Analysis of Corporate Governance Practices in Myanmar Companies

KyawThi Ha[1]

Abstract

This study aims to analyze the corporate governance practices by Myanmar companies in accordance with internationally recognized standards of corporate governance – the G20/OECD Principles of Corporate Governance. This study was conducted using the responses to questionnaire surveys. Primary data wascollected from 24 individual board members from 24 major Myanmar corporations (sample of one board member per company).Results indicated that internationally accepted corporate governance practices are still at an embryonic stage of development in Myanmar. Scores from the survey highlighted inadequate compliant with all five areas of the OECD corporate governance principles. Myanmar companies scored lowest in Disclosure and Transparency and Responsibilities of the Board sections indicating deficiencies in communicating with shareholders and stakeholders as well as the board processes, structure and the roles of companies' directors. The study suggests that Myanmar companies need to adopt international Corporate Governance best practices if they want to enhance the competitiveness and to attract capital in regional and global markets.

Introduction

Today's business environment is becoming global and complex. Companies are faced challenging with the opportunities of global markets, but also unprecedented levels of stakeholder expectations and public scrutiny of corporate values and culture. Shareholders, investors, consumers, creditors, suppliers, employees, communities affected by the company's activities and pressure groups exercise growing activism and demand more transparency as well as ethical and sustainable behavior. This includes issues like corruption, impact of corporate activities on the environment, community participation, work conditions, sustainable supply chains, diversity, and other aspects of company governance. Corporate governance is the corner stone of any good business. It encompasses the processes, practices and policies that a company relies on to make formal decisions and to manage the company. Good corporate governance fosters a culture of integrity and leads to a positive performing and sustainable business. Good governance signals to the market that an organization is well managed and that the interests of management are aligned with other

[1]KyawThi Ha, Roll Number MBF-26, EMBF 6th batch, Department of Commerce, Yangon University of Economics

stakeholders. As such, it can provide businesses with a competitive advantage.Corporate governance is intended to increase the accountability of the company and to avoid massive disasters before they occur. Well-executed corporate governance should be similar to a police department's internal affairs unit, weeding out and eliminating problems with extreme prejudice.

Corporate governance is of paramount importance to a company and is almost as important as its primary business plan. When executed effectively, it can prevent corporate scandals, fraud and the civil and criminal liability of the company. It also enhances a company's image in the public eye as a self-policing company that is responsible and worthy of shareholder and debt holder capital. It dictates the shared philosophy, practices and culture of an organization and its employees. A corporation without a system of corporate governance is often regarded as a body without a soul or conscience.

Good governance is not only important for corporations, it's important for society. To begin with, good corporate governance improves the public's faith and confidence in its corporate leaders. Legislative processes were designed to protect societies from known threats and to keep problems from occurring or reoccurring. Recent corporate scandals shed light on the effect that corporations have on social responsibility. The new focus on corporate social responsibility increases corporations' responsibility and accountability to their stakeholders. As a result, we're seeing corporations increasingly place pressure on themselves to improve best practices for corporate governance with the goal of enhancing their relationships with stakeholders. The largest attraction for corporations to direct some of their attention on sustainability is that it ultimately improves corporations' ability to thrive and prosper.

Myanmar is pushing to publish its Corporate Governance Code in 2020. While such a move may improve investor confidence and attract more foreign direct investments, it also means a significant change in the way local companies operate. Family businesses form a big part of the economy in Myanmar. While many first-time entrepreneurs tend to include relatives on the board, these companies may do well to diversify the profiles of their board members instead. Diversity can come in various aspects, such as background, expertise, age and gender. A diversified board will have a larger network and greater ability to identify opportunities and manage risk, which is one of their key roles. The duties and responsibilities of the board of directors is part of Corporate Governance. The board is responsible for guiding corporate strategy, monitoring performance of the company personnel, achieving an adequate return for shareholders while preventing conflicts of interest and balancing competing demands. Another important board responsibility is to oversee the risk management system and systems designed to ensure that the corporation obeys applicable laws, including tax, competition, labor, environmental, equal opportunity, health and safety laws. In Myanmar, most companies still lack boards of directors that had these fundamental capabilities.2

Rationale of Study

Myanmar Companies Law was enacted on 6 December 2017 and came into effect starting from 1 August 2018. The weaknesses of Companies Act of 1914 were reviewed and starting from the drafting stage matters relating to Corporate Governance was included systematically in accordance to the time, international norms and practices.

