

**AN ANALYSIS OF CORPORATE GOVERNANCE REPORTING
IN COMPANIES LISTED AT THE NAIROBI STOCK
EXCHANGE IN KENYA**

BY

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DECLARATION

This research project entitled "an analysis of corporate governance reporting in companies listed at the Nairobi Stock Exchange" is my original work and has not been presented for examination in any other University.

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This research project has been forwarded for examination with my approval as the University supervisor.

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DEDICATION

This study is dedicated to all persons who uphold integrity in every action.

ABSTRACT

Corporate governance is about putting in place the structure, processes and mechanisms by which business and affairs of the company or firm are directed and managed, in order to enhance long term shareholder value through accountability of managers and enhancing firm performance. In other words, through such structure, processes and mechanisms, the well-known agency problem - the separation of ownership (by shareholders) and control (by managers) which gives rise to conflict of interests within a firm may be addressed such that the interests of the managers are more aligned with those of shareholders.

The research objectives were to establish whether the NSE listed companies in Kenya comply with the disclosure requirements of CMA guidelines on corporate governance practices. To establish whether the NSE listed companies disclose non-compliance with the CMA guidelines on corporate governance and also to establish whether and what NSE listed companies provide as extra information on corporate governance than required by the CMA guidelines. This study is an analysis of published corporate governance information in the annual reports of the NSE listed companies in Kenya, based on the Capital Markets Authority's corporate governance disclosure requirements.

This study is an analysis of published corporate governance information in the annual reports of the NSE listed companies in Kenya, based on the Capital Markets Authority's corporate governance disclosure requirements. The population of the study was all companies quoted at the Nairobi Stock Exchange. Data and evidence collection was based on an analysis of secondary data which was obtained from annual accounts and reports of the NSE listed companies for the year 2010. The data

was analysed per sector and tabulated from the data collection forms whereby the rate of compliance was calculated. The extra corporate governance information disclosed was grouped to various categories. Findings are presented in form of tables, graphs, charts and brief narratives.

The study established that majority of the NSE listed companies adhere to the CMA disclosure requirements on corporate governance. It also established that the NSE listed companies report on many diverse areas of corporate governance practice beside the CMA disclosure requirements.

The guidelines on corporate governance practices by public listed companies in Kenya were issued by the Capital Markets Authority in 2002. They should be reviewed since the companies declare compliance with them and are obviously outdated. This is more so because the operating environment has changed significantly. The statutory laws have also changed, for example there is a new constitution, and the Companies Act was reviewed. The Capital markets Authority should also advance its regulation on the listed companies so as to avoid corporate collapse and scandals.

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ABBREVIATIONS

BOD - Board of Directors

CEO - Chief Executive Officer

CMA- Capital Markets Authority

CACG - Commonwealth Association for corporate governance

ICPAK -Institute of Certified Public accountants of Kenya

IAS - International Accounting Standards

IFRS - International Financial Reporting Standards

ICGN - International Corporate Governance Network

IFAC - International Federation of Accountants

NYSE- New York Stock Exchange

OECD - Organisation for Economic Cooperation and Development

PSCGT - Private Sector Corporate Governance Trust.

SEC - USA security exchanges commission

UNCTAD-United Nations Conference on Trade Development

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CHAPTER ONE INTRODUCTION

1.1 Background of the Study

Corporate governance is how entities are directed and controlled. According to Cadbury (1992) it's about putting in place the set of processes, customs, policies, laws, and institutions affecting the way a corporation (or company) is directed, administered or controlled. An important theme of corporate governance is the nature and extent of accountability of particular individuals in the organization, and mechanisms that try to reduce or eliminate the principle-agent problem Bowen (2010). Corporate governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed Tricker (2009). In contemporary business corporations, the main external stakeholder groups are shareholders, debt holders, trade creditors, suppliers, customers and communities affected by the corporation's activities. Internal stakeholders are the board of directors, executives, and other employees (OECD, 2004).

There has been renewed interest in the corporate governance practices of modern corporations since 2001, particularly due to the high profile collapses of a number of large corporations, most of which involved accounting fraud. Corporate scandals of various forms have maintained public and political interest in the regulation of corporate governance. In the U.S., these include Enron Corporation and MCI Inc. (formerly WorldCom). Their demise is associated with the U.S federal government passing the Sarbanes-Oxley Act in 2002, intending to restore public confidence in corporate governance. Comparable failures in Australia (HIH, One. Tel) are associated with the eventual passage of the CLERP 9 reforms. Similar corporate failures in other countries stimulated increased regulatory interest (e.g. Parmalat in

Italy). In 2002 Capital Markets Authority (CMA), issued guidelines on corporate governance practices by public listed companies in Kenya. The objective was to strengthen corporate governance practices by listed companies in Kenya and to promote the standards of self-regulation so as to bring the level of governance in line with international trends.

1.1.1 Corporate Governance

Corporate governance has become a subject of heightened importance and attention in government policy circles, academia, and the popular press throughout the world. Various reasons explain the current prominence of what many persons might otherwise consider an arcane and technical topic. The recent financial scandals affecting major American firms, such as Enron, WorldCom, and Arthur Andersen, and the resulting loss of confidence by the investing public in the stock market have led to dramatic declines in share prices and substantial financial losses to millions of individual investors. Both the public and the experts have identified failed corporate governance as a principal cause of these scandals. Since half of all adults in the United States own stock either directly or indirectly, corporate governance reform has become a highly charged political issue. The American Congress rapidly responded by passing the Sarbanes-Oxley Act of 2002, which the New York Stock Exchange quickly followed by adopting sweeping new rules for listed corporations, thereby effecting the most significant reform in U. S. corporate governance since the creation of the country's securities regulation regime in the 1930's. Viewing the situation in the United States with alarm, European countries, mindful of earlier financial scandals of their own, are examining their own systems of corporate governance in an effort to guard against similar abuses (Currall & Epstein, 2003).

Cadbury (1992) defined corporate governance as the system by which companies are directed and controlled. Corporate governance is the way in which the affairs of the

corporation are handled by corporate boards and officers. Hampel (1998) observes that good governance ensures that constituents (stakeholders) with a relevant interest in the company's business are fully taken into account.

In broad terms, corporate governance refers to the processes by which organizations are directed, controlled and held accountable. It encompasses authority, accountability, stewardship, leadership, direction and control exercised in organizations. Corporate governance is a concept that is currently receiving a great deal of attention worldwide in both private and public sectors (PSCGT, 2002). Recent developments have mainly been influenced by spectacular corporate collapses in the United States of America (USA) and Britain caused by fraud and mismanagement. There has also been repeated failure of the public sector in many countries of the world. Whereas most discussions have centered on public limited companies, corporate governance is a problem in all types of organizations (Ngumi, 2008).

Macey and O'Hara (2001) observe that the intellectual debate in corporate governance has focused on two very different issues; whether corporate governance should focus exclusively on protecting the interests of equity claimants in the corporation or whether corporate governance should instead expand its focus to deal with problems of other groups like stakeholders or non-stakeholders. In addition, they state that the dominant model of corporate governance in law and economics is that the corporation is a "complex set of explicit and implicit contracts" meaning one should view the corporation as nothing than a set of contractual arrangements among the various claimants to the products and earnings generated by the business. The group of claimants include not only shareholders, but also creditors, employee-managers, the local communities in which the firm operates; suppliers and customers.

It is evident that our continued prosperity as nations, as communities, and even as dignified individuals, is closely linked with our ability to create, strengthen and maintain profitable, competitive and sustainable enterprises. The viable, competitive and sustainable modern enterprise requires an organization of basic resources (capital, material and human) concentrated in large aggregations giving the men and women entrusted to run those enterprises power over people, resources etc. such that their decisions have great impact upon the society, the very lives of entire communities and can shape the future of nations. To achieve their objectives and effectively discharge their responsibilities, corporations must have quality and effective leadership which is responsive, transparent and accountable and which has the focused intelligence to acquire and apply knowledge and know-how for the production and creation of wealth. Good corporate governance is thus the lifeblood of a prosperous society. In targeting directors, corporate governance focuses on their competitive performance and the importance of their abiding by the highest standards of fiduciary management in order to assure wealth creation and the long-term sustainability of a company (Gatamah, 2005).

The collapse of big organizations has cast doubts in the way corporations are managed and made accountable. Enron, a Houston based energy trading company collapsed in early 2002 after reporting huge capital gains resulting from fraudulent accounting where billions of dollars were hidden in off balance sheet special purpose entities and partnerships Kelly (2002). WorldCom was the biggest carrier of internet traffic. WorldCom was caught hiding US\$ 3.85 billion in expenses after failing to bring strong earnings after its merger with MCI. Corporate expenses were treated as capital investments allowing the company to show hefty profits in the year 2001 and for the first three months of 2002, rather than the losses it would have otherwise shown. The USA security exchanges commission (SEC) sued WorldCom for fraud.

Its shares fell from an all-time high of £64.5 to 83p after the fraud was made public (Newsweek, 2002).

