

Afterthoughts

A Critical Analysis of the Ethiopian Banking Law in Light of the Basel Committee on Banking Supervision's Corporate Governance Principles for Banks

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A CRITICAL ANALYSIS OF THE ETHIOPIAN BANKING LAW IN LIGHT OF THE BASEL COMMITTEE ON BANKING SUPERVISION'S CORPORATE GOVERNANCE PRINCIPLES FOR BANKS

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Introduction

For everyone taking part in a development community, endeavoring to bring democracy through ameliorating economic situations and political structures, overcoming poverty, infrastructure decay, limited access to basic resources, and lack of private sector jobs are sensitive concerns in fragile and emerging economies. For this, to address these and other related problems and maintain legitimacy of governments, measures ranging from democratic to market reform were undertaken (Hontz & Shkolnikov, 2009: 10-12).

Amongst all, corporate governance do have a pivotal role in cleansing governance environment in unmasking insider relationship and injecting values of transparency and accountability in both spheres of private and public transactions. It is also accelerates a functional small and medium-sized enterprise sector entrusted for sustainable solutions to poverty in generating jobs and attracting investment. Hence, as good governance in private and public sector is inseparable, corporate governance is found to be an important tool in bringing democracies reveal for all segments of a society (Hontz & Shkolnikov, 2009).

Today, corporate governance is given a place in myriad of platform for discussions. In an effort to promote quality of governance in Africa, the African Peer Review Mechanism (APRM) at the 6th summits of the Heads of State and Government Implementation Committee of the African Union, corporate governance is the one perspective or thematic area together with democracy and political governance,

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macroeconomic policy and management, and social and economic development (Minga 2008: 2). Although, Ethiopia has its own modern business history traced back to long years ago, corporate governance is still a recent issue (Asnakech 2013: 4-7) and its overall standard in the country is insufficient.

When we see the banking sector specifically, it is characterized for its poor corporate governance due to: lack of an adequate legislative framework to regulate the modern bank governance, political parties involvement in business enterprises hindering healthy competition by the private sector, insufficient shareholders protection laws, weak judicial system failed to protect shareholders' wealth and business protection, and absence of share market enabling valuation and price discovery can be mentioned (Asnakech 2013).

Contemplating all these and other related Ethiopian banking corporate governance concerns, this paper seeks to diagnose banking laws of the country in light of the Basel Committee on Banking Supervision Guidelines on the principles of corporate governance for banks. And, at the end, it tries to showcase the diagnosis result and suggest possible solutions the same which could help to draw attention and so that begetting further studies on the topic.

A Prelude: The Ethiopian Banking Law vis-à-vis the Basel Committee on Banking Supervision Corporate Governance Principles for Banks

In order to reflect the lessons learned by many central banks and national bank supervisors from the global financial crisis of 2008-09,² in particular with regard to risk governance practices and supervisory oversight at banks (Basel Committee (2014)), in October 2014, the Basel Committee on Banking Supervision³ of the Bank for International Settlements⁴ issued its consultative Guidelines on Corporate governance

² According to the International Corporate Governance Network (ICGN)'s Statement on the Global Financial Crisis, on *10 November, 2008*, the financial crisis proves beyond a doubt that we are living in a global age. Starting as a problem in the US, it has spread through the world and left investors in seemingly unrelated markets and instruments nursing large losses. Corporate governance failings were not the only cause but they were significant, above all because boards failed to understand and manage risk and tolerated perverse incentives.

³ The Basel Committee on Banking Supervision (BCBS) is one of the committees under the Bank for International Settlements (BIS) which is the primary global standard setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Its mandate is to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability.

principles for banks (known as the “2014 Principles”). The 2014 Principles revise the Committee’s 2010 Principles for enhancing corporate governance (known as the “2010 Principles”), in which the Committee reflected on The 2014 Principles also incorporate corporate governance developments in the financial services industry since the 2010 Principles.

Again, on July 8, 2015, the Basel Committee on Banking Supervision (hereafter BCBS) issued revised guidelines on corporate governance principles for banks (known as the “2015 Principles”) updated the Basel Committee’s 2010 principles for promoting sound corporate governance practices at banking organizations. However, the 2015 principles are largely consistent with the consultative version the Basel Committee issued in October 2014 (“2014 Consultative Version”). Now, what the 2015 principles bring new is the demarcation between the duties of the board of directors [or board] versus senior management. Therefore, this paper considers corporate governance principles of the 2014 and 2015.