Corporate governance aspect of the MCL are the direct results of the collaboration with the OECD and based upon the G20/OECD Principles of Corporate Governance and covers the following five areas as identified in the OECD Principles:

- Part A: rights of shareholders
- Part B: equitable treatment of shareholders
- Part C: role of stakeholders
- Part D: disclosure and transparency
- Part E: responsibilities of the board

Myanmar Companies Law was enacted on 6 December 2017. The nature, rights and powers of shares were included in Section 60 and 61 of the Myanmar Companies Law. Section 83 to 88 contain enactment on transfer of share and Section 99, 157, 186, 188, 260 and 261 describe the rights of shareholders to view, inspect and acquire company’s information. Section 146, 148 and 150 to 154 prescribe the rights of shareholders to attend meetings. Section 17, 25 (d), 116, 121, 146, 151, 173 and 345 prescribe the rights of shareholders to vote on the decision made by the company.

[2] LanLuhLuh, “Corporate governance in Myanmar –A reference from Singapore” *Myanmar Times*, Friday January 31,2020

Through these, the rights of shareholders were fully protected.Myanmar Companies Law Section 192, 193, 194, 196, 200, 201, 289 (f) and 302 protects the rights of shareholders and ensures equitable treatment of all shareholders, including minority shareholders.As the old law didn't fully describe the duties of the directors, this was included in the new law. The new law includes powers and duties of directors, restrictions on power of directors as well as taking legal actions for inappropriate actions of the director(s).Section 90 to 95, 97, 99, 189 and 241 prescribe details about disclosing information about the company. In addition to supporting Myanmar's standing in the World Bank's annual Doing Business Report enacting the new law help ease local business persons to do businesses. More importantly it is an important foundation stone toward establishment of a good Corporate Governance in Myanmar.[3]

For the establishment of an effective Corporate Governance strong legal, procedural and organizational frameworks are required. Only when the economic sectors depend on those frames can there be benefit to the private sector. The government had been systematically conducting matters for widespread acceptance and practice of Corporate Governance in Myanmar.

Objectives of the study

The main objectives of the study are:

i. To identify the development of corporate governance practices in Myanmar companies
ii. To analyze the compliance of corporate governance practices of Myanmar companies

Research Method

Quantitative Research and Descriptive statistics are employed to analyze corporate governance practices of Myanmar companies in this study. Primary data is collected from qualitative face-to-face interviews with members of the Board of Directors (BOD) from subject companies in Myanmar using questionnaires of 142 criteria based on OECD Principles of Corporate Governance. Official report, articles and previous literature was used as secondary data. The sample size is 24 companies

[3]International Finance Corporation ,Myanmar Corporate Governance Scorecard 2018: *A Report on the Assessment of Myanmar Companies*, April 2019

listed on the YSX consist of public, private, and listed entities. OECD categorizes scores as below:

- score below 50 percent need to improve their practices
- scores between 50 and 65 percent have fair performance
- scores between 65 and 75 percent are considered to have good corporate governance practices
- scores higher than 75 percent are deemed to have excellent corporate governance

Scope and Limitations

This study evaluated the corporate governance practices of major Myanmar companies based on the structure and criteria of the G20/OECD Principles of Corporate Governance.

Literature Review

According to the OECD (2015), there are six principles of corporate governance that ensure the basis for an effective corporate governance framework: the rights and equitable treatment of shareholders and key ownership functions, institutional investors, stock markets and other intermediaries, the role of stakeholders in corporate governance, disclosure and transparency, and the responsibilities of the board. These principles of corporate governance provide guidance for corporate governance improvements, which can be adapted to the specific circumstances of individual countries.

