Corporate Governance & Business Resilience

September 2024

> *The ability to reposition yourself is critical to survival*

Corporate Governance

Corporate governance refers to the system of rules, practices, policies, and processes by which an entity is directed and controlled. It involves **balancing the interests of an entity's stakeholders**, such as shareholders, management, customers, suppliers, financiers, government, employees and the community. The framework for corporate governance aims to ensure **transparency, fairness, and accountability** in an entity's relationship with all its stakeholders.

Business Resilience

Business resilience refers to an entity's **ability to anticipate, prepare for, respond to, and recover from or adapt to** incremental changes and sudden disruptions, ensuring its long-term survival and growth. It encompasses a broad range of practices and capabilities that enable entities to withstand adverse conditions, crises, or disasters, ranging from **natural calamities** and **technological failures** to **economic downturns** and **market volatility**.

Overview

- **History of Business Resilience in Ghana**
- **Need for Business Resilience in Ghana**
- **Accounts of Corporate Governance Failures**
- **Corporate Governance and Business Resilience: The Connection**
- **Good Corporate Governance Practices**

01

History of Business Resilience in Ghana

Repealed Companies Act, 1963 (Act 179)

The Companies Act, 1963 (Act 179) served as the primary legal framework governing the formation, operation, and dissolution of companies in Ghana for several decades. While it laid the foundation for corporate law, its provisions were relatively basic and limited in scope compared to modern corporate governance standards.

Limitations

The deficiencies of the Companies Act, 1963 (Act 179) became increasingly apparent as Ghana's economy grew and the business environment became more complex. These limitations included:

Reactive Measures

Companies Act, 1963 (Act 179) took a reactive approach to business failure through provision of liquidation guidance after the fact, instead of implementing preventive measures to enhance business resilience.

Unprotected Creditors

Creditors often faced challenges in recovering debts during the liquidation process, as the Companies Act, 1963 (Act 179) did not provide sufficient safeguards for their interests.

Absence of robust Governance Framework

The absence of robust corporate governance provisions contributed to mismanagement, fraud and other corporate misconduct, increasing the likelihood of business failures.

Discriminatory Capital Requirement

Companies Act, 1963 (Act 179) imposed a minimum capital requirement for company formation, creating barriers to entry for entrepreneurs, particularly small and medium-sized enterprises (SMEs).

Traditional Corporate Practices

The Companies Act, 1963 (Act 179) did not adequately address issues such as electronic transactions, digital signatures, and other modern corporate practices.

Challenges

The inadequacies of the Companies Act, 1963 (Act 179) posed significant challenges for businesses operating in Ghana. These challenges included:

Risk of Failure

The absence of preventive measures and robust corporate governance frameworks exposed businesses to a higher risk of failure.

Unattractive Investment

Investors were often deterred by the perceived lack of protection for their investments and the potential for lengthy liquidation processes.

Unaccessible Credit

Creditors were hesitant to lend to businesses operating under a legal framework that offered limited protection for their interests.

Slow Business Growth

The restrictive provisions of the Companies Act, 1963 (Act 179) , including capital raising restrictions, expansion limitations and operational constraints, hindered the growth and expansion of businesses.