The issue of corporate governance in Ethiopia is new (Minga 2008: 4-5). The financial sector is still underdeveloped and largely owned and controlled by the government for reasons of the absence of share market; mix of politics and business; inadequate shareholder protection laws, and an in-effective court system (Asnakech 2013: 9). Despite the fact that Bank corporate governance is distinguished for its complex framework (owing to wide range of interests of shareholders and stakeholders) and require strict government regulation via bank supervisors and a range of banking laws and regulations, the country has not yet a developed bank corporate governance (Asnakech 2013: 3).

For years, though inadequate, the commercial code of Ethiopia has been the only document evidencing corporate governance rules in the country. Since the Provisions of the commercial code (Arts. 304-509) failed to cope up with modern corporate governance issues related to board of directors, rights of shareholders as well as financial reporting, transparency and audit, some attempts have been made to reform corporate governance in the country. Amongst the attempts, the Federal Democratic

⁴ The Bank for International Settlements (BIS) is an international financial organization which was established on 17 May 1930 and owned by 60 member central banks, representing countries from around the world that together make up about 95% of world GDP. Its head office is in Basel, Switzerland and it has two representative offices: in the Hong Kong Special Administrative Region of the People's Republic of China and in Mexico City. BIS is has mission to serve central banks in their pursuit of monetary and financial stability, to foster international cooperation in those areas and to act as a bank for central banks.

Republic of Ethiopia (hereafter FDRE) Ministry of Justice is revising the Commercial Code; and [a] “*Voluntary Code of Corporate Governance for Ethiopia*” was also adopted by Addis Ababa Chamber of Commerce and Sectoral Associations (AACCSA) on 3 June 2011. Although adequate information is not available on the matter; the Ethiopian Institute of Corporate Governance with the motto “Striving for a Responsible Business Practice” is established to promote the evolution of a dynamic, ethical and responsible business community which adheres to local and international corporate governance standards via providing information and conduct awareness creation and trainings; providing membership development services, and publishing of the Ethiopian corporate governance codes and related governance issues.⁵ These reform initiatives considered both formal (regulatory) and informal (non-regulatory) corporate governance approaches, keeping the selection of an effective approach of corporate governance well fitted to the real situations of the country is controversial (Hussein 2014:161).

Concerning bank corporate governance of Ethiopia, two years ago, the National Bank of Ethiopia (hereafter NBE) has come up with “Bank Corporate Governance Directive N^o. SBB/62/2015.” This is what the NBE did as per its purpose and powers and duties enshrined under Articles 4 and 5 (7) of the National Bank of Ethiopia Establishment (as Amended) Proclamation N^o. 591/2008 respectively. The directive envisages the rules that should govern the operation and work of bank corporate bodies on the following four major areas: (i) key aspects in the supervision of senior management performance; (ii) the minimum content of the company's Code of Conduct; (iii) the composition, operation and powers of the Board committees; and (iv) the policies, manuals and minimum guidelines that must exist in every company.

This Directive is binding on all banks licensed and supervised by the NBE so that upon non-compliance, a bank shall be subject to a penalty of Birr10,000 (ten Thousand Birr) for each violation; in addition to the penalty indicated NBE may take any other measures it considers necessary.⁶

This measure indicates that Ethiopia is signifying the existence of eighteen banks; two public and sixteen private banks and that the financial sectors in general and the banking subsector in particular as one of the protected sector regulated and supervised by the

⁵ Brief profile, the Addis Ababa Chamber of Commerce & Sectoral Associations (AACCSA), (September 2015), p. 11.

⁶ Penalty for Non-compliance Directive N^o. SBB/35/2004, Art. 2.

NBE, which sets the rules for the operations of the banks and oversees their performance (Business Finance Guide, AACCSA 2016).