The ASEAN Corporate Governance Initiative, composed of the ASEAN Corporate Governance Scorecard and assessment and ranking of ASEAN publicly listed companies (PLCs), is among several regional initiatives of the ASEAN Capital Markets Forum (ACMF). This initiative has been a collaborative effort of ACMF and the Asian Development Bank since 2011. The Scorecard covers the following five areas as identified in the OECD Principles: (i) Part A: rights of shareholders; (ii) Part B: equitable treatment of shareholders; (iii) Part C: role of stakeholders; (iv) Part D: disclosure and transparency; and (v) Part E: responsibilities of the board. Between 2011 and 2016, a number of ASEAN countries including Thailand, the Philippines, Singapore, Indonesia, Malaysia, and Viet Nam have participated in the Scorecard. In

2017 the ASEAN Corporate Governance Scorecard wasthoroughly reviewed and changes were made to improve the methodology, basing on the G20/OECD Principles of Corporate Governance.

The OECD has been contributing to the improvement of corporate governance framework in Southeast Asian countries including Myanmar through a series of projects with the financial support of the Government of Japan. In particular, the OECD-Southeast Asia Corporate Governance Initiative, which was launched in 2014, aimed to support the regional development of vibrant and healthy capital markets through the advancement of corporate governance standards and practices.

Analysis and Discussion

To identify the development of corporate governance practices in Myanmar companies, the study evaluated corporate governance practices in terms of(i) Part A: rights of shareholders; (ii) Part B: equitable treatment of shareholders; (iii) Part C: role of stakeholders; (iv) Part D: disclosure and transparency; and (v) Part E: responsibilities of the board

Part A. Rights of Shareholders

There were 21 criteria in Part A of the OECD Corporate Governance framework and they are grouped into five separate dimensions. All 21 criteria were included in the appendix section for further reference.

Part A determines whether or not a company recognizes the rights of its shareholders while conducting its business affairs. Importantly, shareholders need to be able to exercise their ownership rights, including the right to receive dividends and participate in decisions concerning fundamental corporate changes such as taking part during the AGMs, and electing directors. Table 1 below shows the mean score of the five key dimensions from Part A.

Table 1

Survey results for Part A. Rights of shareholders

ID	Dimension	Percent
A.1	Basic shareholders rights	83%
A.2	Right to participate in decisions concerning fundamental corporate changes	78%
A.3	Right to participate effectively and vote in general shareholder meetings	34%
A.4	Markets for corporate control should be allowed to function in an efficient and transparent manner	0%
A.5	The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated	13%

Source: Survey data, November 2019

It was found that 83% of the companies surveyed pay dividends in an equitable and timely manner, and 78% of the companies allow shareholders to participate in changes such as amendments to constitution, authorization of additional shares. This is promising and it can be inferred that most Myanmar companies do respect the basic shareholder rights and decisions concerning fundamental corporate changes are adequately addressed.

However, only 34% of the companies let shareholders to participate effectively and vote in general shareholder meetings and are informed of the rules, including voting procedures that govern general shareholder meetings.

It was noted that not a single company surveyed has ever appointed a third party to evaluate the fairness of the transaction price in case of mergers, acquisitions, and takeovers. This is due to the face that M&A activities are still a rarity in Myanmar corporate environment; nevertheless, Myanmar Corporations need to plan for better governance procedures in this area as the businesses get more exposure to the international capital markets.

Myanmar companies are failing when it comes to facilitating ownership rights of the shareholders. The results show that only 13% of the companies disclose its practices to encourage shareholders to engage with the company beyond the AGM.

Overall for this part, Myanmar companies need to improve the quality of their AGM procedures and corporate disclosure for better transparency—albeit they tend to respect the key rights of their shareholders.

Part B. Equitable Treatment of Shareholders

There were 14 criteria in Part B of the OECD Corporate Governance framework and they are grouped into four separate dimensions. All 14 criteria were included in the appendix section for further reference.

Part B addresses whether minority shareholders are treated fairly and equally alongside controlling shareholders. The AGM process needs to enable all shareholders to participate in the meeting without complexity. Also, outside shareholders must be protected from possible actions such as tunneling of assets by the controlling shareholders acting directly or indirectly, abuses caused by the use of material non-public information and related party transactions (RPTs). Table 2 below shows the mean score of the four key dimensions from Part B.

