Trans Century Ltd. is one good example of a successful investment group. Most of the groups initially invested at the Nairobi Securities Exchange and the real estate sector but there is an increasing appetite for bigger and higher risk projects, increasing formalization of groups, demand by members for return on investment, and the willingness to co-invest with other groups. This calls for greater corporate governance to enhance control in the investment clubs.

1.1.1 Corporate Governance Practices

Bell (2011) notes that corporate governance practices vary significantly among companies. This is a reflection of many factors, including: Differences in the stage of development of companies, including the relative importance placed on various values, differences in the investor base for different types of companies, differences in expectations of board members and advisors to companies and their boards, which can vary by size, age of company, stage of development, geography, industry and other factors, and the reality that corporate governance practices that are appropriate for large, long-established public companies can be meaningfully different from those for newer, smaller companies. Corporate Governance practice helps in maximizing the long-term shareholder value. It is more a way of business life than a mere legal compulsion. The ideals which should be the guiding force of company's philosophy on corporate governance practice are transparency, accountability, disclosure and value creation. This lead to particular practices such prohibition of insider trading, ensuring the audit committee adheres to best practices and that the board is independent and duly exercises oversight on the management.

Perceptions of the elements that constitute good corporate governance practices vary from country to country since the business environment is not uniform in all countries. Nevertheless, some insights of key elements of good corporate governance practices are provided by the basic principles of corporate governance as captured in the Organization for Economic Co-operation and Development (OECD 1999) Vafeas principles of corporate governance which include amongst others, the following: Firstly, observing the rights of shareholders (and others) to receive relevant information about the firm in a timely manner, to have the opportunity to participate in decisions concerning fundamental corporate changes, and to share in the profits of the corporation, among others, and facilitate the effective exercise of those rights. Secondly, it involves equitable treatment of shareholders, especially minority and foreign shareholders. The role of stakeholders in corporate governance should be recognized and established by law, recognize legal and other obligations to all legitimate stakeholders. Thirdly, it recognizes the need to publish the respective roles and responsibilities of the board and Management. The Board of directors must be active, informed and independent. The firm's framework should be designed to enable the board to provide strategic guidance for the firm and effective oversight of management. The board should have an effective composition, size and commitment to adequately discharge its responsibilities and duties.

Additionally, it highlights the importance of promoting ethical and responsible decision-making. The firm should clarify the standards of ethical behavior required of directors and key executives and encourage the observance of those standards and publish its position concerning the issue of board and employees trading in the firm's securities and in associated products which operate to limit the economic risk of those securities. Moreover, corporate governance practices safeguard integrity in financial reporting, it encourages companies to have a structure to independently verify and safeguard the integrity of the firm's financial reporting. This requires the firm to put in place a structure of review and authorization designed to ensure the truthful and factual presentation of the firm's financial position. It also facilitates the recognition and management of risk by encouraging firms to establish a sound system of risk oversight and management and internal control. This system should be designed to identify, assess, monitor and manage risk and inform investors of material changes to the firm's risk profile. Finally, it encourages companies to remunerate fairly and responsibly and ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to corporate and individual performance is defined. This means that firms need to adopt remuneration policies that attract and maintain talented and motivated directors and employees so as to encourage enhanced performance of the firm.

1.1.2 Investment Industry

An Investment company is business entity that is either privately or publicly owned, that manages, sells, and markets funds to the public. Investment companies typically offer investors a variety of funds and investment services, which include portfolio management, recordkeeping, custodial, legal, accounting and tax management services, a pool of such companies form an investment industry.

An investment company is normally formed by a group of people or firms who come together and pool resources in order to meet their goals, through investing together members are given the opportunity to share ideas as they build their personal wealth and knowledge through investing in different options such as equities, fixed income securities and real estate. This type of investment vehicles has become increasingly popular in Kenya with groups forming investment companies or investment clubs.

There are several benefits that accrue to members of the investment companies or clubs example, when funds are pulled together by different parties the company or club is able to invest in assets which would have otherwise been out of reach for the individuals, the companies or clubs help lower investment costs which is shared when investing in pooled funds as opposed to when an individual goes it alone, investment companies are also able to employ or attract experts in different investment fields to help in creating shareholders wealth through diversity in experience.

In Kenya, Savings and credit co-operative societies (Sacco's) have been faced with challenges in investing or offering their members investment opportunities due to the Sacco's Act which restricts the kind of investments that Sacco's can engage in and the percentage of funds that the Sacco's can tie into investments in order to maintain high liquidity to meet their obligations of providing loans when members apply for them .Hence many Sacco's have started an investment firm registered under the companies Act that will engage in investments and offer its members an alternative investment mechanism for their funds. Mhasibu Sacco is one of the Sacco's formed an investment company namely Mhasibu Investment Company Ltd.

1.1.3 Mhasibu Investment Company Ltd

Mhasibu Investment Company Ltd (MICL) is in the services sector providing group investment for the members. It is one of the several investment groups in the country which offer collective investments to members in diversified Investment portfolios.
It was started by members of the Mhasibu Sacco society, the formation of the sacco from which MICL was born was spearheaded by members of the Institute of Certified Public Accountants of Kenya (ICPAK). According to company documents, the members decided it was important to explore other investment options by pooling resources and hence birth of MICL.