These aforementioned efforts to develop bank corporate governance system in the country seems to recognize and/ or realize the facts that: banks play an important role in economic sectors of development through mobilization of funds from within and outside the country and channeling such funds to various the economy; banks occupy a central place in the payment and settlement system of the country's economy; the business of banking has a number of attributes which, if not managed properly, has the potential to generate financial system and macroeconomic instability; the cost of financial system and macroeconomic instability to the general public and the Government is significant; and it is essential to ensure safety, soundness and stability of the banking system by having a comprehensive law for the licensing and supervision of the banking business which are stipulated under the preamble of the "Banking Business Proclamation N^o. 592/2008"⁷

Now, the forthcoming paragraphs make a close diagnosis on the Ethiopian bank corporate governance laws:

- The commercial code corporate governance rules,
- Bank Corporate Governance Directive N^o. SBB/62/2015,
- Banking Business Proclamation N^o. 592/2008; and
- Other relevant directives, circular letters and documents of the NBE in light of the thirteen BCBS corporate governance principles for banks. For this, a comparative discussion on corporate governance conceptual foundations and principles has been made.

In doing so, it is possible to appreciate differences between BCBS corporate governance conceptual foundations and principles for banks and the Ethiopian bank corporate governance laws so that constructive insight enhancing the Ethiopian bank corporate governance system will follow.

The Main Discourse

The BCBS corporate has adopted the definition of OECD corporate governance and defined as "[a] set of relationships between a company's management, its board, its

⁷ Preamble of the Banking Business Proclamation N^o. 592/2008, paragraph 1-5.

shareholders and other stakeholders which provides the structure through which the objectives of the company are set and the means of attaining those objectives and monitoring performance” This definition emphasized the way that authority and responsibility are allocated and how corporate decisions is made. Not only the definition, but also the BCBS principles of corporate governance are streamlined with OECD principles.⁸ This makes the BCBS principles comprehensive and applicable across different jurisdiction.

The 2015 BCBS principles stressed the following subject matters:

- a. Effective corporate governance is critical to the proper functioning of the banking sector and the economy as a whole;
- b. Safeguarding stakeholders’ interest in conformity with public interest on a sustainable basis. Among stakeholders, particularly with respect to retail banks, shareholders’ interest would be secondary to depositors' interest;
- c. The allocation of authority and responsibilities by which the business and affairs of a bank are carried out by its board and senior management;
- d. Supervisors have a keen interest in sound corporate governance, as it is an essential element in the safe and sound functioning of a bank and may adversely affect the bank’s risk profile if not operating effectively;
- e. Sound corporate governance may permit the supervisor to place more reliance on the bank’s internal processes; and
- f. Considered the 2010 principles which designed following the global financial crisis in 2007/8.

Comparatively speaking, the Bank Corporate Governance Directive N^o. SBB/62/2015 of NBE neither defined nor borrowed other’s definition of corporate governance like OECD. Simply, it tells on the necessity of having corporate governance rule for a safety, sound and prudent financial system in general and banking sector in particular for management and direction of banks; and in turn for the ultimate objective of long term shareholders value, customers and stakeholders’ interest.⁹ However, as opposed to this as indicated above, the BCBS 2015 principles well streamlined OECD relatively comprehensive corporate governance definition and gives primacy to stakeholders’ interest in line with public interest; shareholders’ interest is secondary to depositors’

⁸ Preamble of the Banking Business Proclamation N^o. 592/2008, at p. 3.

interest. It also emphasized the role of supervisors, boards and senior management in banks corporate governance. For this, in creating a sound and well working corporate governance and in turn building investor confidence and ensuring long term investment contributory for the proper functioning of the whole economy, the BCBS 2015 corporate governance principles are well founded and better so far.

Principle 1: Board's Overall Responsibilities

Concerning the board's overall responsibility for the bank concentrates on approving and *overseeing*¹⁰ management's implementation of the bank's strategic objectives, governance framework and corporate culture. Further, these overall responsibilities divided into:¹¹

- Responsibilities of the board: for the bank's business strategy and financial soundness, key personnel decisions, internal organization and governance structure and practices, and risk management and compliance obligations. Here, the board is duty bound to establish and be satisfied with the bank's organizational structure; the members of the board should exercise their "*duty of care*" and "*duty of loyalty*" to the bank under applicable national laws and supervisory standards; the board should ensure that transactions with related parties; and discharging these responsibilities, the board should take into account the legitimate interests of depositors, shareholders and other relevant stakeholders as wells ensuring effective relation with its supervisors.
- Corporate culture and values: a corporate culture of reinforcing appropriate norms for responsible and ethical behavior. These norms are especially critical in terms of a bank's risk awareness, risk-taking behavior and risk management. In order to promote a sound corporate culture, the board should reinforce the "*tone at the top*"