Table 2

Survey results for Part B. Equitable Treatment of Shareholders

ID	Dimension	Percent
B.1	Shares and voting rights	60%
B.2	Notice of the AGM	39%
B.3	Insider trading and abusive self-dealing	21%
B.4	Related-party transactions by directors and key executives	20%

Source: Survey data, November 2019

It was observed that 60% of the companies comply with shares and voting rights section of Part B—particularly in regards to one vote for one share policy as well as where the company has more than one class of shares, the company publicizes the voting rights attached to each class of shares (e.g. through the company website/reports/the stock exchange/the regulator's website).

However, only 39% of the companies comply with the overall AGM notice aspect of Part B. It is important to highlight the fact that most companies don't include the profile of the directors seeking election/re-election. This is concerning because shareholders have the rights to know and that the company has the fiduciary duty to disclose important information as such. It was also discovered that most of the companies don't have a policy or rule prohibiting their directors from benefiting from knowledge not available to the market (i.e. insider trading). This is, once again, due to the fact that the Myanmar capital market is still in its infancy and trading of shares of publicly listed companies are still in a nascent stage.

Important point to note in this section is that the practice of managing related party transactions (RPT) still an aberration rather than the norm and needs significant improvement. Overall, Myanmar companies have a simple share and voting rights system and their engagement with shareholders is basic and need to be improved. Last but not least, they have to improve their handling of related party transactions to safeguard the rights of minority shareholders.

Part C. Role of Stakeholders

There were 13 criteria in Part C of the OECD Corporate Governance framework and they are grouped into four separate dimensions. All 13 criteria were included in the appendix section for further reference.

The objective of Part C is to encourage corporate responsibility through the company's activities in relation to the environment, and stakeholders such as consumers, business partners, competitors, employees, communities, and creditors, etc. Table 3 below shows the mean score of the four key dimensions from Part C.

Table 3

Survey results for Part C. Role of Stakeholders

ID	Dimension	Percent
C.1	The rights of stakeholders established by law or through mutual agreements are to be respected	45%
C.2	Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights	21%
C.3	Mechanisms for employee participation should be permitted	27%
C.4	Stakeholders, including individual employees and their representative bodies, should be able to freely communicate	40%

Source: Survey data, November 2019

Not surprisingly, all the companies donate to the communities. Ironically though, only half of the companies respect the rights of the stakeholders established by laws. Myanmar companies are particularly weak when it comes to anti-corruption measures and safeguarding creditors' rights.

Only 21% provide contact details via the company's website or annual report which stakeholders (e.g. customers, suppliers, general public etc.) can use to voice their concerns and/or complaints for possible violation of their rights. This practice is still alien to directors and managers in most Myanmar enterprises.

27% reported that they disclose their employee health, safety, and welfare policies and practices. Remarkably, 40% claimed to have a whistle-blowing policy that includes procedures for complaints by employees and other stakeholders concerning alleged illegal and unethical behaviors—although the practical use of it is yet to be seen in most Myanmar companies.

Overall, the communication channels between companies and the stakeholders are inadequate and need to be improved. Currently, companies are falling behind in reporting non-financial performance in a sustainability report that provides facts and data to stakeholders.

Part D. Disclosure and Transparency

There were 29 criteria in Part D of the OECD Corporate Governance framework and they are grouped into 9 separate dimensions. All 29 criteria were included in the appendix section for further reference.

Part D reflects the accuracy, completeness, and punctuality of corporate information disclosure. Companies should disclose material corporate information in a timely and cost-effective manner through a variety of channels to reach all interested and relevant parties. Significant items such as ownership structure, RPTs, and financial and non-financial information are to be disclosed. Table 4 below shows the mean score of the 9 key dimensions from Part D.

Table 4

Survey results for Part D. Disclosure and Transparency

ID	Dimension	Percent
D.1	Transparent ownership structure	48%
D.2	Quality of annual report	23%
D.3	Disclosure of related party transactions (RPT)	10%
D.4	Director and commissioner dealings in shares of the company	8%
D.5	External auditor and auditor report	0%
D.6	Medium of communication	52%
D.7	Timely filing/release of annual/financial reports	70%
D.8	Company website	16%
D.9	Investor relations	0%

Source: Survey data, November 2019

Results indicated 48% of companies disclose the direct and indirect shareholdings of their major shareholders while the rest make no attempt to do so. Only 10% disclose the name and details of each material RPT. At this point, very little is done to improve the transparency what it comes to RPT process.