MICL was founded and registered in 1997 as a limited company and has since grown to 300 shareholders. It was started to take advantage of the high yield returns on treasury bills and bonds but has since diverted from fixed income to higher return investments for example in private equity, real estate and offshore investments. The share capital has grown more than 20 times between December 1997 and December 2009. MICL also has a very well established over the counter facility (OTC) to enable shareholders trade in shares. MICL has been a member of Kenya Association of Investment Groups (KAIG) since 2007.

1.2 Research Problem

The history of corporate governance systems is now well documented. The past two decades have however, witnessed significant transformations in corporate governance structures, leading to increased scholarly interest in the role of board of directors in driving corporate performance. Arising from many high profile corporate failures, coupled with generally low corporate profits across the globe, the credibility of the existing corporate governance structures has been put to question. In addition, the efficiency of the prevailing governance mechanisms has been questioned (Jensen, 1993, Miller, 1997 and Porter, 1997). Besides, there has been a surge of anti-takeover legislation (particularly in the United States) which has limited the potential disciplining role of takeovers on managers (Bittlingmayer, 2000). Finally, there has been a considerable amount of debate over comparative corporate governance structures, especially between the United States, Germany and Japan models (Shleifer. A and Vishny, 1997) and a number of initiatives taken by stock market and other authorities with recommendations and disclosure requirements on corporate governance issues.

Private and unlisted firms face unique governance and internal control challenges. The governance of a private firm is in many ways more complex than the governance of a public listed firm which has to disclose to the public. Therefore, it is of theoretical and practical importance to examine how corporate governance practices are embedded in private firms. The choice of one company is also informed by the fact that private companies in their nature are not required to make their information public, hence, anticipation of bottlenecks from information gatekeepers.

Prior research on corporate governance in Kenya has focused mainly on compliance with the principles of the best corporate governance practices, and surveys of the state of corporate governance in various sectors. Jebet (2001) documented the corporate governance structures in listed companies, Kitonga (2002) studied the need for corporate governance audit in Kenya, Mwangi (2002) surveyed the corporate governance practices in the insurance industry, and Mwangi (2003) investigated the determinants of corporate governance practices, Ongore and K' Obonyo (2011) analyzed the effects of selected corporate governance characteristics on firm performance, Mulili and Wong (2011) focused on corporate governance in public universities. Barako (2007) analyzed the determinants of voluntary disclosures in Kenyan companies' annual reports. Other studies by Wainaina (2002), (Munyuru (2005), Linyiru (2006) and Washee (2010) have also been carried out in contexts other than of private investment companies.

Key research gaps include, examining the governance and ethical standards of private firms, research on how small firms deal with interference from majority shareholders while still upholding corporate governance. Research on disclosures by private firms and a comparative analysis of private and public companies governance standards and differential gaps is required. No study has so far been undertaken on the corporate governance practices of private investment in spite of their significance in the economy. For example, MICL holds huge capital to invest for members in sometimes risky and competitive opportunities. Secondly, it wishes to expand and be listed as a public company. Thirdly, most of the members have a background in accounting and thus are more informed on corporate governance, therefore, MICL has to be on the cutting edge in order to interest more members. Lastly, corporate governance is required to meet stringent regulatory requirements both local and international for some investments such as offshore investments. This research will be guided with two research questions. The first question relates to corporate governance practices thus, what are the Corporate Governance practices at MICL? The second question relates to factors that influence governance practices at MICL. Thus, what factors influence governance practices of MICL?

1.3 Research Objectives

The objectives of this study are:

I. To examine the corporate governance practices at MICL

II. To determine the factors influencing corporate governance at MICL

1.4 Value of the Study

The study will have significant importance to several stakeholders across the corporate world like shareholders, boards of directors, management teams, government and government agencies, Capital Market Authority, scholars of governance among others.

Shareholders will find the study useful in the sense that as investors or providers of risk capital, they will be keen to know if corporate governance practices are worth investing in, in pursuit of their key objective of wealth maximization. Boards of directors will benefit from the study since it will help them establish if indeed corporate governance practices are worth the time and effort they have injected in activities like formation of audit committees, regular board meetings, compliance, training and forums attended among others. It will be particularly useful for assisting board committees improve their corporate governance practices.

The study will be of importance to Nairobi Securities Exchange because it will be able to verify if private companies are already practicing good corporate and if they are willing to protect shareholders wealth. To government and other policy making agencies, the study will contribute to a better understanding of the general and specific governance characteristics of private firms in Kenyan Companies and assist policy makers to reach an appropriate balance of legislative and regulatory reform.

The results of the study can create awareness for both scholars and practitioners; ultimately, this study may contribute to the overall enhancement of Kenyan corporate governance practices. It will assist firms to start building adequate corporate governance structures and develop of effective practices.

2.0 CHAPTER TWO: LITERATURE REVIEW

2.1Introduction

This chapter presents review of relevant literature covering the major issues about the study. It provides an overview of the concept of corporate governance, analyses corporate governance practices, factors influencing corporate governance practices and challenges facing organizations in corporate governance.