1.1.2 Public Limited Companies in Kenya

Public limited companies are registered companies under the companies Act Cap 486 and limited by shares. They have a minimum number of seven members. Most public companies are initially private companies that are subsequently converted to public companies when they invite members of the public to subscribe to their shares and debentures. Public listed companies in Kenya are entities whose shares are traded in the Nairobi Stock Exchange (NSE). They are registered and managed under the Companies Act Cap 486 and governed by the Capital Markets Authority (CMA).

Conversion to a public limited company is strictly regulated. In exercise of the powers conferred by section 12(1) of the Capital Markets Act (Cap 485A), the Capital markets Authority made the "The Capital Markets (Securities) (Public offers, Listing and Disclosure) Regulations, 2002" through the Legal Notice No.60 which a private company wishing to be listed at the Nairobi Stock Exchange must adhere to. These regulations provide the guidelines on eligibility, disclosure and general requirements for public offerings such as application meaning and interpretation of 'offer of securities' and 'offer of the public'. The issuer is supposed to publish the prospectus, adhere to the disclosure requirements for public issues and general duty of disclosure in the prospectus. The regulation also provide guidelines on supplementary prospectus ,power of authority to extend, re-open or cancel, exceptions, advertisements etc. in connection with offer of securities, persons responsible for prospectus and underwriting requirements .It also include continuing obligations and miscellaneous provisions (CMA Act, 2002).

1.1.3 Nairobi Stock Exchange.

The NSE was established in 1954 as a voluntary association of stockbrokers registered under the Societies Act. The Nairobi Stock Exchange is licensed and regulated by the Capital Markets Authority. It has the mandate of providing a trading platform for listed securities and overseeing its member Firms. The Central Depository and Settlement Corporation (CDSC) provide clearing, delivery and settlement services for securities traded at the Nairobi Stock Exchange. It oversees the conduct of Central Depository Agents comprised of stockbrokers and investment banks which are members of NSE and custodians. Now, with effect from 1st August 2011, there are about fifty seven (57) companies quoted at the NSE which are divided into ten (10) sectors. The sectors are:-Agricultural (7); Commercial and Services (8); Telecommunication and Technology (2); Automobiles and Accessories (4); Banking (10); Insurance (4); Investment (4); Manufacturing and Allied (9); Construction and Allied (5); Energy and Petroleum (4).

1.1.4 Capital Markets Authority

The capital market is part of the financial system that provides funds for long-term development. This is a market that brings together lenders (investors) of capital and borrowers (companies that sell securities to public) of capital. The Capital Markets Authority was set up in 1989 through an Act of Parliament (Cap 485A, Laws of Kenya). The authority was eventually constituted in January 1990 and inaugurated on 7th March 1990. The Authority is a body corporate with perpetual succession and a common seal. Its mandate is to promote, regulate and facilitate the development of an orderly, fair and efficient capital markets in Kenya.

In 2002, through a Gazette notice No.3362, the CMA issued guidelines on corporate governance practices by public listed companies in Kenya. These guidelines cover the

area of Principles of good corporate governance practices which have been identified as representing critical foundation and virtues. These are:-Board of Directors^ Role of
 •v/ / ^ ^
 Chairman and Chief Executive; Shareholders; Accountability'and Audit and General Guidelines on: -disclosure, chief financial officers, company secretaries and auditors of listed companies. The guidelines also give the recommended best practices in corporate governance by public listed companies. This is in adoption of international standards in corporate governance which is essential for public companies in Kenya in order to maximize shareholders value through effective and efficient management of corporate resources. These relate to:-board of directors; position of chairman and chief executive; rights of shareholders; the conduct of general meetings and accountability and role of the audit committees.

1.2 Research Problem

The main communication tool by the corporations to their shareholders and the public is the annual reports. Important information such as corporate governance issues are delivered through this channel among other tools. UNCTAD (2006) provides guidance on good practices in corporate governance disclosure on widely applicable disclosure issues that should be relevant to most enterprises. The purpose of the guidance is to assist the preparers of enterprise reporting in producing disclosures on corporate governance which addresses the major concerns of investors and other stakeholders. The guidance is also useful for promoting awareness in countries and companies that are not sufficiently adhering to international good practices and are consequently failing to satisfy investors' expectations regarding corporate governance disclosures. These disclosures are financial and non-financial. Enterprises should disclose their financial and operating results. Almost all corporate governance codes around the world, including the OECD and the ICGN Principles, the CACG Guidelines, the Cadbury Report, and the King II, specifically require the board of

directors to provide shareholders and stakeholders with adequate financial and business information. The disclosure should be clear, concise, and precise and governed by the "substance over form" principle (UNCTAD, 2006).

Capital Market Authority (CMA) has issued corporate governance guidelines to the public listed companies in Kenya, in order to enhance corporate governance practices by such companies. It has also recommended best practices in corporate governance by public listed companies in line with the international standards. The objective of issuing the guidelines is to strengthen corporate governance practices by public listed companies in Kenya and to promote the standards of self-regulation so as to bring the level of governance in line with the international trends. These guidelines relate to: Board of Directors; Role of Chairman and Chief Executive; Shareholders; Accountability and Audit and General Guidelines on: - disclosure, chief financial officers, company secretaries and auditors of listed companies. The public listed companies are firms whose shares are traded at the Nairobi Stock Exchange.

Various MBA research projects has been done on the area of corporate governance but most are case studies or relating to a particular industry or sector. For example, Ngumi (2008) studied Corporate Governance practices in Housing Finance Company of Kenya. However, there several studies on corporate governance relating to NSE listed companies in Kenya, e.g. Mwirichia (2008) did A Survey of Corporate Governance Disclosures among Kenyan Firms Quoted at NSE, and found that a good number of NSE listed companies in Kenya have chosen to disclose information regarding various issues of corporate governance but this study was not based on the CMA guidelines on corporate governance. Manyuru (2005) did a study on Corporate Governance and organizational performance: the case of companies quoted at Nairobi Stock Exchange, it conclusively indicated that the extent of corporate governance in most companies was either high or very high. Turanta (2010) studied The Effects of

Corporate Governance on Firm Value: An Empirical Assessment on NSE and found that there is a strong positive correlation between the overall corporate governance index and firm value. Ng'ang'a (2007), studied Compliance with Capital Markets Authority corporate governance guidelines: A survey of companies listed at the Nairobi stock exchange. It established that the highest role of the board of directors was strategy and the lowest being leadership. The study was not an analysis of corporate governance information published by quoted companies. None of these studies dealt with specific corporate governance information disclosed to shareholders and the public through annual reports by the listed companies in Kenya.

The study analysed the information which NSE listed companies publish in their annual reports under the title "Corporate Governance". These are mostly non-financial disclosures which the companies deem important to specifically write in their annual reports targeting the shareholders. The analysis was based on the disclosure requirements issued by Capital Markets Authority (CMA). It will involve examining the companies' annual reports relating to the year 2010 to answer the following questions. Do NSE listed companies comply with the CMA's corporate governance guidelines on disclosure requirements? Do the companies disclose non-compliance? What extra corporate governance practice information is published that is not a requirement by the CMA guidelines?

1.3 Research Objectives

- i. To establish whether the NSE listed companies in Kenya comply with the disclosure requirements of Capital markets Authority guidelines on corporate governance practices.

- ii. To establish whether the NSE listed public companies disclose non-compliance with the Capital Markets Authority's guidelines on corporate governance practices.
- iii. It will also seek to establish whether and what NSE listed companies provide as extra information on corporate governance than required by the guidelines.

1.4 Value of the Study

This study was valuable source of reference to business management and commerce students who have a desire to deepen their knowledge on governance issues. Excerpts of this study will later be published in revered journal for ease of knowledge access to students and scholars and it will also stimulate further research.

To the capital markets authority, this study will explore any potential governance gaps and make recommendations which CMA can consider for adoption for improving the governance environment in Kenya. The CMA guidelines on governance have not been reviewed since year 2002 and this study will establish their adequacy in the current operating environment. This study will also provide valuable information on key corporate governance issues to small and medium businesses which they can adopt in their systems as they grow.

CHAPTER TWO LITERATURE REVIEW

2.1 Introduction

This chapter explains different definitions of corporate governance by various groups and bodies. It also outlines the developments in corporate governance, principles of good corporate governance and its importance .It gives the corporate governance structure which includes:-shareholders, board of directors (BOD) and management. It concludes with a description of corporate governance transformations.

2.2 Corporate Governance

The term corporate governance appears to have arisen and entered into prominent usage in the mid-to-late 1970's in the United States in the wake of the Watergate scandal and the discovery that major American corporations had engaged in secret political contributions and corrupt payments abroad (Norman, 1993). Eventually it also gained currency in Europe as a concept distinct from corporate management, company law or corporate organization.