¹⁰ The BCBS Corporate Governance principles 2015, pp. 3-4. Here is the place where the 2015 Principles make a number of changes to the 2014 Consultative Version. Incorporating certain comments received, the most significant changes in the 2015 Principles are made to the role of the board. Members of the BIS commented and BCBS acknowledgement that the role of the board is one of oversight. For this, the term "ensure" was largely replaced with "oversee" throughout the 2015 Principles. The term "oversee", is itself a defined term in the 2015 Principles, meaning to "*oversee and be satisfied with.*" For example, paragraph 26 was changed to require the board to "oversee," rather than "establish and monitor," "the development of and approve the bank's business objectives and strategy and monitor their implementation." Nonetheless, not all references to "ensure" were similarly edited or changed to "oversee". For example, under paragraph 44, "the board should ensure that the risk management, compliance and internal audit functions are properly positioned, staffed and resourced and carry out their responsibilities independently, objectively and effectively." This appears to indicate the increased regulatory focus on the board's role in risk management.

¹¹ See The BCBS Corporate Governance principles 2015

setting and adhering to corporate values, and promoting risk awareness and communication; [a] bank's code of conduct or code of ethics, or comparable policy, should define acceptable and unacceptable behaviors; and the bank's corporate values should recognize the critical importance of timely and frank discussion and escalation of problems to higher levels within the organization.

- Risk appetite, management and control: [a]s part of the overall corporate governance framework, the board is responsible for overseeing a strong risk governance framework. Developing and conveying the bank's risk appetite is essential to reinforcing a strong risk culture. For this, the board should take an active role in defining the risk appetite and ensuring its alignment with the bank's strategic, capital and financial plans and compensation practices.
- Oversight of senior management: the board should select the [Chief Executive Officer] and may select other key personnel, including members of senior management; and the board should also provide oversight of senior management.

When we see the NBE bank corporate governance directive, the board's responsibilities are poorly drafted. The responsibilities outlined under Art. 10 (4) of the directive focused on the day to day activities; and nourished what normally the very ostensible responsibilities of a board.¹² The directive could have succinctly provide a guiding and condensed architecture of boards responsibility that banks need to follow in their respective memorandum and articles of association as well as other rules, guideline and manuals. The directive failed to state rules enhancing corporate culture and values; and guiding and overseeing the bank's business strategy, financial soundness, key personnel decisions, internal organization and governance structure and practices, and risk management and compliance obligations which are the backbone of bank corporate governance necessitating due consideration and framework development by the board.

Principle 2: Board Qualifications and Composition

- Board Composition

The principle envisaged that to attain board's individual and collective qualification, its members need to understand their oversight and corporate governance role and be able to exercise sound, objective judgment about the affairs of the bank. The board must be suitable and have a composition facilitating effective oversight. Hence, the board should

¹² The 2015 BCBS Corporate Governance principles, Arts. 10.4.1-10.4.24.

have a sufficient number of independent directors with a balance of skills, diversity and expertise, who collectively possess the necessary qualifications commensurate with the size, complexity and risk profile of the bank.

For Collective suitability of the board, board members should have a range of knowledge and experience with varied backgrounds to promote diversity of views. Relevant areas of competence may include, but are not limited to capital markets, financial analysis, financial stability issues, financial reporting, information technology, strategic planning, risk management, compensation, regulation, and corporate governance and management skills. Moreover, the board collectively should have a reasonable understanding of local, regional and, if appropriate, global economic and market forces and of the legal and regulatory environment. International experience, where relevant, should also be considered; and Individual board members' attitude should facilitate communication, collaboration and critical debate in the decision-making process.

- Board Member Selection and Qualification

Boards should have a clear and rigorous process for identifying, assessing and selecting board candidates. Save rules otherwise, board (not management) nominates candidates and promotes appropriate succession planning of board members. The selection board candidates should be based on the knowledge, skills, experience and, particularly in the case of non-executive directors, independence of mind given their responsibilities on the board and in the light of the bank's business and risk profile; a record of integrity and good repute; sufficient time to fully carry out their responsibilities; and have the ability to promote a smooth interaction between board members. Board candidates should not have any conflicts of interest that may impede their ability to perform their duties independently and objectively.

When we come to the bank corporate governance directive of NBE there are separate statements concerning board qualification and composition under Art. 10.2.1. Particularly, on nomination of board candidates, the directive cross refers the Requirements for *Persons with Significant influence*¹³ in a Bank Directive N^o.