Over half of the companies surveyed attempt to communicate with shareholders and stakeholders but they are inadequate and not effectively utilizing their websites—although they have websites that are up and running. Not a single company has an officer responsible for investor relations. This highlights that Myanmar companies don’t consider communication with shareholders and stakeholders is imperative for their continued success.

Overall, Myanmar companies don’t comply with most of the best practices specified in this part. They need to disclose both financial and non-financial performance indicators with the stakeholders. Very weak disclosure of related party transactions and they need to include details such as ownership structure, details of the directors and audit activities in their annual reports.

Part E. Responsibilities of the Board

There were 65 criteria in Part E of the OECD Corporate Governance framework and they are grouped into five separate dimensions. All 65 criteria were included in the appendix section for further reference.

This section focuses on the duties, responsibilities, and accountabilities of the board of directors to shareholders and other stakeholders. By considering the interests of all stakeholders, the board must apply high ethical standards to the business to adequately fulfill their responsibilities. The board is mainly responsible for guiding corporate strategy, monitoring managerial performance, and preventing conflicts of interest. Table 5 below shows the mean score of the five key dimensions from Part E.

Table 5

Survey results for Part E. Responsibilities of the Board

ID	Dimension	Percent
E.1	Board duties and responsibilities	42%
E.2	Board structure	8%
E.3	Board processes	20%
E.4	People on the board	40%
E.5	Board performance	4%

Source: Survey data, November 2019

Majority of the companies surveyed have mission statements and disclose them, but very few have a process to review and monitor the implementation of corporate strategy. The results indicated weak compliance when it comes to the requirements of board structure, processes and monitoring board’s performance. Boards diversity is not there and no oversight mechanisms in place for board’s actions. The concept of appointing independent director is still alien to most Myanmar companies—except the ones that are listed publicly.

The analysis indicates that the responsibilities of the board are not well defined and observed. Myanmar companies have to improve key areas of board responsibilities, such as the role of the chairman, board composition, structure, and leadership, as well as its role in oversight and company control.

In analyzing the compliance of corporate governance practices of Myanmar companies, The results in table 6 and figure 1 show that Myanmar companies score below 50% when measured against the G20/OECD Corporate Governance framework criteria. As mentioned previously, any score less than 50% requires significant improvement in order to be considered of having “good” corporate governance system in place.