Scholars and practitioners of corporate governance give the term a wide variety of definitions. Economists and social scientists tend to define it broadly as the institutions that influence how business corporations allocate resources and returns O'Sullivan (2001) and the organizations and rules that affect expectations about the exercise of control of resources in firms World Bank (2002). One noted economist has rather cryptically written that governance is an institutional framework in which the integrity of the transaction is decided (Williamson, 1996). These definitions focus not only on the formal rules and institutions of corporate governance, but also on the informal practices that evolve in the absence or weakness of formal rules. Moreover, they encompass not only the internal structure of the corporation but also its external

environment, including capital and labor markets, bankruptcy systems, and government competition policies.

The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set and the means of attaining these objectives and monitoring performance (OECD, 1999).

In the Kenya Gazette Notice No.369 of 25th January 2002 corporate governance is defined as the process and structure used to direct and manage business affairs of the company towards enhancing prosperity and corporate accounting with the ultimate objective of realizing shareholders long-term value while taking into account the interest of other stakeholders. It seeks to promote corporate fairness, transparency and accountability.

Broadly speaking, corporate governance generally refers to the processes by which organisations are directed, controlled and held accountable. It encompasses authority, stewardship, leadership, direction and control exercised in companies and corporations. Governance is concerned with structures and processes for decision making, accountability, control and behaviour at the top of organisations (PSCGT, 2002). The bottom line is about power, how it's used and controlled.

Standard agency theory of corporate governance, according to Shleifer and Vishny (1997), focuses on the separation of ownership and control and investigates the mechanisms via which the suppliers of capital influence managerial decisions with varying degrees of success. Caprio and Levine (2002) developed this further by observing that small shareholders may seek to exert corporate governance by voting

²⁵ directly on major decisions, electing boards of directors, and signing incentive contracts with managers that link pay to performance. Similarly, neutral debt holders may seek to constrain managerial discretion through covenants, such that default or violation of a covenant typically gives debt holders the right to repossess collateral, initiate bankruptcy proceedings and vote on removing managers.

2.3 Developments in Corporate Governance

The World Bank and the OECD established the global governance forum which was mandated to build a consensus in favour of coming up with an appropriate policy on regulatory and corporate reforms. It was also charged with a mandate to coordinate and disseminate corporate governance activities, provide corporate development and capacity building in the associated fields of corporate governance and train the various professionals and other agents essential to bringing about a culture of compliance.

The international corporate governance network (ICGN) was established also to promote and coordinate research and development in corporate governance. Also established was the Commonwealth Association for corporate governance (CAGG), which came up with the November 1999 commonwealth heads of government meeting in Durban South Africa as a guide for all commonwealth countries to develop or enhance their own national corporate governance principles.

In Africa, the Africa capital markets forum has been undertaking a study on the state of corporate governance in Africa. The King's committee report and code of corporate governance in South Africa published in 1994 continues to stimulate corporate governance debate in Africa. In East Africa, regional conferences were held in Kampala, Uganda in June 1998 and September 1999 to create awareness and promote regional cooperation in matters of corporate governance. Uganda and Kenya

have made considerable progress in formulating national codes of best practice corporate governance, while Tanzania is still at the formative stage. In Kenya the Private sector initiative for corporate governance is mandated to explore ways of facilitating the establishment of a national body to promote corporate governance in the country and to coordinate developments in the area of corporate governance in East Africa.

2.4 Principles of Good Corporate Governance

The Cadbury report (1992) identified the fundamental principles of corporate governance as openness, integrity and accountability. These principles are relevant to both private and public entities. The Cadbury's report defined the three principles in the context of the private sector and more specifically, of public companies. In the context of the public sector, these definitions need to be adapted to reflect the key characteristics of the public sector entities, which distinguish them from the private sector. In particular, public sector entities have to satisfy a more complex range of political, economic and social objectives, which subject them to a different set of external constraints and influences; and are subject to forms of accountability to their various stakeholders which are different to those that a company in the private sector owes to its stakeholders (IFAC, 2001).

The report of the Nolan Committee, published in May 1995, identified and defined seven general principles of conduct that should underpin public life. The committee recommended that all public sector entities should draw up codes of conduct incorporating these principles. The principles are selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Corporate governance seeks to find the appropriate mechanisms for governing the relationships of constituent groups with the organisation so as to generate long-term value. It reduces conflict of interest among stakeholders and makes sure *that the right people make the decisions. It*

ensures that corporate power is exercised in the best interest of society. It also helps the aligning of responsibility and authority to be able to achieve optimum conditions for growth and success (PSCGT, 2002).

Effective corporate governance ensures that long term strategic objectives and plans are established and proper management and management structures are in place to achieve those objectives, while at the same time making sure that the structure functions to maintain the company's integrity, reputation and accountability to its relevant constituencies. The right system of checks and balances should be the basis of merit for any corporate governance system (Hunger & Wheelen, 1996).

For corporations to be efficient and productive, they must apply good corporate governance practices that are framed on four pillars. First, there should be an effective body responsible for governance separate and independent of management to promote accountability, efficiency and effectiveness, probity and integrity, responsibility, transparency and open leadership. Secondly, there must be an all-inclusive approach to governance that recognises and protects the rights of all members and all stakeholders. Thirdly, the corporation must be governed and managed in accordance with the mandate granted by the founders and the society, and they should take their wider responsibilities seriously in order to enhance sustainable prosperity. Finally, the corporate governance framework in the corporations should provide an enabling environment within which their human resources can contribute and bring to bear their full creative powers towards finding innovative solutions to shared problems (PSCGT, 2002).

2.5 Importance of Corporate Governance

Good corporate governance aims at the increased profitability and efficiency of business enterprises and their enhanced ability to create wealth for shareholders,

increased employment opportunities with better terms for workers and increased benefits to stakeholders. The transparency, accountability and probity of business enterprises make them acceptable as caring, responsible, honest and legitimate wealth creating organs of society. The credibility of business enterprises enhances their capacity to attract investment in an internationally competitive environment. The enhanced legitimacy, responsibility and responsiveness of business enterprises within the economy and improved relationships with their various stakeholders comprising shareholders, managers, employees, customers, suppliers, host communities, providers of finance and the environment enhance their market standing, image and reputation (PSCGT ,2002).

Good corporate governance ensures the highest standards of corporate responsibility, citizenship and business ethics in an effort to strengthen mutual responsibility. It enhances the spirit of participatory development, create partnerships for progress and increase citizen engagement in establishing a secure and stable environment in which business enterprises can grow and thrive. As far as the public sector is concerned, efficient use of resources and accountability strengthens the stewardship of these resources, improve management and service delivery, thereby contributing to improving people's lives. Effective governance is essential for building confidence in public sector entities which is in itself necessary if they are to be effective in meeting their objectives (PSCGT, 2002).

Progressive economic growth and social development over a prolonged period of time depends on decisions about allocation, utilisation and investment of resources. Strategic decisions about the allocation and utilisation of corporate resources are the foundations of investments in productive capacities that can make innovation and economic development possible. Corporate decisions on whether to invest, how soon

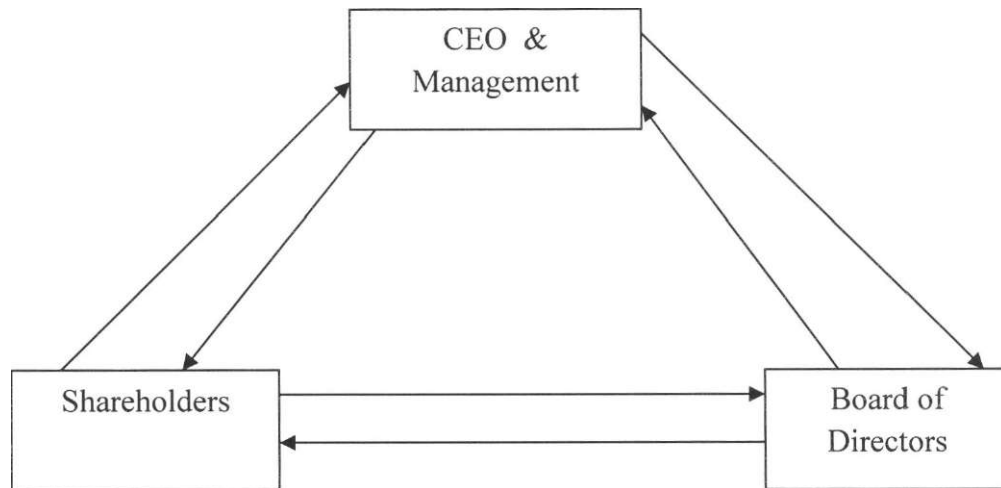
to invest, what to produce and whether to employ ultimately affect income, employment needs and indeed livelihoods of the entire society (PSCGT, 2002).

The national capacity to compete in the borderless and liberalised global market increasingly depends on the competitiveness of individual corporations and their ability to produce highest quality of products and services that meet the test of international competition. A corporation's competitiveness depends on the ability of the board of directors to apply and generate innovative ideas, acquire and apply knowledge and know how to push and integrate their corporation into the competitive global market (Hunger & Wheelen, 1996).