2.2The Concept of Corporate Governance

Corporate governance is an important subject in business literature and the debate about the improvement of governance systems is of great interest. Both the theoretical issues regarding corporate governance and the potential benefits achievable through its improvement have already been deeply discussed in literature. Many researchers have conducted studies on corporate governance and come up with different findings. Bain and Band (1996), for example, point out that there are wide and divergent views on corporate governance. It is difficult to define the concept of corporate governance in a universally acceptable way because definitions vary from country to country. Moreover, countries differ from each other in terms of culture, legal systems and historical developments (Ramon, 2001). This explains why there is a wide range of definitions of the concept of corporate governance. In its narrowest sense, corporate governance can be viewed as a set of arrangements internal to the firm that govern the relationship between the managers and shareholders. A simple definition of corporate governance is provided by Cadbury (1999) who stated that corporate governance was “the system by which firms are directed and controlled”, thus the concern is primarily with management and stewardship issues.

Corporate governance, attracts considerable attention, however, most of this attention has focused on large listed corporations (Gabrielsson and Huse 2004;Hart 1995) and little empirical work relates to how governance impacts agency costs for smaller business.The ownership structure of private companies is different from other forms of businesses and entities and as such some large shareholders would end up being members of the board of directors and have a control over voting and day to day running of the businesses of the entity. It's therefore important to carry out a study on how effective corporate governance can be practiced in private investment companies and uphold the principles of effective corporate governance to all stakeholders.

There is no single accepted definition of corporate governance as noted above. The presence of different definitions indicates that each author formulates a definition that spins around his or her theme (Demb & Neubauer, 1992). In fact, Wallace and Zinkin (2005) point out that the term good corporate governance is easy to phrase but difficult to understand and appreciate. The term ‘‘Corporate governance’’ has a clear origin from a Greek word ‘‘Kyberman’’ meaning to steer, guide or govern. From a Greek word, it moved to Latin, where it was known as ‘‘gubernare’’ and the French version of ‘‘governor’’. It could also mean the process of decision-making and the process by which decisions may be implemented. Henceforth, corporate governance has much a different meaning to different organizations (Abu-Tapanjeh, 2008).

2.3 Corporate Governance Practices

The literature has several interlinked ideas on what constitutes corporate governance practices. The section below analyses what the literature highlights as good corporate governance practices, which will hence form a backdrop on the study of corporate governance practices in MICL.

2.3.1 Structural Independence of the Board

Structural independence of the board refers to the board leadership in the form of chairperson and management leadership in the form of chief executive officer. Both the chairperson and the CEO's contributions are equally important in a corporation. Leadership skills of the chairperson is an important factor in determining the board processes, optimal decision making and overall effectiveness of a board of directors Leblanc 2004. The CEO is the executive who has overall responsibility for the conduct and performance of an entire organization. The board does not involve its self with the day-to-day operational activities of the management or become part of the management.

In a company where the chairman of the board is a different person from the CEO, the CEO oversees the operational issues while the board oversees the supervisory functions which include strategic decisions and the management function of the board. For effective corporate governance there should be separation of the top two positions of the board, the Chief executive officer and the chairman of the board.

Addullah (2004) states that the reason for separation is that both the monitoring and the implementation roles are vested in a single person the monitoring role will be severely impaired. Furthermore, companies that have combined leadership structure may have an individual who has too much power and is able to make decisions that do not maximize shareholders wealth Laing & Weir 1999.

2.3.2 Board Composition

Board composition refers to the combination of executive directors including the chief executive officer and non-executive directors in the board. Sometimes non-executive directors are appointed from outside and they may not have any material interest into the firm they are also known as independent directors. They are appointed due to their qualifications, expertise and experience and they may effectively influence the board's decision and ultimately add value to the firm.

Board composition is also an important component of the board structure. The assumption is that an effective board comprised of a greater proportion of outside directors is significant to firm performance Zahra & Pearce 1989. According to agency theory, these outside non-executive directors are able to provide superior performance as a result of their independence from firm management Dalton 1991 et al. 1998. Outside directors are more vigilant as they mainly focus on the firm's financial performance, may dismiss the CEO following poor performance to maintain their personal reputation as directors.

Baysinger and Butler 1985 found that firms with higher numbers of outside directors on the board had a greater return on equity than the board with inside directors.

Ezzamel and Watson 1993 also found that outside directors were positively associated with profitability among a sample of UK firms.

2.3.2 Board Committees

In order to perform better and alleviate agency conflict between shareholders and senior management, companies are advised to introduce board committees, because oversight functions of the board are primarily carried out by the board committees Rezaee 2009. Cadbury 1992 also highlighted the importance of board committees and proposed to set up sub-committees of the board to focus on specific aspects of governance that are considered problematic. These include financial reporting, remuneration of board and senior management, audit and appointment to the board Spira & Bender 2004.

Committee members must be drawn from current members of the board itself, so having a talented and diverse board is an extremely important ingredient to the success of an organization. The board’s powers to form committees are usually addressed in the organizations bylaws. A typical bylaw provision usually allows the board to form any type of committee it deems appropriate and also allows the board to delegate certain powers to a committee, however, it’s the board at large that’s ultimately responsible for the decisions it makes based on the work of a committee.

Various committees of the board might carry out some important functions example the audit committee might help in reviewing the company financial statements and operating results, they engage the management in discussions on analysis of financial and operating results and assist the board in its oversight of the integrity of financial reporting process and the quality of financial statements, overall public disclosure as well as company legal and regulatory requirements on financial reporting. The compensation committees assist the board in monitoring, reviewing and approving compensation policies and practices, the compensation committee is responsible for reviewing and recommending director and senior management compensation and for succession planning with respect to senior executives.