¹³ Requirements for Persons with Significant influence in a Bank Directive N^o. SBB/54/2012, Art.2.10. As per the aforementioned article, persons with significant influence mean those influential shareholders, directors, chief executive officers, and senior executive officers of a bank.

SBB/54/2012. Under the cross referred directive-fit and proper criteria; and ongoing fitness and propriety test, and action by the NBE have been inculcated. Under fit and proper criteria- knowledge, experience and age; integrity; and financial soundness are requirements for board member selection. There, five percent of the board members at minimum are required to have a first degree or its equivalent and the rest to complete secondary education. Board members are also required to have adequate experience in business management or preferably in banking business and/or required to take adequate training on banking business management after securing their seat and a director should be at least thirty years old.¹⁴ Honesty, reputability and diligence requirements have also been included. Besides, a board must have at least nine members; and a board may be comprised of a mixture of gender and core competencies such as banking, finance, accounting, legal, business administration, auditing, information technology and investment management. Inclusion of non-influential shareholders was also done.

The aforementioned requirements, regarding collective qualification requirements of a board and conflict of interest consideration¹⁵, are somehow comparable with the BCBS 2015 principles. However, as to the individual requirements for directorship bringing individual competency of a director in the board, those stipulated eligibilities are not enough and don't suffice to measure qualification well. Another thing which seems improper is that fixing the minimum number of directors in the directive may not be proper; rather the determination should be left to banks. Banks themselves determine the number of board directors based on the size, complexity and risk profile of the bank, as the BCBS principles laid down. The trend of fixing the number of directors seems taken from the commercial code.¹⁶

Principle 3: Board's Own Structure and Practices

The board is responsible to have its own appropriate governance structures and practices, and have the means for enforcement and follow upping mechanism for ongoing effectiveness. To do so, the board should have a structured leadership, size and establish committees to do its oversight role and other responsibilities. For this, the

¹⁴ The 2015 BCBS Corporate Governance principles, Art. 5.1 (5.1.1 (i), (ii), & (iii)).

¹⁵ The 2015 BCBS Corporate Governance principles, Art. 4.

¹⁶ Commercial Code of the Empire of Ethiopia, Art.347 (2).*The article says that a company shall have not less than three and no more than twelve directors who shall form a board.*

board is required to keep and periodically update organizational rules, by-laws, or other similar documents. Specifically, the chair of the board does have a key leadership role for proper functioning of the board. Moreover, the board should have supporting committee such as audit, risk, compensation, and other committees (nomination/human resource/governance, and ethics and compliance) as well as other specialized committees help to bring approximate mix of skill and experience to the board. Last, the board by whatever means required to avoid conflict of interest potentially exist in the bank via designing formal written conflict of interest policy.¹⁷

In this regard, the Ethiopian counterpart, the bank corporate governance instructs the board to approve its own code of conduct¹⁸; to establish a document formally describing matters of its own decision making as per the articles and memorandum of association and asserting that it duly directs and controls the bank¹⁹; to establish and ensure functioning of different board committees²⁰; and to put in place sound conflict of interest policy inhibiting advancing of personal interests or activities at the expense of the bank²¹. Regarding setting board's own structure and practices, the directive has already included duties and provided annexes; however, it would be far better if it treats in a separate section taking as a distinct principle necessitating a due separate treatment.

Principle 4: Senior Management

Senior management, under the direction and oversight of the board, should carry out and manage the bank's activities in a manner consistent with the business strategy, risk appetite, remuneration and other policies approved by the board. Senior management is a core group of experienced, competent, honest and individuals. They are duly promoted or recruited are responsible accountable to the board in designing the management structure and staff and for the sound and prudent day-to-day management and overall management of the bank.²² Here, the directive defines senior management

¹⁷ Requirements for Persons with Significant influence in a Bank Directive N^o. SBB/54/2012, pp.15-19

¹⁸ The 2015 BCBS Corporate Governance principles, Art. 10.4.19, p. 8.

¹⁹ Ibid, Art. 10.5.1.

²⁰ Ibid, Arts. 10. 4.10 & 11.

²¹ Ibid, Art. 10.4.14.

²² Ibid, p. 20-21.

members are the chief executive officer, senior executive officer and any other official who are responsible to run day to day activities of a bank.²³ However, apart from defining senior management separately stipulating the responsibilities of chief executive officer and establishing accountability of the senior management to the board, the directive failed to recognize it as distinct company organization. And, the commercial code complete didn't recognized the concept of senior management.