Table 6

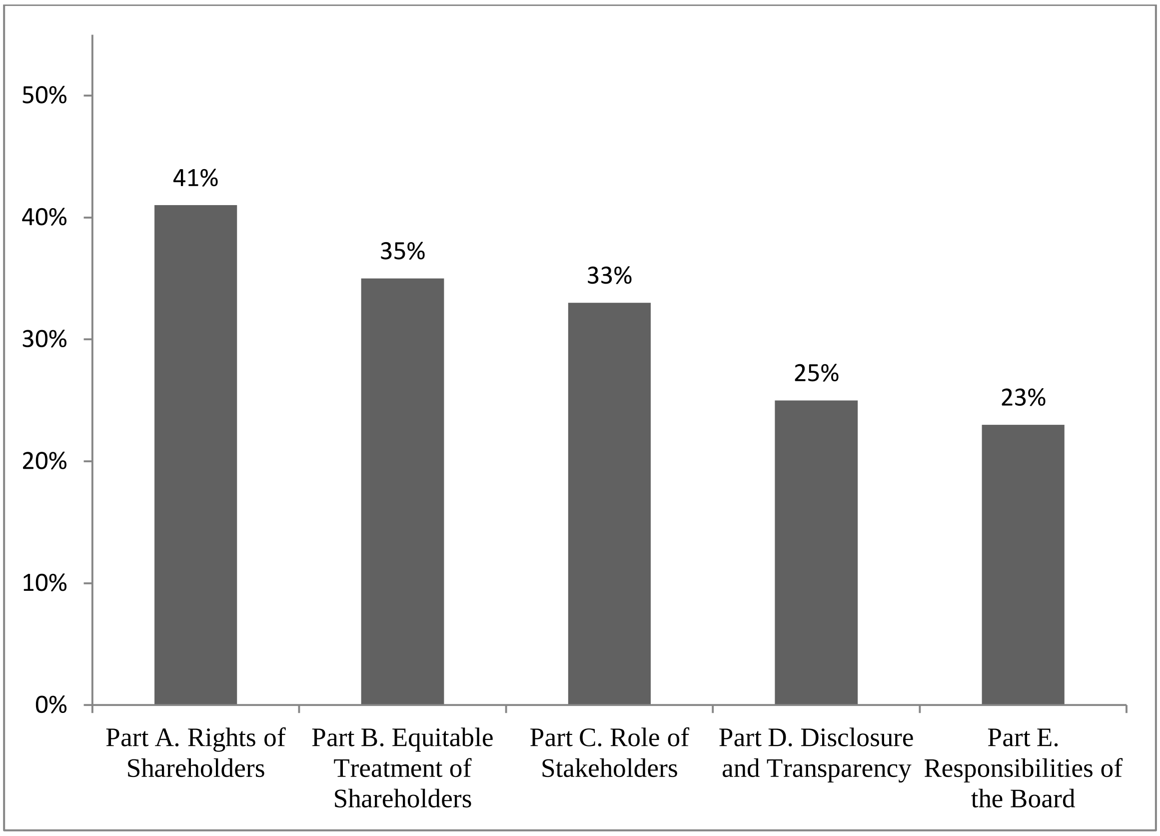
Overall Score

OECD criteria	Overall Percentage
Part A. Rights of Shareholders	41%
Part B. Equitable Treatment of Shareholders	35%
Part C. Role of Stakeholders	33%
Part D. Disclosure and Transparency	25%
Part E. Responsibilities of the Board	23%

Source: Survey data, November 2019

Figure 1

Comparison of Overall Results for All Parts



Source: Survey data, November 2019

Recommendation

Myanmar authorities, from legislative and regulatory perspective, should ensure that all registered companies in Myanmar comply with the new Myanmar Companies Law that was recently enacted—especially with respect to corporate governance. Myanmar companies should prepare a comprehensive annual report in the form of one document that provides information on the company's activities and performance (financial and non-financial) over the past year and for the foreseeable future. The annual report should be provided to all shareholders and be available to the public on the company website.

Directors, shareholders and management of Myanmar companies should take corporate governance training provided by organizations such as Myanmar Institute of Directors. Understanding corporate governance practices would allow stakeholders to better appreciate normal and expected basic rights of shareholders and actively exercise those rights. Outside professional advisers from these organizations would help companies build their internal capacities. A good practice in stakeholders' relations is to have a key point of contact to manage relationships with shareholders, investors and stakeholders. Almost no company in Myanmar has a dedicated role assigned for this activity.

Overall, it is clear that corporate governance practices are at an early stage of development in Myanmar and efforts to improve will require collaboration from many players in Myanmar. One thing is clear: Myanmar companies need to adopt CG best practices if they want to enhance the competitiveness and to attract capital in regional and global markets. Global markets demand fairness; accountability, transparency and best corporate governance practices will help Myanmar companies achieve them.

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LIST OF ABBREVIATIONS

ACGS	ASEAN Corporate Governance Scorecard
AGM	Annual General Meeting
ASEAN	Association of Southeast Asian Nations
BOD	Board of Director
CG	Corporate Governance
DICA	Directorate of Investment & Company Administration
G20	Group of Twenty
IFC	International Finance Corporation
MBF	Master of Banking and Finance
MCL	Myanmar Companies Law
MIL	Myanmar Investment Law
MIoD	Myanmar Institute of Directors
OECD	Organization of Economic Co-operation and Development
RPT	Related Party Transaction
SECM	Securities and Exchange Commission of Myanmar
UMFCCI	Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry
YSX	Yangon Stock Exchange