Corporate governance and nomination committee assists the board in establishing corporate governance policies and practices, the committees also identifies individuals qualified to become members of the board and reviews the compensation and functioning of the board and its committees. The Finance committee reviews the company's financial structure and investment and financial risk management programs.

2.3.4 Corporate Reporting

Better management practices of firms is translated into better performance leading to higher share prices and enhance returns as a result of timely and accurate disclosure of information which is provided through corporate reporting practices of firms Mobius 2002. Corporate reporting is not only financial reporting but information beyond that which is required by the regulation (Corporate law and accounting standards), provided through annual reports to their shareholders and other stakeholders Eccles 2004.

Corporate social responsibility and reporting is information over and above that which is mandatory, and is seen as a key driver for engaging the wider community as an important stakeholder in business activities Zairi & Peters 2002. In support of this view, other stakeholder's theorists consider that a firm's responsibility is not only to its shareholders, but also to all stakeholders whose contribution is necessary for its success Balabanis, Phillips & Lyall 1998.

2.4 Factors Influencing Corporate Governance Practices

Corporate governance practices are vehicles for reducing agency costs that is they try to minimize two sets of conflicts - those between owners and managers, and those between controlling shareholders and minority shareholders (Shleifer and Vishny, 1997). Factors influencing the quality of corporate governance include; integrity of the management, ability of the board, adequacy of the process, quality of corporate Reporting, Participation of Stakeholders and quality of corporate reporting.

The literature generally distinguishes between internal and external governance mechanisms. The primary concerns of internal mechanisms which monitors management operations and processes, while the external mechanisms include the takeover market, legal infrastructure, protection of minority shareholders etc.

2.4.1 Internal Control Mechanisms

Board of Directors: Agency theorists argue that a firm's board of director's safeguards invested capital and is therefore an important element of corporate governance (Williamson, 1983). Literature on the board of directors focuses on three main areas: the size of the board, its composition and independence and its internal structure and functioning (John and Senbet, 1998). The size of the board can impact its monitoring and control activity, larger boards have been argued to offer the firm a greater range of expertise and resources (Dalton et al, 1999). However, other studies have found that an increase in board size has a negative effect on firm performance (Hermalin and Weisbach, 2003) it appears that there are no conclusive results as to what is an optimal board size for effectively monitoring the behavior of managers.

Composition: this influences the board's ability to perform their supervisory and advisory tasks. It has been suggested that outside board members are likely to be more effective in monitoring managers (Rindova, 1999) and might significantly reduce agency costs and increase firm value. Beasly (1999) examined the association between board of director composition and financial statement fraud and found that a higher proportion of outside directors on the board reduced the likelihood of fraud. The results provide support for the view that boards with more outside directors provide more effective corporate governance structures.

Internal functioning of the board: A number of factors can affect the way boards operate among them are the committee structures adopted by the board and the frequency of board meetings. Klein (1998) suggested that there is an association between firm performance and how boards are structured and how regularly the board meets. The view point is that the more frequent the board meetings, the more frequent the interaction and hence detailed control of the managers. Empirical evidence shows that the board of directors is typically reactive rather than proactive in improving corporate governance (Vafeas, 1999).

2.4 .2 External Control Mechanisms

It is believed that the market for corporate control is a very important factor in corporate governance (Dan, 2005); it is also argued that the market is essential for proper allocation of resources and an alternative instrument for motivating managers. By threatening managers with job loss if they do not maximize shareholder value, the market for corporate control creates incentives for managers to act in the interests of shareholders; the agency problem is restrained rather than eliminated. A potent form is takeovers, there have been some concerns about the effectiveness of takeovers. For example, Prowse (1998) argued that “takeovers are sufficiently expensive; managers often take strategic actions to deter them and they require a highly liquid market”.

Legal infrastructure and the protection of Minority shareholders and the nature of political influence on corporate governance, financial reporting and disclosure vary substantially across countries. Common law systems typically assume that all transactions are at arm’s length. Studies by La Porta et al (1997) indicate the importance of the legal framework and foundation in disciplining managers and controlling shareholders. Because countries differ in their legal protection for investors, a legal approach based on agency theory could explain why some countries have much larger capital markets than others.

Product market competition is of major importance in corporate governance because it affects the incentives of managers and thereby, the efficiency of the firm. According to Denis (2001), the product market operates through the firm’s ability to produce products and sell them to the market within a cost structure that includes the cost of capital, thus there is price competition. Therefore, if managers of a firm waste resources, the firm will eventually fail in its product markets. Increased competition reduces managerial slack and maybe helpful in limiting efficiency losses (Hart, 1983). Shleifer. A and Vishny (1997) conclude that "although product market competition is probably the most powerful force toward economic efficiency in the world, we are skeptical that it alone can solve the problem of corporate governance".

In summary, the external control market is limited as a corporate governance mechanism. Control contests are time consuming and expensive, and may not be an effective way of dealing with small deviations by management from value maximizing behavior (Denis, 2001).