2.6 Corporate Governance Structure

Montgomery and Kaufman (2003) acknowledge that the corporate balance of power is delicate. The three principal actors in this power game are the shareholders, management and the board of directors as shown in figure 1. The interrelationship between them is the key to effective governance and forms a triangular relationship,

Figure 1: The Corporate Governance Triangle



Source: Adapted from Montgomery and Kaufman." The Board missing link", Harvard Business Review, March 2003

2.6.1 Shareholders

Primarily it is the money raised from shareholders, known as capital, which is used by an organisation to finance its operations. They do not have direct right in the property of the organisation as a whole. They do not engage in daily management of the organisation. Instead, they elect persons known as directors, who collectively as a board represent them and oversee the management on their behalf. The shareholders control the long term direction of the organisation through the general meetings which in most type of organisations are held at least once a year. At the general meetings, they deliberate and vote on important issues such as election of directors and auditors. After appointing directors and auditors, they should satisfy themselves that an appropriate governance structure is in place. They are expected to remove directors if unhappy with their actions. They should evaluate the performance of directors regularly. For them to be able to do this, they need to be properly informed about the company's activities in order to carry out their evaluation (PSCGT, 2002).

One of the ways organisations report to their shareholders is through the annual audited reports. The reports are prepared with due regard to requisite disclosure requirements as per the governing regulations. Many countries including Kenya have adopted the International Financial Reporting Standards (IFRS) which have progressively been improving on disclosure requirements. Stock exchange requirements enhance the accounting standards disclosures. The power of shareholders is also determined by their awareness level, which is influenced by their education level (Ongore, 2001).

2.6.2 Board of Directors (BOD)

The BOD is the link between the people who provide capital (shareholders) and the people who use that capital to create value (management). Their primary role is to monitor and influence the performance of management on behalf of the shareholders in an informed way. Efficient corporations can only be established and developed by responsible, creative and innovative boards. Indeed, without efficient corporations, a country will not create and produce wealth fast enough or generate employment opportunities. In a legal sense, the board is required to direct the affairs of the corporation but not to manage them, It is charged by law to act with due care (sometimes called due diligence). Directors must act with that degree of diligence, care and skill which ordinary prudent people would exercise under similar circumstances in like positions. If a director or the board as a whole fails to act with due care and as a result, the corporations is in some way harmed, the careless director or directors can be held personally liable for the harm done (PSCGT, 2002).

Hunger and Wheelen (1996) outlined three basic strategic management roles for boards. First, is to monitor by acting through committees, staying abreast of developments both inside and outside the corporation. The board can thus bring to management's attention developments that management might have overlooked. At

minimum, the board should carry out this task. Secondly, a board can examine management's proposals, decisions, and actions; agree or disagree with them; give advice and offer suggestions; and outline alternatives. More active boards do so in addition to monitoring management's activities. Thirdly, a board can delineate a corporation's mission and specify strategic options to its management. Only the most active boards take on this task in addition to the previous two. The boards of most publicly owned companies are composed of both inside and outside directors who are officers or executives employed by the corporation. Some countries like Germany adopt a two-tier board system where there is an executive board and a supervisory board (IFAC, 2001).

2.6.3 Management

These comprise the CEO and his senior management team. Their primary responsibility is performance. Top management and especially the CEO, is responsible to the board of directors for overall management of the company. Specific top management tasks vary from company to company and reflect an analysis of the mission, objectives, strategies and the key activities of the company (Johnson & Scholes, 1997). Generally, effective top managers are people who see the business as a whole, who can balance the present needs of the business against future needs, who can make sound timely decisions.

There is a tendency for top management to draw back to functional work. We can also have top managers perceiving only those aspects and responsibilities of their function that is compatible with their abilities, experience and temperaments as their role. If the board of directors fails to state explicitly what it considers to be the basic responsibilities and activities of top management, top managers are free to define their jobs themselves. Therefore important tasks can be overlooked until a crisis occurs (Johnson & Scholes, 1997).

2.7 Corporate Governance Transformations

Scandals like the Enron have shown the importance of pursuing profits within ethical bounds and the danger of executives and shareholders enriching themselves by extorting the public or employees. Toothless codes of ethics like Enron's are no help. Ethical concerns must grow teeth, which mean biting into reform of corporate governance. While most proposals for reform today merely tinker at the margins, some get to the heart of the matter (Estes, 2002). A number of practices have come up to strengthen corporate governance. In the wake of Enron, WorldCom and a chain of other scandals, USA no longer trusts its corporate leaders to tell the truth without being warned of prison doors slamming. In America, chief executives are swearing in front of a notary that "to the best of my knowledge", their latest annual and quarterly reports neither contain an "untrue statement" nor omit any "material fact". The oaths are only the first wave in a flood of new regulations enveloping companies in America (Kelly, 2002).

Stock exchanges in many countries of the world are coming up with rules aimed at restoring the quality of disclosures by preventing harmful conflicts that were evident in the most spectacular recent bankruptcies. The NYSE requires firms to get shareholders' approval for all stock option plans. They must also have a majority of independent directors in their boards and only independent directors on the audit committees and the committees that select chief executives and determine pay. US companies are now prohibited from providing subsidised loans to executives and requires bosses to reimburse incentive based compensations if profits are found to have been misstated.

There are moves to ensure auditors really audit by making them fully independent. Auditors are not the tools of management. They are the eyes and ears of shareholders (who own the company) and no bonds or other deals should be put above the

ownership of shareholders (without their permission). Instead of having companies as the "bosses" of their own auditors - selecting and paying the firms they want to work with- a corporate accountability commission could assign auditors and pay them for fees assessed on companies. The commission would be empowered to expend reporting requirements beyond stockholder needs to encompass data needed by other stakeholders such as pollution emissions, wages and benefits paid and corporate welfare received (Estes, 2002).

³⁵CHAPTER THREE RESEARCH METHODOLOGY

3.1 Introduction

This section describes the research design of the study, population, data collection methods and concludes with how data was analysed. Carriger (2000) defines research design as the strategy, the plan, and the structure of conducting research project. Social research needs a design or a structure before data collection or analysis can commence. A research design is not just a work plan which details what has to be done to complete the project but the work plan flow from the project's research design.

3.2 Research Design

The function of research design is to ensure that the evidence obtained enables us to answer the initial question as unambiguously as possible. Obtaining relevant evidence entails specifying the type of evidence needed to answer the research question, to test a theory, to evaluate a programme or to accurately describe some phenomenon. In other words, when, designing research we need to ask: given this research question (or theory), what type of evidence is needed to answer the question (or test the theory) in a convincing way? Research design deals with logical problem and not logistical problem. This study is an analysis of published corporate governance information in the annual reports of the NSE listed companies in Kenya, based on the Capital Markets Authority's corporate governance disclosure requirements.

3.2 Population

The population of the study was all companies quoted at the Nairobi Stock Exchange (NSE). The study analysed information from all fifty seven (57) NSE listed companies as listed in Appendix II.

3.3 Data Collection

Data and evidence collection was based on the analysis of secondary data. Using these sources, it was possible to collect complete and reliable information and to obtain a clear picture of the problem.

The secondary data used was obtained from the annual accounts and reports of the NSE listed companies for the year 2010. The researcher did an analysis of companies' annual reports on information under the title "corporate governance". Disclosure requirements by CMA guidelines provided the basis of the documents analysis using a form as demonstrated in Appendix I. Therefore, data found in these reports was found to be sufficient in successfully carrying out the study.

3.4 Data Analysis

Descriptive statistics enable the researcher to summarize and organize data in an effective and meaningful way. They provide tools for describing collections of statistical observations and reducing information to an understandable form (Nachmias & Nachmias, 1996).

Secondary data obtained from the companies' annual reports was analysed per sector in which a particular company belongs, using spreadsheets and other computer tools available. The data was tabulated from the data collection forms and the researcher computed the rate of compliance with the disclosure requirements per sector and the rate of disclosure of non-conformity too. The researcher also grouped the extra corporate governance reporting than required by the Capital Market Authority's requirements into various categories, which are board of directors, shareholders, audit & accountability, corporate social responsibility and others. Findings are presented in form of tables, graphs, charts and brief narratives.