Principle 5: Governance of Group Structures

This principle, considering a group structure in banks, makes the board of the parent company responsible for the group and for ensuring the establishment and operation of a clear governance framework appropriate to the structure, business and risks of the group and its entities. There, the board and senior management should know and understand the bank group's organizational structure and the risks that it poses too.²⁴ Despite the fact that the commercial code recognized the existence of holding companies²⁵, neither the code nor the directive says about the governance of group structures. So, dealing over corporate governance of group structures in Ethiopia is seems totally ignored and is a totally untouched area.

Now, what is going to be discussed is as to the rest eight of the Basel committee 2015 corporate governance principles²⁶. Since six of them deal a similar subject matter *about risk* but a different area of emphasis on the same subject matter (risk management, identification, monitoring, controlling, compliance, internal audit, and compensation). Hence, this paper opted to discuss them together; the principles are:

1. Principle 6: Risk management function: *Banks should have an effective independent risk management function, under the direction of a chief risk officer (CRO), with sufficient stature, independence, resources and access to the board.*
2. Principle 7: Risk identification, monitoring and controlling: *Risks should be identified, monitored and controlled on an ongoing bank-wide and*

²³ Ibid, Art.. 2.15.

²⁴ Ibid, pp. 22-24.

²⁵ See the commercial code, Arts. 344-428.

²⁶ Requirements for Persons with Significant influence in a Bank Directive N^o. SBB/54/2012, pp. 25-32.

individual entity basis. The sophistication of the bank's risk management and internal control infrastructure should keep pace with changes to the bank's risk profile, to the external risk landscape and in industry practice.

3. Principle 8: Risk communication: *An effective risk governance framework requires robust communication within the bank about risk, both across the organization and through reporting to the board and senior management.*
4. Principle 9: Compliance: *The bank's board of directors is responsible for overseeing the management of the bank's compliance risk. The board should establish a compliance function and approve the bank's policies and processes for identifying, assessing, monitoring and reporting and advising on compliance risk.*
5. Principle 10: Internal audit: *The internal audit function should provide independent assurance to the board and should support board and senior management in promoting an effective governance process and the long-term soundness of the bank*
6. Principle 11: Compensation: *The bank's remuneration structure should support sound corporate governance and risk management.*

It is the 2007/8 global financial crises that causes the coming into existence of the 2015 the BCBS corporate governance principles. Hence, as enshrined above, six of the principles give paid due emphasis to deal over risk governance in banks and beyond. Actually, the multifaceted role of banks performing as liquidity guarantors, sources of non-market finance, information brokers between lenders and borrowers, and payment system operators and sensitive role which banks play in the economic system normally absorbs government's attention through heavy regulation. All the nature of banks together with the opacity of bank assets and activities makes governments to impose an elaborate array of regulations on banks (Asnakech 2013: 6). And, when the global financial crisis added to the sensitive and strict regulatory nature of banks, BIS and its committee-the BCBS obliged to revise bank corporate governance principles and bear the successively updated 2010, 2014 and 2015 principles much concentrated and inclined on risk governance. Short comings occurred in corporate governance of banks, when expanded, can destabilize the financial system, and cause systemic risks to the real economy (Bouchez 2006:41). This measure truly assured the notion that banks financial crisis is highly sensitive, all-affecting and is easily extrapolated towards other organizations and the whole economy.

Coming back to the Ethiopian bank corporate governance laws in general and the directive in particular, risk governance has not been given a place leaving a great deal of emphasis to the Basel principles. Unless indirectly inferred from some provisions, the commercial code didn't recognize or took the matter of risk or risk governance under the umbrella of company corporate governance. As opposed to this, the bank corporate governance directive adopted risk management program²⁷ and instructs the board and chief executive officer to observe risk profile of the bank, design risk management of the bank and ensure risk controlling mechanisms besides enhancing auditing and compliance corporate cultures.²⁸ Yet, the directive is not adequate enough to show that risk management is aligned with compensation framework. No one is also entrusted to run risk management and compliance function; unlike existence of appointing chief risk officer (CRO) under the Basel principles. Practically, in Ethiopia, it is indicated that there is lack of effective risk management measure. For this, NBE indicated growth of risk aside with profits from time to time and calls banks to develop effective risk management tools (Bank Risk Management Guidelines (Revised), NBE, Bank Supervision Directorate). And, even if it is common to observe risk department and officers at banks in Ethiopia, however, the directive is expected to have a clear say on the matter.