2.5 Challenges Facing Organizations in Corporate Governance Practice

Empirical studies have provided the nexus between corporate governance and firm performance. Bebchuk, L., Cohen, A. and Ferrell, A. (2004) indicate that well-governed firms have higher firm performance. Globalization means greater reliance on market forces and calls for highly effective corporations with world-class standards of governance. In his book Corporate Governance: The New Paradigm,13 Gopalsamy accurately notes that more than ever before, to survive and thrive, corporations are required to gear up to exploit global market opportunities while defending and increasing their domestic shares in a liberalized and highly competitive global environment.

Center for International Private Enterprise (2002), notes that corporate governance helps companies and economies attract investment and strengthen the foundation for long-term economic performance and competitiveness in several ways. First, by demanding transparency in corporate transactions, in accounting and auditing procedures, in purchasing, and in all of the myriad individual business transactions corporate governance attacks the supply side of the corruption relationship. Corruption drains companies' resources and erodes competitiveness driving away investors. Second, corporate governance procedures improve the management of the firm by helping firm managers and boards to develop a sound company strategy, and by ensuring that mergers and acquisitions are undertaken for sound business reasons, and that compensation systems reflect performance. This helps companies to attract investment on favourable terms and enhances firm performance. Third, by adopting standards for transparency in dealing with investors and creditors, a strong system of corporate governance helps to prevent systemic banking crises even in countries where most firms are not actively traded on stock markets. Fourth, recent research has shown that countries with stronger corporate governance protections for minority shareholders also have much larger and more liquid capital markets.

3.0 CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Introduction

The chapter describes the research design, approach used for data collection, and technique that was applied for data analysis. The approach applied for data analysis was done in line with the research objectives.

3.2 Research Design

The study employed a case study approach, Yin (1984) defines the case study research method as an empirical inquiry that investigates a contemporary phenomenon within its real-life context, when the boundaries between phenomenon and context are not clearly evident, and in which multiple sources of evidence are used. Neale et al (2006) note that the primary advantage of a case study is that it provides much more detailed information than what is available through other methods, such as surveys. Case studies also allow one to present data collected from multiple methods (i.e., surveys, interviews, document review, and observation) to provide the complete story.

By focusing on MICL to generate primary data, the study seeks a deeper understanding of the organizations corporate governance. The primary data was sourced through an interview with the company secretary of the firm in order to get information in tandem with the research. He was asked various corporate governance issues in MICL, these include disclosures, internal and external audit, codes of governance adhered to, how growth is balanced with shareholder returns, the impact of majority shareholders on corporate governance, the composition of the board, characteristics of board committees and ownership structure of the firm among others. This was synthesized to answer the research questions and reach the research objectives.

3.3 Data Collection

The study relied on both secondary and primary data. Uses of both primary and secondary data yield the best results. The source of primary data was an interview with the company secretary who is the custodian of the organization's corporate governance practices. Secondary data was collected through a critical review of existing literature on corporate governance practices and MICL documents. The secondary data was reviewed from published and unpublished literature. This material was sourced through electronic website, pamphlets and annual reports. Data reviewed from secondary sources was useful in highlighting key issues that were not captured through the interview.

A key informant interview checklist consisting of a series of questions on corporate governance practices was used to collect data from the key informant. The checklists consist of open ended and close ended questions. The checklist was administered personally by the researcher on face to face with the key informant.

3.4 Data Analysis

Data analysis is the act of transforming data with the aim of extracting useful information and facilitating conclusions. The information obtained from the key informant checklist and secondary data was analyzed using content analysis. Content analysis is the systematic qualitative description of the composition of the objects or material of the study Hsieh and Shannon (2005). It involves observation and detailed description of objects, items or things that comprise the object of the study.

The researcher synthesize information from secondary sources, primary data collected from the key informant was cross checked against company reports. Some facts from primary source are reported in verbatim, the researcher categories and combine data to address the purpose of the study and make the necessary conclusions and recommendations.

CHAPTER FOUR: DATA ANALYSIS, FINDINGS AND DISCUSSION

4.1 Introduction

The information collected has been analyzed and interpreted in line with the objectives of the study, namely to study the corporate governance practices at MICL and determine the factors influencing corporate governance at the organization. Data was collected using both secondary and primary sources. Primary data was collected using a key informant checklist containing open ended questions to allow for further probing during the interview.

Thus, primary data was collected using key informant checklist attached in the appendix 2. The key informant checklist consists of section A,B,C,D,E,F,G and H in which open ended questions relating to respondents profile, corporate governance at MICL, board and management structure, board composition, board committees, corporate reporting, factors influencing corporate governance at MICL and challenges in implementing corporate governance were covered. Secondary data was collected by examining related documents such as annual reports presented to shareholders at the AGM, audited reports, briefs presented to prospective investors and annual reports filled with the registrar of companies in Kenya.

4.2 Data Analysis

Data collected from primary source was reported verbatim. However, in order to check on the consistence of the responses, the researcher triangulated primary data with secondary data i.e. the response from the key informant were triangulated against information obtained from the organization's reports. On the other hand, secondary data was analyzed thematically. Generally, data for this study was analyzed qualitatively.

4.3 Findings of the Study

The following paragraphs discuss the findings of the study.