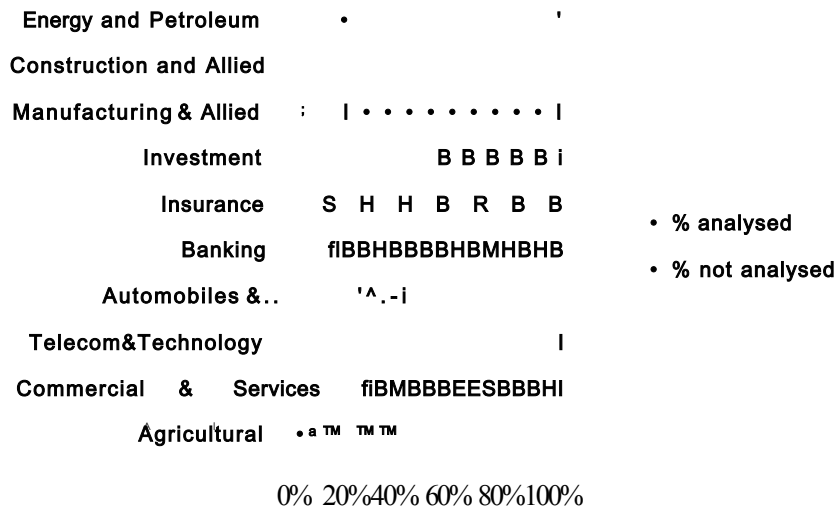
CHAPTER FOUR DATA ANALYSIS, RESULTS AND DISCUSSION

4.1 Introduction

The research objectives were to establish whether the NSE listed companies in Kenya comply with the disclosure requirements of CMA guidelines on corporate governance practices. To establish whether the NSE listed companies disclose non-compliance with the CMA guidelines on corporate governance and also to establish whether and what NSE listed companies provide as extra information on corporate governance than required by the CMA guidelines. This chapter presents the analysis, results and discussion with regard to the research objectives. The data was analysed from the annual reports for the year 2010 of forty eight (48) companies out of fifty seven (57) now listed at NSE. This is 84% representation which the researcher found to be adequate. The distribution of the analysed reports is illustrated by the following table and graph.

Table 1: Companies' Annual Reports Analysed						
Sector	No. of companies	No. of reports analysed	% analysed per sector	% not analysed per sector	% analysed	Cum.
Agricultural	7	6	86	14	11	11
Comm. & Services	8	7	88	13	12	23
Telecom & Tech.	2	2	100	0	4	26
Auto & Accessories	4	3	75	25	5	32
Banking	10	10	100	0	18	49
Insurance	4	3	75	25	5	54
Investment	4	2	50	50	4	58
Mfg & Allied	9	6	67	33	11	68
Constr. and Allied	5	5	100	0	9	77
Energy & Petroleum	4	4	100	0	7	84
<i>Reports not analysed</i>		9			16	100
Total	57	57			100	

Figure 2: Distribution of annual reports analysis



The nine (9) annual reports that were not analysed are: CFC Insurance Holdings and Trans-Century Ltd because they were listed at the NSE in year 2011; others were Eaagads Ltd, Hutchings Biemer Ltd, Car and General (K) Ltd, City Trust Ltd, B.O.C Kenya Ltd, Kenya Orchards Ltd, A Baumann Co Ltd whose 2010 annual reports were not found.

4.2 Corporate Governance Disclosure Analysis

The Capital Markets Authority's Gazette Notice No. 3362 (Cap.485A) guidelines on corporate governance practices by public listed companies in Kenya include principles of good corporate governance practices and also give recommended best practices in corporate governance by listed companies. These guidelines should be adhered to by the companies listed at NSE. However, there are various disclosure requirements which public listed companies are supposed to disclose in their annual reports. This research has analysed information contained in the companies' annual reports for the year 2010 in order to establish adherence to these disclosure requirements as discussed below.

4.2.1 Supply and Disclosure of Information

As per the Capital Markets Authority's guidelines on corporate governance practices by public listed companies in Kenya clause 2.1,3 (ii), there is a requirement for the board to disclose its policies for remuneration including incentives for the board and senior management, particularly the following: Quantum and component of remuneration for directors including non -executive directors on a consolidated basis in the categories of ,executive directors fees, executive directors emoluments, on executive directors fees, on executive directors emoluments; A list of ten major shareholders of the company; Share options and other forms of executive compensation that have to be made or have been made during the course of the financial year ; and Aggregate directors' loans.

4.2.1.1 Directors Fees and Emoluments

All analysed companies listed at the Nairobi stock exchange (NSE) disclosed information on the directors' fees and emoluments in their annual reports for the year 2010. Majority (67%) gave brief information in the statement of corporate governance which was being analysed and the rest (33%) gave the information in the notes to the financial statements.

4.2.1.2 A List of Ten Major Shareholders of the Company

After the analysis of the statement of corporate governance and perusing through the annual reports of these listed companies, it was revealed that majority disclosed the list of ten major shareholders of the company. Ninety eight percent (98%) had disclosed of which, 60% in the statement of corporate governance and 38% in the notes to financial statements.

4.2.1.3 Share Options and Other Forms of Executive Compensation

Majority of the companies quoted at the NSE disclosed Share options and other forms of executive compensation that have to be made or had been made during the course of 2010 financial year. The disclosure level was ninety eight percent (98%), with 35% disclosing in the statement of corporate governance and 63 % only in the notes to financial statements.

4.2.1.4 Aggregate Directors' Loans

Most companies didn't mention directors' loans in the statement of corporate governance and or in the notes to the financial statement. The ones that mentioned indicated that there are no directors' loans. The disclosure rate is, 35% mentioned directors' loan in the statement of corporate governance, 8% mentioned it in the note to financial statements and 57% didn't mention it in these sections of the 2010 annual reports.

4.2.2 Re-election of Directors

According to clause 2.1.7(c) of the Capital Markets Authority's guidelines on corporate governance practices by public listed companies in Kenya, disclosure should be made to the shareholders at the annual general meeting and in the annual reports of all directors approaching their seventieth (70th) birthday that respective year.

After analysing the companies' annual reports, the researcher found that only 35% disclosed the age of the directors. A few (4%) either mentioned the directors who were approaching their 70th birthday or that there was none and 31% gave the age of the directors in their respective profiles. For the remaining 65%, the issue of the directors' age was not mentioned in these sections of the annual reports.

4.2.3 Resignation of Directors

Resignation by a serving director should be disclosed in the annual report together with the details of the circumstances necessitating the resignation as per clause 2.1.8 of the Capital Markets Authority's guidelines on corporate governance practices by public listed companies in Kenya.

Majority of companies (84%) whose annual reports were analysed didn't mention any resignation of directors. The few who mentioned resignation, all the 16% didn't give the details necessitating the resignation, included here (10%) just indicated 'resigned' beside the name of a director in the directors' list under the company information section of the annual report. There were only three (3) companies representing 6% of the analysed reports that mentioned resignation of directors' in the statement of corporate governance, stating specifically that there were no directors who had resigned that year.

4.2.4 Role of Chairman and Chief Executive

Clause 2.2.1 of the Capital Markets Authority's guidelines on corporate governance practices by public listed companies in Kenya states that there should be clear separation of the role and responsibilities of the chairman and the chief executive, which will ensure a balance of power of authority and provide checks and balances such that no one individual has unfettered powers of decision making. Where such roles are combined a rationale for the same should be disclosed to the shareholders in the annual report of the company.

The guideline requires separation of roles and responsibilities of the chairman and those of the chief executive, so, the disclosure requirement is for those companies where these roles are combined. From going through the annual reports, the researcher found that it was obvious that most companies had both a chairman and a

chief executive officer. The separation of their roles could be deduced from their separate statements published in the annual reports. A few companies representing 27% indicated in the statement of corporate governance that these roles were separate and went ahead to state them. However, there were three (3) companies which had only the chairman mentioned and no statement or mention of the chief executive, making it difficult to establish whether these roles were separate. Otherwise there was no company that indicated that these roles were combined.

4.2.5 Public Disclosure

According to clause 2.5.1 of the Capital Markets Authority's guidelines on corporate governance practices by public listed companies in Kenya, There shall be public disclosure in respect of any management or business agreements entered into between the company and its related companies, which may result in conflict of interest.

All companies analysed disclosed information on business between them and their related companies. A few companies representing 8% disclosed this information or part of it in the statement of corporate governance .The remaining majority (84%) only disclosed this information in the notes to the financial statements under the related party transactions section.

4.3 Disclosure of Compliance and Non -Compliance Analysis

It is important that the extent of compliance with these guidelines should form an essential part of disclosure obligations in the corporate annual reports. It is equally important the extent of non-compliance be also disclosed. This is clause 1.7 of the Capital Markets Authority's guidelines on corporate governance practices by public listed companies in Kenya.

After reading through the companies' annual reports, especially the statement of corporate governance, the researcher found that most companies indicate that they

endeavor to comply with corporate governance guidelines issued by CMA and some mention corporate governance best practice. For non-compliance, majority reports were silent on the issue with only two (2) companies stating non-compliance and indicating which areas of the guidelines they have not complied with. One of them is Kakuzi Ltd which stated that the company is compliant with the Guidelines on Corporate Governance with the exception of the following non-prescriptive guidelines: Rule 3.1.3 (i) the nominating committee is constituted as a committee of the entire board, and new board appointments are considered by the full board. Rule 3.1.4 (i) the remuneration of directors is considered by the nominating committee which comprises the whole board. The other one is Kapchorua Tea Co. Ltd which stated that the chairman is not being an independent non-executive because he was Managing Director until 2007 and that the audit committee being composed of only two independent directors.