Principle 12: Disclosure and Transparency

The governance of the bank needs to be adequately transparent to its shareholders, depositors, other relevant stakeholders and market participants. Transparency goes with sound and effective corporate governance; whereas disclosure includes, but not be limited to, material information on the bank's objectives, organizational and governance structures and policies. Save existence of confidentiality, disclosure of banks risk exposure and risk management strategies are recommended to get solutions and promote transparency of banks corporate governance.²⁹ Under the NBE directive also included the principle of disclosure to bring transparency, save confidentiality when the national laws of the country and other NBE directives says otherwise. However, as in the case of Basel principles, the directive doesn't say as to the disclosure of banks risk

²⁷ The bank corporate governance directive define risk management program as *[a] program that clearly identifies and measures inherent and significant risks of a bank and draws a strategy, policy, and procedure to mitigate such risks.*"

²⁸ See the preamble, Arts. 2.13, 10.2, 10.4.9, 10.4.10, 10. 4.22, 11.6 & 11.8 of the bank corporate governance directive.

²⁹ Requirements for Persons with Significant influence in a Bank Directive N^o. SBB/54/2012, pp. 36-37.

exposure and risk management; clearly it concerns disclosure of bank corporate governance structures and policies. Keep it that there are other plausible justifications as to the context of the country's development of corporate culture and values, perhaps, the silence of providing information on risk exposure and management likely seems to maintain public trust towards banks.

Principle 13: The Role of Supervisors

Supervisors or to borrow and use their usual name of *central or national banks* are required to provide guidance and supervise corporate governance at banks undertaking comprehensive evaluations and regular interaction with boards and senior management, to require improvement and remedial action when necessary, and should share information on corporate governance with other supervisors.³⁰

Comparatively, it is easily understood, the preamble of the directive indicates that NBE is duty bound to ensure that banks are managed and directed sound and prudently. In addition, other provisions of the directive and the banking business proclamations either directly or indirectly affirms that NBE is empowered and duty bound to play supervisory roles over banks, whether publicly or privately owned. However, save the practices and obliging global financial system coordination and collaboration scenarios to the matter, the bank corporate governance laws mentioned don't state that NBE should share corporate governance information with other supervisors unlike the case of the Basel principles.

Conclusion

In a nutshell, to conclude the discussion, corporate governance has got a considerable application from ameliorating internal company governance procedures to addressing company governance problems in general and banks' in particular, it is found to be an irreplaceable tool to overcome financial crisis and building a sound and prudent financial system guaranteeing and underpinning an economy.

However, many emerging and transiting economies' including Ethiopia's corporate governance in general and bank corporate governance in particular have not been yet developed. For this, when diagnosis is made in light of the BCBS corporate governance principles, bank corporate governance of Ethiopia is at its infancy. The comparative

³⁰ Ibid, pp. 38-40.

discussion succinctly depicts that the country's bank corporate governance is by far weak. The existing fractional rules and concepts (as compared to Basel principles) of bank corporate governance of the country couldn't govern and answer corporate governance problems. This signals that corporate culture and values which are stepping stone for corporate governance development are at their inception.

However, from time to time, bank corporate governance is evolving and become an all-time agenda for banks in Ethiopia. To evidence this, enactment of the Bank Corporate Governance Directive N^o.SBB/64/2012 of the NBE; the establishment of institute of corporate governance, and emergence of scholarships on bank corporate governance as a cutting edge researchable idea and agenda of the day in the each and every business concerns for companies predominantly and for the media, society and government.

Therefore, it is compulsory to establish an appropriate and effective legal, regulatory, and institutional framework responsive to build good corporate governance system in Ethiopia. Apart from this, designing a voluntary or non-regulatory code of corporate governance streamlined to the OECD, BCBS corporate governance principles and other models is vital to develop the country's corporate governance in general and bank corporate governance in particular. For this, concerning banks and other financial institutions' corporate governance, the NBE should amend and or enact latest corporate governance policy, guidelines and rules in the form of directives. Last, the Ethiopian Institute of Corporate Governance should be strengthened so that as it is possible to institutionalize corporate governance of the country.

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