4.3.1 The respondent's Profile

The respondent interviewed for this study was the company secretary of MICL. The company secretary is the custodian of corporate governance practices. The company secretary has been the company secretary for 15 years. His responsibilities are to advise the board on compliance with the laws and regulations governing the company, procedures and processes meetings, maintains statutory records and books and generally adherence to good corporate governance practices.

The respondent was very cooperative and shared information willingly on corporate governance in general and in particular the corporate governance practices in MICL. The company secretary was easily reached and has a vast experience in the field having been a company secretary to many companies in Kenya and a strong advocate of companies practicing good corporate governance.

4.3.2 Corporate Governance Policy

According to the findings of the study, MICL does not have a corporate governance policy. However according to the company secretary, ''there is a general understanding as to what the company's corporate governance policy entails but this has not been formally documented into a policy document''. The company secretary attributed the lack of a corporate governance policy to the size of the organization and the fact that it's also a private entity. Most large public companies will have a corporate governance policy.

4.3.3 Board and Management Structure

MICL has a board with an independent structure. This means that the chairman of the board is different from the CEO of the company. The chairman of the board provides the overall leadership to the board and the company in the company's strategy to achieve its vision, strategic intentions and business plans. The board chairman chairs board meetings and company meetings and acts as the team leader in implementation of good corporate governance practices in the company.

The CEO is responsible for day to day business issues of the company through implantation of the board's decisions and the general administration of the company. The CEO represents the board's intentions for the company on a continuous basis and makes regular reports to the board on the business operations. Hence the functions of the chairman of the board and the CEO don't overlap.

4.3.4 Board Composition

MICL board has a total of six members, three of them male and three of them female. According to the company secretary, the initial search for new board members is done by the nominations committee. The person(s) identified is then presented to the general meeting for a resolution to appoint him/her in accordance with the company articles of association. For members retiring by rotation, the general meeting also makes the resolution to appoint them or appoint new ones in their place.

The company also has independent directors in the board. The nominations committee is responsible for the identification of ideal candidates based on expertise needed by MICL. The candidates approached are requested to express an interest in serving MICL as board members, they are then presented to the general meeting for appointment.

4.3.5 Board Committees

The board of MICL has formed board committees that focus in specific areas that help the overall board achieve its targeted objectives. The committees formed by the board are:

a) Finance and Audit Committee
b) Investment Committee
c) Nominations Committee
d) Real Estate Committee

The board of MICL also recognizes that it may not have all the expertise within its own members and therefore taps into the market outside the board to access such expertise. This means that the committees have been allowed to coopt non-members who have various expertise and can be of great help in helping the sub-committee meet its objectives.

The committees have quarterly scheduled meetings in the course of any one year. However, if there is an ongoing project under a committee, the particular committee may meet as often as the business demands. Committee agenda are developed by the CEO in consultation with the committee chairman.

All committees make their report to the board at its next scheduled meeting. The report is made by the committee chairman, who, if not a board member, will be invited to present the report or a member of the board who seats in that committee may make the report on behalf of such non-board member in this case the chairman.

4.3.6 Corporate Reporting

The board of MICL does reporting, the type of reports vary from status of implantation of strategic plans and proposed projects, financial reporting to the general meeting and statutory reports required by the state. At the general meeting the reports target the shareholders, at investors briefing sessions, the information is targeted to major shareholders with the potential to make further investments and non-shareholders by the board as potential investors. The chairman of the board and the company secretary are in charge of all reporting requirements of the board and company in general.

4.3.7 Factors Influencing Corporate Governance at MICL

Both internal and external factors influence corporate governance at MICL. The internal factors include, the ethics manual of the organization where every new board member and staff are oriented on the companies ethics principles and are required to sign acknowledging that they have attended the training and are bound by the companies ethics, professional competence where potential board members identified by the nominations committee and potential new staff identified by management are qualified individuals and have professionalism, the company has an equality policy where all shareholders whether majority or minority are treated equally and staff are given equal opportunity without discrimination, MICL has an internal audit department which reports to the finance and audit committee and is responsible in accessing the company's internal controls and procedures, the AGM also appoints a supervisory committee which is tasked with supervising the board on behalf of the stakeholders and reports to the AGM. Board members server two terms of 3 years each, however the second term is subject to approval by the AGM upon successful evaluation by stakeholders, this helps in keeping the board members in check.

The external factors include, legal requirements by the laws of the country like companies Act which requires all companies to carry out an external audit as well as file the same with the registrar of companies, government agency auditors like Kenya Revenue Authority which can carry out an in-depth audit on the companies accounts for tax purposes, potential investors who may want to invest in MICL or partner with MICL in investment projects, lenders and providers of capital example banks and other financial institutions like insurance companies, the Capital Markets Authority which would need to review MICL before licensing it to trade at the Nairobi securities Exchange over the counter segment or even approve the trading of MICL shares as a public company.

4.3.8 Challenges of Implementing Corporate Governance at MICL

The main challenges that MICL faces in corporate governance practices are due to lack of fully documented corporate governance practices and policies. Individually and collectively, the board members have embraced good corporate governance practices and believe in them.

The board of MICL has mitigated against the challenges through individual and collective subscription to good corporate governance practices. The board has taken it upon itself to ensue new members of the board are trained on corporate governance by sponsoring them to a corporate governance seminar or inviting experts in the corporate governance field to orient the new board members on corporate governance.