4.4 Extra corporate governance Information Analysis

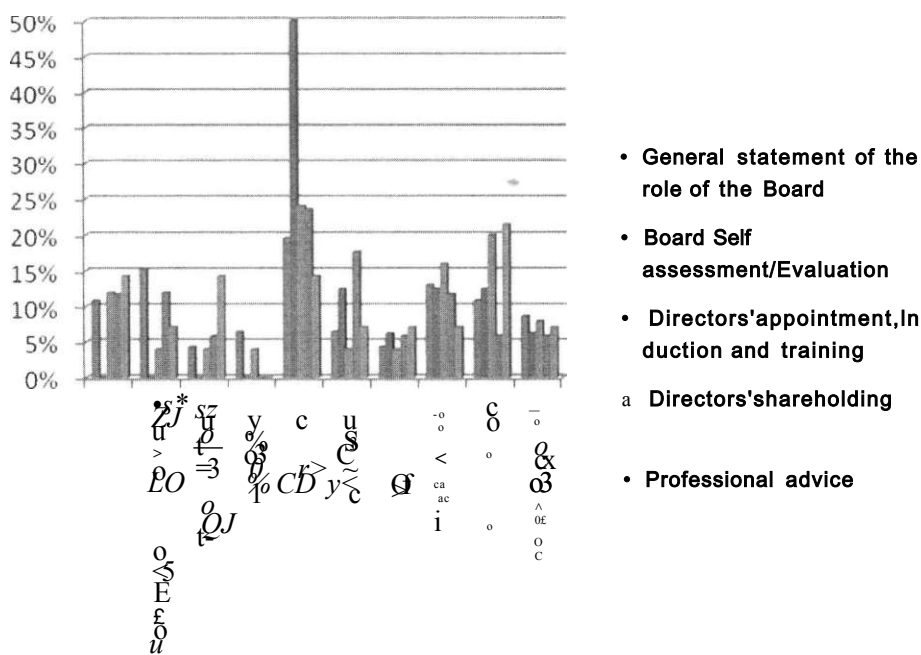
The corporate governance statement in the 2010 annual report of each company was scrutinized to establish other information published than the disclosures required by the CMA guidelines. This information was grouped in the following categories: Board of Directors; Shareholders; Accountability and Audit; Corporate Social Responsibility and Others, of which the results of the analysis are discussed below.

4.4.1 Board of Directors

The board is a crucial part of corporate governance structure and therefore a lot of extra information published in the corporate governance statement pertains to the board. Almost all companies gave information on board composition, board meetings (some gave attendance information) and detailed information on the board committees.

There are other issues of the board that were published by various companies in their annual reports. Majority (96%) explained the role played by the board of directors in the company. For example, Nation Media Group stated that the role of the Board is to determine the Company's policies and strategies, to monitor the attainment of the business objectives and to ensure that the Company meets its obligations to the shareholders. The directors are also responsible for overseeing the Group's internal control systems. These controls are designed both to safeguard the Group's assets and to ensure the reliability of the financial information used within the business. The other information concerning the board are: Board assessment/evaluation (33%); Directors appointment, induction and training (52%); Directors' shareholding (35%); and availability of professional advice to the board in order to effectively carry out their duties (29). These diverse information is illustrated in the following graph.

Figure 3: Board of Directors Reporting Analysis



4.4.2 Shareholders

Several companies gave information concerning the shareholders in the statement of corporate governance. About 56% of the companies analysed explained their

communication with shareholders or shareholder relations. For example, Housing Finance Co Ltd reported that the company is committed to: Ensuring that shareholders and the financial markets are provided with full and timely information about its performance; and Compliance with regulations and obligations applicable to the Stock Exchange and the Capital Markets Authority. Information is disseminated to the shareholders through an annual report and press notices following the release of quarterly, half yearly and annual results. Press releases on significant developments are also reported.

Only CFC Stanbic Holdings which gave the responsibilities of the shareholders in the corporate governance report. It stated that the shareholders' role is to appoint the board of directors and the external auditor. This role is extended to holding the board accountable and responsible for efficient and effective corporate governance.

4.4.3 Accountability and Audit

There was some information concerning accountability and audit in the listed companies' annual reports. First, is the area of Risk Management and Internal Controls that was discussed by 54% of companies in their statement of corporate governance. For example, Express Kenya Ltd stated that the Board through the Audit Committee constantly assesses, reviews policies and procedures to ensure best practices are followed in conducting the day to day operations and financial reporting as well as in implementing strategic plans approved by the Board. In reviewing the effectiveness of the systems of internal control and risk management, the Board constantly monitors the operational and financial aspects of the Company's activities through the Audit Committee, the advice of external auditors and recommendations from the regular management meetings that are relevant to any operational and financial risk that the company may face.

Secondly, is the statement of the role of the internal audit function which was reported by 17% of the listed companies in the statement of corporate governance. For example, Housing Finance Co Ltd stated that The Group has a fully operational internal audit function that is led by a senior member of staff who is a member of the Institute of Certified Public Accountants of Kenya. Internal Audit monitors compliance with policies and standards and the effectiveness of internal control structures across the Group through its audit programmes.

Thirdly, two companies from the Insurance sector discussed the existence of anti-fraud policy. For example, Jubilee holdings Ltd stated that in addition to the code of business ethics, the Company has updated its anti-fraud policy to bring it in line with current best practices and to better reflect the changing face of business in an increasingly automated world. This policy serves to reinforce the Company's zero tolerance on fraud and corruption by providing a framework for reporting and investigating fraud and ensuring fast and appropriate response to alleged incidences of fraud. All incidences of fraud and the action taken are reported to the Board.

4.4.4 Corporate Social Responsibility

Corporate governance considers other stakeholders too apart from the shareholders and the issue of corporate citizenship and responsibility is in the forefront. The listed companies reported their social responsibilities and environmental responsibilities. For example, in its statement of corporate governance Sasini Ltd stated that the Group is mindful of its responsibilities with regard to the social welfare of its employees, their families and the host communities. The Group, therefore, provides buildings for primary education, a fully-fledged hospital equipped with ambulances and social facilities at the tea and coffee estates. The Group conducts AIDS awareness programmes at its health facilities.

The researcher found that about 86% reported on the issue of social responsibility, of which 69% gave detailed reports including pictures in a different section separate from the statement of corporate governance while the remaining 17% gave brief information in the statement of corporate governance. The issue of environmental responsibilities was discussed by 61% of the listed companies of which 48% gave detailed reports separate from the statement of corporate governance while 13% reported their environmental responsibilities in the statement of corporate governance.

4.4.5 Others

There were various general corporate governance issues that were discussed by the listed companies in their annual reports under the statement of corporate governance. First, is the existence of the executive team and its mandate. Although most companies published the executive/senior management profiles, about 48% of companies discussed this item albeit briefly in the statement of corporate governance. For example, Nation media group stated that the Group Chief Executive chairs the Executive Team which comprises the executive directors and other senior executives of the Group. The team deals with operational matters and co-ordinates activities across the Group's various subsidiary companies and divisions.

Secondly, the issue of conflict of interest which is a matter on the limelight now after the recent boardroom wars and subsequent suspension of CMC Holdings Ltd by Capital Markets Authority. About 46% of the companies analysed discussed this item in their statement of corporate governance, calling it: conflict of interest; business ethics; code of conduct etc. For example, The Co-operative bank of Kenya Ltd stated that The Board's policy provides that directors, their immediate families and companies where directors have interests in only do business with the Bank at arm length. Where a matter concerning the Bank may result in a conflict of interest, the director is obliged to declare the same and exclude themselves from any discussion or

vote over the matter in question. Business transactions with directors and related parties are disclosed in notes to the financial statements. The distribution of listed companies that discussed the issue of corporate governance is described per sector in the following table.

Table 2: Conflict of Interest Reporting Analysis

Sector	Percentage
Agricultural	0%
Commercial & Services	5%
Telecom& Technology	5%
Auto & Accessories	14%
Banking	23%
Insurance	5%
Investment	0%
Manufacturing & Allied	17%
Construction & Allied	17%
Energy &Petroleum	14%

Thirdly, a few companies (15%) discussed briefly the item of going concern in their statement of corporate governance. For example, CFC Stanbic Holdings Ltd stated that the Board has reviewed the facts and assumptions, on which it relied and, based on these, will continue to view the Group as a going concern for the foreseeable future. Another example is for Sasini Ltd which stated that the Directors confirm that the Group has adequate resources to continue in business for the foreseeable future and therefore to continue to use the going concern basis when preparing the financial statements.

Lastly, there were various diverse items in the companies' annual statements under the statement of corporate governance that seemed to appear in individual companies. For example Nation media group had the following statement. There is a clearly defined organizational structure within which individual responsibilities and authority limits are identified in relation to internal financial controls. The structure is complemented by policies and management operates the business in compliance with these policies. Equity bank discussed and listed its development partners stating that it's due to its quest the highest standards of corporate governance, accountability and business growth. Other issues are: Succession planning; Employment Equity; Relations with employees; Indemnification of Directors etc.

4.5 Discussion of Results

The various disclosure requirements which public listed companies are supposed to disclose in their annual reports have been in this research, using information contained in the companies' annual reports for the year 2010. All analysed companies listed at the Nairobi stock exchange (NSE) disclosed information on the directors' fees and emoluments. Majority (98%) disclosed the list of ten major shareholders of the company, also 98% disclosed share options and other forms of executive compensation that have to be made or had been made during the course of 2010 financial year. Most companies didn't mention directors' loans in the statement of corporate governance and or in the notes to the financial statement. The ones that mentioned indicated that there are no directors' loans.

As per the analysis only 35% disclosed the age of the directors. Majority of companies (84%) didn't mention any resignation of directors. The few who mentioned resignation, all the 16% didn't give the details necessitating the resignation. There were only three (3) companies representing 6% of the analysed reports that mentioned resignation of directors' in the statement of corporate

governance, stating specifically that there were no directors who had resigned that year.. The separation of their roles of chairman and of the chief executive could be deduced from their separate statements published in the annual reports. A few companies representing 27% indicated in the statement of corporate governance that these roles were separate and went ahead to state them. However, there were three (3) companies which had only the chairman mentioned and no statement or mention of the chief executive, making it difficult to establish whether these roles were separate. Otherwise there was no company that indicated that these roles were combined. All companies analysed disclosed information on business between them and their related companies.

Most companies indicate that they endeavor to comply with corporate governance guidelines issued by CMA and some mention corporate governance best practice. For non-compliance, majority reports were silent on the issue with only two (2) companies stating non- compliance and indicating which areas of the guidelines they have not complied with. The corporate governance statement in the 2010 annual report of each company was scrutinized to establish other information published than the disclosures required by the CMA guidelines. This information was grouped in the following categories: Board of Directors (96%); Shareholders (56%); Accountability and Audit (54%); Corporate Social Responsibility (86%). Others are: existence of the executive team and its mandate; the issue of conflict of interest; a few companies (15%) discussed briefly the item of going concern in their statement of corporate governance. There were various diverse items in the companies' annual statements under the statement of corporate governance that seemed to appear in individual companies. For example, organizational structure, development partners, succession planning, employment equity; relations with employees, indemnification of directors etc. Corporate governance information contained in companies' annual reports is

diverse given the minimum disclosure requirements the extra information is at the discretion.

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CHAPTER FIVE SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This section discusses the summary of results of the research which was a detailed analysis of corporate governance information contained in the annual reports of NSE quoted companies for the year 2010. It also states the conclusion that the researcher made from the analysis of corporate governance data; recommendations for policy makers; suggestions for further research and concludes with a brief mention of the limitations of the research.

5.2 Summary

The study confirmed that almost all NSE listed companies disclose their policies for remuneration including incentives for the board and senior management, particularly the following: Quantum and component of remuneration for directors including non-executive directors on a consolidated basis in the categories of executive directors fees, executive directors emoluments, on executive directors fees, on executive directors emoluments; A list of ten major shareholders of the company; Share options and other forms of executive compensation that have to be made or have been made during the course of the financial year ; and Aggregate directors' loans. The issue of directors' loans had a low disclosure which can mean that these companies do not give loans to their directors and therefore find no need to state so in their annual reports.

There are other disclosure requirements that are essential when certain circumstances exist and therefore may or may not be mentioned in the annual report if they didn't exist. These are disclosures are: All directors approaching their seventieth (70th) birthday that respective year; any resignation by a serving director and the details of

the circumstances necessitating resignation; and the rationale for combination of the role and responsibilities of the chairman and chief executive. The few companies that had directors who had resigned in year 2010 didn't give the details of the reasons for the resignations. The disclosure requirement for management or business agreements entered between the company and its related companies was disclosed in the notes to the financial statements by majority of the listed companies and not in the statement of corporate governance. Non-compliance disclosure was done by two companies only; this can indicate compliance with the guidelines given that most companies stated that they adhere to the corporate governance guidelines.

The extra corporate governance practices information given by the listed companies in their annual reports in the statement of corporate governance indicate adherence to the CMA guidelines on corporate governance practice. Almost all companies gave information on the composition of the board, board meetings schedules, and details of board committees and their role and duties. Majority of the companies had a statement on the role played by the board in the organization. The other items concerning the board are: Board assessment/evaluation (most of these are from the banking sector); Directors appointment, induction and training Directors' shareholding; and availability of professional advice to the board in order to effectively carry out their duties.

These corporate governance issues discussed in the statement of corporate governance in the annual reports of the NSE listed companies include other area than the board of directors. In the area of accountability and audit, over half of the companies reported on risk management and internal controls, a few gave the role played by the internal audit function in the organization and two insurance companies reported on the anti-fraud policies. The issue of corporate social responsibility is significant whereby a big number of the listed companies discussed their social and environmental activities

with most of them giving detailed separate reports on the same. The other areas that these listed companies touched on in their statement of corporate governance are: executive team and its mandate; conflict of interest; going concern; presence of organizational structure and its importance; and others such as succession planning, employee relations, development partners etc.

5.2 Conclusion

The study established that majority of the NSE listed companies adhere to the CMA disclosure requirements on corporate governance. They published information required on directors' fees and emoluments, a list of ten major shareholders of the company, share options and other forms of executive compensation. All companies disclosed the management or business agreements entered into between the company and its related company. This information was found in the notes to the financial statement which can be construed to mean that the companies were adhering to the International Financial Reporting Standards (IFRS) and not necessarily to the CMA guidelines.

It was not possible to establish compliance with the following disclosure requirements since there are circumstances based and not possible to confirm given the scope of the study. These are disclosures are: All directors approaching their seventieth (70th) birthday that respective year; Any resignation by a serving director and the details of the circumstances necessitating resignation; and the rationale for combination of the role and responsibilities of the chairman and chief executive.

The study found that the corporate governance practice information published by the NSE listed companies in their annual reports in the statement of corporate governance is very diverse with no uniformity. It seems that the companies have the discretion to publish since the disclosure requirements are few and specific. The

companies may be practicing good corporate governance but they may not report so in their annual reports which are the main contact tool with their shareholders. The annual reports give a lot of information about the company especially finance related matters but there should be organized and clear reporting on corporate governance.

5.3 Recommendations for Policy Makers

The guidelines on corporate governance practices by public listed companies in Kenya issued by the Capital markets Authority and form the base of this study were issued in 2002. This means that they are almost ten years old and they have not been reviewed. The companies declare compliance with these guidelines which are obviously outdated since the operating environment has changed significantly. The statutory laws have also changed, for example there is a new constitution, and the Companies Act was reviewed.

The Capital markets Authority should also advance its regulation on the listed companies so as to avoid corporate collapse and scandals. There are reports in the press that there are reviewed corporate governance guidelines awaiting government approval which the researcher hopes will help improve the corporate governance practice in Kenya.

5.4 Suggestions for Further Research

A study can be carried out to establish the methods used by the Capital markets Authority in regulating the corporate governance practice in public listed companies in Kenya. This will establish the effectiveness of the capital markets Authority in safeguarding the interest of all stakeholders.

A study can also be carried out on the area of conflict of interest in the public listed companies. It will establish various rules and enforcement measures put by organization in dealing with this matter.

Another follow up similar research can be carried out especially after the adoption of updated CMA guidelines on corporate governance practices by public listed companies in Kenya. This can be done after a few years to establish adherence to the new guidelines.

5.5 Limitation of the Study

The study concentrated with the statement of corporate governance in the companies' annual reports. This is not the only section that report matters related to corporate governance and therefore the researcher could have missed some information. Sections such as the Chairman's statement, chief Executive's statement, Notice to the Annual general meeting may contain corporate governance information.

There was also the limitation of resources such as time , if it were adequate could have helped in enriching the research through collecting more information from other sections of the annual reports or gathering additional information on corporate governance practice in NSE quoted companies in Kenya.

REFERENCES

- Bowen, R. (2010). Whistle-Blowing: Target Firm Characteristics and Economic Consequences. *Harvard Law School on Forum on Corporate Governance and Financial Regulation* Retrieved from <http://blogs.law.harvard.edu/corpgov/tag/robert-bowen/>
- Cadbury. (1992, December 1). Report of the Committee on Financial Aspects of Corporate Governance. *World Bank*. (Adrain, & e. al., Eds.) Retrieved from <http://worldbank.org/html/fpd/privatesector/cg/docs/cadbury.pdf>
- CAGG. (1999). Principles of Corporate Governance in Common Wealth: Towards Global Competiveness and Economic Accounatability . *Commonwealth Association of Corporate Governance* . New Zealand: CAGG.
- Caprio, G. J., & Levine, R. (2002). Corporate Governance of Banks : Concepts and Interanational Observations. *Global Corporate Governance Forum Research Network Meeting*. Global Corporate Governance Forum Research Network.
- Carriger, M. (2000). What is Research Design? How is Knowledge Gained? Retrieved from <http://dogbert.mse.cs.cmu.edu/Mse2001/Studio/resdes.pdf>
- Currall, S., & Esptein, M. J. (2003). The Fragility of Organzational Trust: Lessons from the Rise and Fall of Enron. *Organizational Dynamics* .
- Demb, A., & Neubauer, F. (1993). The Corporate Boad: CONforanting the Paradoxes. *Long Range Planning* , 25(3), 9-20.
- Donaldson, G. (1995, July - August). A New Tool for the Boards: The Strategic Audit. *Harvard Business Review* , 99 - 107.
- Estes, R. (2002). *Proposed Corporate Acccoutability*. American University , Department of Accounting .
- Gareth, R. J., & Charles, W. L. (2001). *Strategic Management Theory: An Integrated Approach*(5 ed.). Houghton Mifflin Company .
- Gatamah, K. (2005). Launching Corporate Governance in Africa with an Emphasis on Kenya. *Centre for International Private Enterprise*.