4.4 Disscussion

MICL lacks a corporate governance policy, the company should endeavor to develop a corporate governance policy which all its directors and members of staff should adhere to. A corporate governance policy will include the purpose of the corporate governance policy itself which explains why the policy is being formulated in the first place. The main aim of a corporate governance policy is to enhance performance of the organization, understand and manage risks in order to minimize negative aspects and maximize on opportunities available in the market, strengthen stakeholders confidence in the company, demonstrate how the management and directors of the company are discharging legal and ethical obligations, provide a mechanism for accountability and assist in prevention and detection of fraud and unethical behavior.

The corporate governance policy will further help in setting up the subcommittees of the board and give guidance on which subcommittees should be set up, the term of reference for the subcommittees as well as for the CEO will also be included in the corporate governance policy. The policy will also help if formalizing the performance review of the CEO and key staff of the company. The company secretary who has a wealth of experience in corporate governance and has represented other companies should assist MICL with the development of a corporate governance policy.

The independent structure of the board is a good model that has been adopted by MICL, this structure is recommended for companies as it helps in segregating of responsibility between the board and the management of a company. Where the chairman of the board is still the companies CEO, the monitoring and supervisory roles are vested on a single person and the monitoring role is severely impaired. The company however should consider increasing the board membership from its current 6 to 9 given that the company has experienced significant growth in terms of capitalization and investment portfolio, the 3 new positions should be set aside for non-executive directors who have no material interest in the company but appointed based on their qualifications, expertise and experience in the investment industry.

The internal and external factors that influence corporate governance at MICL need to be managed correctly in order to eliminate or reduce the impact of such factors on MICL. While the internal influences can be managed with ease since they can be influenced by MICL, the same cannot be said for external factors, MICL has no control over the external factors, hence MICL would be required to constantly scan and review this forces in order to be abreast with changing legislation by the government, new policies proposed and implemented by Capital Markets Authority as well as Kenya Revenue Authority.

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This study focused on corporate governance practices at MICL with a view to, examine the corporate governance practices and determine the factors influencing corporate governance at the organization. Data for the study was collected from primary and secondary sources and analyzed qualitatively. This chapter therefore gives a summary of the main findings, conclusions and recommendations. The findings, conclusions and recommendations are based on the objectives that guided the study.

5.2 Summary of Findings

MICL as a company does not have a corporate governance policy, however the board members are well sensitized about corporate governance and have a general understanding as to what to what the company's corporate governance entails. MICL has an independent structure where the chairman of the board and the CEO are different persons and play different roles, the chairman of the board also supervises the CEO who has the responsibility of the day to day running of the company and implements the board's strategies.

MICL's board consists of six members who are appointed by a resolution of the AGM, the search and vetting of potential candidates is done by the nominations committee, members who have served their term and wish to continue serving are also appointed by a resolution of the board. The board of MICL has formed several

committees to assist it achieve its objectives with much ease, non-directors have also been coopted into the subcommittees based on their expertise and the needs of the subcommittees on the required skills. The committees have quarterly scheduled meetings in the course of one year meaning that they meet at least four times.
The company also does corporate reporting. The chairman of the board is the main person who is in charge of releasing information pertinent to the company, the company secretary is in charge of filing returns with the registrar of companies. The main targets for reporting are the stakeholders, potential investors as well as the register of companies in Kenya.

Both internal and external factors influence corporate governance at MICL. The internal factors have been identified as, the ethics policy of MICL, the appointment of competent professionals as members of the board as well as staff members, policy on equality for all shareholders and equal opportunity to staff, the supervisory committee appointed by the AGM to supervise the board of directors and reports to the AGM, the maximum six year term for directors where a director is appointed for the first 3 years and upon expiry is subject to appointment by the AGM for the last 3 years term.

External factors that influence corporate governance at MICL have been identified as, the requirement of external audit by the companies Act of Kenya, potential in-depth audit by Kenya Revenue Authority, requirement for filling of annual company returns by the registrar of companies, potential investors in MICL, lenders and provider of capital, comply with the Capital Markets Authority requirements before listing of shares at the Nairobi Securities Exchange.

5.3 Conclusions

The first objective of this study was to examine the corporate governance practices at MICL. According to the results from the key informant and company reports, MICL has following practices, an independent structure of the board, the composition of the board, committees formed by the board and corporate reporting.

The company secretary is the custodian of the corporate governance practices of MICL. The chairman of the board and the board of MICL practice corporate governance in their oversight role at MICL.

The second objective was to determine factors influencing corporate governance at MICL. According to the company secretary, these factors have been identified as internal and external factors. While the internal factors have been identified as those factors which have been put in place by the company itself, the external factors are those factors which the company has no control or influence over.

Further challenges experienced by the board in corporate governance practices are as a result of lack of fully documented corporate governance practices and policies. However the board of MICL has undertaken it upon itself to make sure that new board members are oriented on corporate governance and understand their responsibility to the stakeholders as well as legal requirements.

5.4 Limitations of the study

The study was carried out within limited time, resources and targeted corporate governance practices only. In order to get a deeper and a clearer picture more time, resources and also a broader study on corporate governance of MICL will be needed.

This constrained the scope as well as the depth of the research. In addition, the research used a case study research design. The findings of a case study cannot be used to make generalizations regarding corporate governance practices among firms in Kenya.