- GoK. (2002). *CMA Guidelines on Corporate Governance Practices by Listed Companies in Kenya*. GoK. Nairobi: Government Printers.
- Hampel Committee. (1998, January). *Hampel Committee Report*. (Gee Publishing Ltd., Producer) Retrieved from http://www.ecui.org/codes/country_documents/uk/hampel_index.htm
- Hill, C., & Jones, G. (2001). *Strategic Management Theory*(5 ed.). Houghton Miffling Co.
- Hunger, J. D., & Wheelen, T. L. (1996). *Essentials of Strategic Management* (5 ed.). Addison Wesley Publishing Co. Incl.
- International Federation of Accountants. (2001). Governance in the Public Sector. *International Federation of Accountants, Study No. 13*.
- Johnson, G., & Scholes, K. (1997). *Exploring Corporate Strategy* (5 ed.). Prentice Hall.
- Kelly, M. (2002, June). *Business Ethics Magazine*. Editorial Page
- Macey, J. R., & O'Hara, M. (2005). The Corporate Governance of Banks. *Federal Reserve bank of New York Economic Policy Review* .
- Manyuru, P. J. (2005). *Corporate Governance and Organizational Performance: The Case of Companies Quoted at the Nairobi Stock Exchange*. Unpublished MBA project, University of Nairobi.
- Montgomery, C., & Kaufman, R. (2003, March). The Board Missing Link. *Havard Business Review*.
- Mwirichia, M. G. (2008). *A Survey of Corporate Governance Disclosures among Kenyan Firms Quoted at NSE*. Unpublished MBA Project, University of Nairobi.

Nachmias, C. F., & Nachmias, D. (1996). *Research Methods in Social Sciences* (5 ed.). St. Martin Press, New York.

Newsweek. (2002, July 2). Report Implicate Former World-Corn CEO in Fraud. *Newsweek*, CXL(No. 2) . Newsweek Inc.

Ngumi, P. M. (2008,). *Corporate Governance Practices in Housing Finance Company of Kenya*. Unpublished MBA Project, University of Nairobi.

Nolan Committee. (1995/ *The Third Report of the Committee on Standards in Public Life: Standards of Conduct for Government in UK*.

Norman, V. E. (1993). The Emergence of Corporate Governance as a New Legal Discipline . *The Business Lawyer* (48).

Ng'ang'a, P. M. (2007). *Compliance with Capital Markets Authority Corporate Governance Guideline: A Survey of Companies Listed at the Nairobi Stock Exchange*. Unpublished MBA Report, University of Nairobi.

Ongore, V. O. (2001). *Managerial Responses of Derugulation of Co-operative Sector: The Case of Nairobi Saccos*. Unpublished MBA Project, University of Nairobi.

Organization for Economic Cooperation and Development. (1999). *OECD Principles of Corporate Governance*. Adhoc Task Force on Corporate Governance

O'Sullivan, M. (2001, July). Corporate Governance and Globalization. *The ANNALS of American Academy of Political Science*, 570, 153 - 154.

Patton, A., & Baker, C. (1987). Why Wont Directors Rock the Boat. *Havard Business Review* AO (2), 10-18.

Peterson, W. A. (1982). *Research Instruments in Social Gerontology* (Vol. 13). Minneapolis, MN: University of Minnesota Printers.

PSCGT. (1999). Principles for Corporate Governance in Kenya. Nairobi: PSCGT

PSCGT. (2002). Good Corporate Governance in State Owned Corporation - Draft Guidelines. Nairobi: PSCGT

PSCGT. (2002). Good Corporate Governance Guidelines for Shareholders -Final Draft Guidelines. Nairobi: PSCGT

PSCGT. (2002). Good Corporate Governance in Unversities -Discussion Draft. Nairobi: PSCGT

Salmon, W. (1993). Crisis Prevention: How to Clear Up Your Board. *Harvard Business Review*, 68 (5), 68 - 75.

Sarbanes-Oxley Act (2001 - 2002), H.R. 3763 (2002).

Shkeifer, A., & Vishny, R. (1997). A Survey of Corporate Governance. *Journal of Finance*, 52 (2).

Turanta, O. K. (2010). *The Effects of Corporate Governance on Firm Value: An Empirical Assessment on NSE*. Unpublished MBA Project, University of Nairobi.

UNCTAD. (2006). Guidance on Good Practices in Corporate Governance Disclosure. New York and Geneva: United Nations

Williamson, O. E. (1996). *The Mechanisms of Governance II*. New York: Oxford University Press.

World Bank. (2002). *Building Institutions for Markets: World Bank Development Report*. (B. I. Report, Ed.) Retrieved from World Bank Development Report : <http://worldbank.org/html/fpd/privatesector/cg/>

Appendix I

Corporate Governance Disclosure Analysis Form

Sector										
Disclosure components	Company/									
	A	B	C	D	E	F	G	H	I	J
(A)										
(i) Directors Fees & emoluments										
(ii) A list of ten major shareholders of the company										
(iii) Share options and other forms of executive compensation										
(iv) Aggregate directors' loans										
(B)										
All directors approaching their seventieth(70 th) birthday that respective year										
(C)										
Any resignation by a serving director and the details of the circumstances necessitating resignation										
(D)										
Rationale for combination of the role and responsibilities of the chairman and chief executive.										
(E)										
Management or business agreements entered into between the company and its related companies										
(F) Any non-conformity disclosure?										
(G)										
Other Disclosure: Specify										
(i)										
(ii)										
(iii)										
(iv)										

Note: A complete list of the NSE quoted companies is in appendix II.

Appendix II

List of Quoted Companies in Kenya

Agricultural

- 1 Eaagads Ltd
- 2 Kapchorua Tea Co. Ltd
- 3 Kakuzi Ltd
- 4 Limuru Tea Co. Ltd
- 5 Rea Vipingo Plantations Ltd
- 6 Sasinl Ltd
- 7 Williamson Tea Kenya Ltd

Commercial and Services

- 8 Express Ltd
- 9 Kenya Airways Ltd
- 10 Nation Media Group
- 11 Standard Group Ltd
- 12 TPS Eastern Africa (Serena) Ltd
- 13 Scangroup Ltd
- 14 Uchumi Supermarket Ltd
- 15 Hutchings Biemer Ltd

Telecommunication and Technology

- 16 Access Kenya Group Ltd
- 17 Safaricom Ltd

Automobiles & Accessories

- 18 Car and General (K) Ltd
- 19 CMC Holdings Ltd
- 20 Sameer Africa Ltd
- 21 Marshalls (E.A.) Ltd

Banking

- 22 Barclays Bank Ltd
- 23 CFC Stanbic Holdings Ltd
- 24 Diamond Trust Bank Kenya Ltd
- 25 Housing Finance Co Ltd

- 26 Kenya Commercial Bank Ltd
- 27 National Bank of Kenya Ltd
- 28 NIC Bank Ltd
- 29 Standard Chartered Bank Ltd
- 30 Equity Bank Ltd
- 31 The Co-operative Bank of Kenya Ltd

Insurance

- 32 Jubilee Holdings Ltd
- 33 Pan Africa Insurance Holdings Ltd
- 34 Kenya Re-Insurance Corporation Ltd
- 35 CFC Insurance Holdings

Investment

- 36 City Trust Ltd
- 37 Olympia Capital Holdings ltd
- 38 Centum Investment Co Ltd
- 39 Trans-Century Ltd

Manufacturing and Allied

- 40 B.O.C Kenya Ltd
- 41 British American Tobacco Kenya Ltd
- 42 Carbacid Investments Ltd
- 43 East African Breweries Ltd
- 44 Mumias Sugar Co. Ltd
- 45 Unga Group Ltd
- 46 Eveready East Africa Ltd
- 47 Kenya Orchards Ltd
- 48 A.Baumann CO Ltd

Construction and Allied

- 49 Athi River Mining
- 50 Bamburi Cement Ltd
- 51 Crown Berger Ltd
- 52 E.A.Cables Ltd
- 53 E.A.Portland Cement Ltd

Energy and Petroleum

- 54 KenolKobil Ltd
- 55 Total Kenya Ltd
- 56 KenGen Ltd
- 57 Kenya Power & Lighting Co Ltd