The interviewing of one individual could cause bias given that the person can only give the information he wants and cannot be counter checked by another party in the firm. Lack of anonymity of the respondent could result in withholding of some key information regarding the corporate governance practices at MICL. There were very few similar past studies to compare with given that most scholars confirm to corporate governance studies as opposed to corporate governance practices.

5.5 Recommendation for Policy and Practice

As discussed above, the first objective of this study was to examine the governance practices at MICL. Since the results have indicated that MICL does not have a corporate governance policy, it is the recommendation of this study that MICL develop and implement a governance policy. A governance policy would improve operations and management of the company hence contributing to its consistent growth. The study documented corporate governance practices at MICL. It is recommended that similar studies be done by scholars, for other private firms, public listed firms, state corporations and cooperative movements. This will provide valuable insight to corporate governance practices in Kenya firms that operate in different sectors and with different mission and vision thus stimulating more research in this area of corporate governance.

5.6 Recommendation for Further Studies

This study was carried out on a small investment company and was limited to the company only. However, it would be interesting if a study was done to ascertain any similarity between corporate governance practices in private and public listed firms.

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APPENDIX 1: LETTER OF INTRODUCTION

TO : Jophecee Yogo

Company Secretary

Mhasibu Investment Company Ltd

RE: MBA Research project

I am a post graduate student at the School of Business, University of Nairobi, doing a case study on corporate governance practices at MICL as part of the requirements for the degree of Master of Business Administration (MBA).

Kindly spare some time for a face to face interview to enable me finalize the study. You have been selected for the study due to your position as the company secretary of MICL and as such you are a custodian of key information relating to MICL.

The information collected will be used for academic purpose and will be treated with strict confidence. A copy of the research report will be availed to you on request.

Your assistance and cooperation will be highly appreciated.

Alfred Kogi Maina

MBA student

APPENDIX 2: KEY INFORMANT CHECKLIST

SECTION A: Respondent Profile

Date of interview ____

Name of interviewee ____

(c) Position of interviewee________________________________

(d) Number of years working for MICL as Company Secretary_______________

(e) Responsibilities in the organization

____

____

____

SECTION B: Corporate Governance at MICL

1. Does MICL have a corporate governance policy?

a) Yes

b) No

2. If yes, briefly state the policy and what it entails_____________________________

____

3. What times span does the corporate governance policy cover?

____

4. (a) how often is the corporate governance policy reviewed?

____

(b) Who reviews the policy ____

5. Who is involved in the formulation of corporate governance policy?

____

6 .Who is involved in implementing corporate governance policy?

____

7. If no to question 1 above, why does MICL not have a policy? Please explain

____

SECTION C: Board and management structure

8. Is the chief executive officer the same person as the chairman of the board of directors?

Yes

No

9. If yes to question 8 above, why does MICL deem it fit to have the same person as CEO and chairman of the board?

____

10. If no to question 8,

a) Can you briefly explain the functions of the chairman of the board of directors?

____

b) Briefly explain the functions of the chief executive officer

____

11. (a)In your opinion do the functions of the chairman of the board and those of the chief executive officer overlap?

i). Yes

ii). No

(b)If yes, how do the functions overlap? ________________________

C) If yes, how does the overlap affect MICL_________________________

12. In the event that the functions off the two positions overlap, how are the shareholders rights protected from conflicts that might arise as a result of overlap on duties and responsibilities?

____

SECTION D: Board Composition

(a)What is the board size?____

(b) Please explain the gender composition of the board____________________

14. How are the board members elected or appointed?___________________

15. Are there any independent directors in the board of MICL?

a) Yes

b) No

16. If yes to question 15, how are they appointed?______________________________

17. If yes to question 15, in your opinion do the independent directors add value to the shareholder of MICL? Please explain ____

18. If no to question 15, what factors have informed MICL not to appoint independent directors?

____

SECTION E: Board Committees

19. Have the board of directors formed any committees of its board?

a) Yes

b) No

20. If yes to question 20, what committees are constituted by the board?

____

21. Are there any non-directors of MICL who seat in the committees?

a) Yes

b) No

22. If yes to question 20, why are there non-members of the board seating in the committees?

____

23. How often do the committees meet, and who drafts the agenda? ___________________________

24. To whom do the committees report to? ____________________________

SECTION F: Corporate Reporting

25. Does the board of directors of MICL do corporate reporting?

Yes

No

26. If yes, what type of information does MICL board disseminate? ____

27. To who is the information targeted?_________________________________

28. If no, why does the board withhold information? ___________________________

SECTION G: Factors Influencing Corporate Governance at MICL

29. Are there internal factors that influence corporate governance practices at MICL?

a) Yes

b) No

30. If yes, what internal factors influence corporate governance?

____

31. Are there external factors that influence corporate governance at MICL?

a) Yes

b) No

32. If yes, can you identify external factors that influence corporate governance at MICL?

____

SECTION H: Challenges in implementing Corporate Governance

29. Does MICL face any challenges in in implementing corporate governance?

a) Yes

b) No

30. If yes, which challenges? (Please state them in order of importance)

____

31. How has MICL addressed the challenges? If no, how can the challenges be mitigated?

____

32. What do you feel can be done differently in order to ensure better corporate governance practices? ____