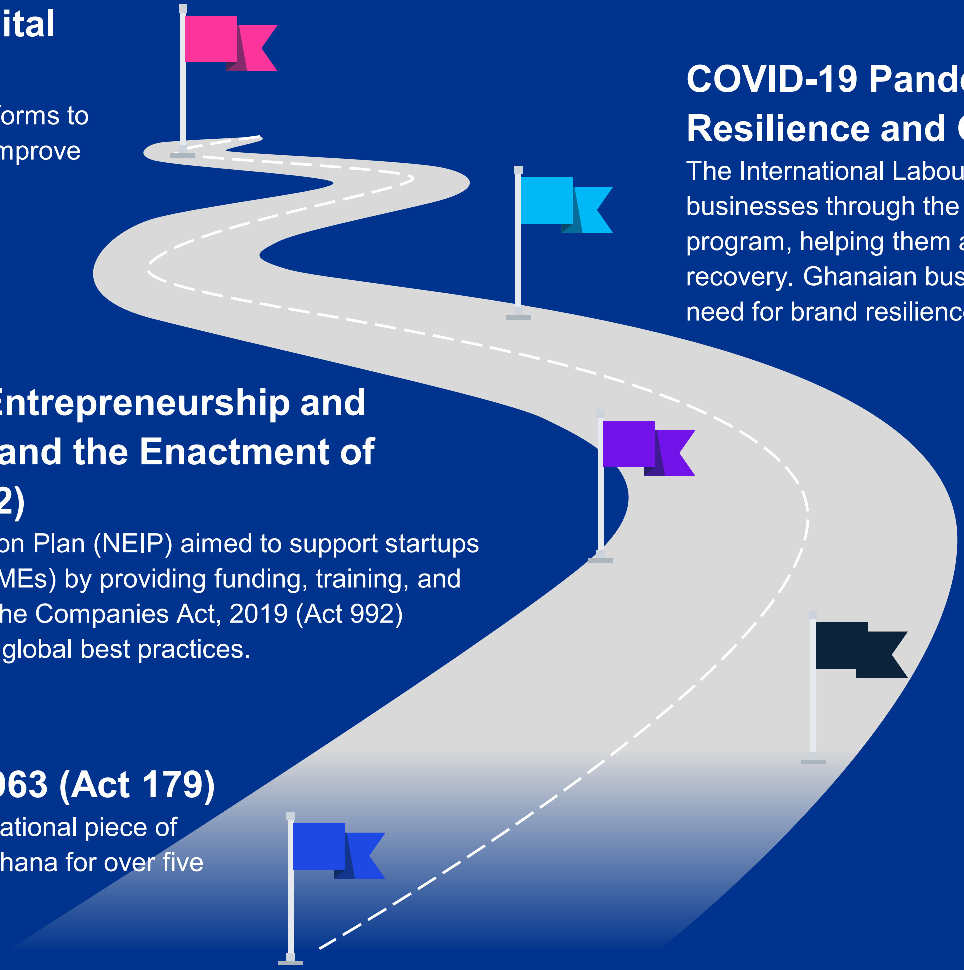
Limited protection of Shareholders

The Companies Act, 1963 (Act 179) offered limited protection for minority shareholders, making them vulnerable to the actions of majority shareholders and directors.

Evolution of Business Resilience in Ghana: Key Milestones

Adoption of Technology and Digital Transformation

Businesses have leveraged digital tools and platforms to streamline operations, reach new markets, and improve customer engagement.



COVID-19 Pandemic - Focus on Business Resilience and Crisis Management

The International Labour Organisation (ILO) supported Ghanaian businesses through the Business Continuity Planning (BCP) training program, helping them acquire skills to enhance resilience, response, and recovery. Ghanaian businesses have also increasingly recognised the need for brand resilience and crisis management.

Introduction of the National Entrepreneurship and Innovation Plan (NEIP), 2017 and the Enactment of Companies Act, 2019 (Act 992)

The National Entrepreneurship and Innovation Plan (NEIP) aimed to support startups and small and medium-sized enterprises (SMEs) by providing funding, training, and mentorship to entrepreneurs. Additionally, The Companies Act, 2019 (Act 992) aligned Ghana's corporate governance with global best practices.

Economic Reforms and Structural Adjustment Programs (1980s-1990s)

During the 1980s and 1990s, Ghana underwent significant economic reforms and structural adjustment programs, initiated by the International Monetary Fund (IMF) and the World Bank, to stabilise the economy, reduce inflation, and promote private sector growth. Additionally, the Ghana Investment Promotion Centre (GIPC) was established in 1994 to promote foreign direct investment (FDI) and support local businesses.

Enactment of Companies Act, 1963 (Act 179)

The Companies Act, 1963 (Act 179) was a foundational piece of legislation that governed corporate activities in Ghana for over five decades.

Enactment of Companies Act, 2019 (Act 992): A New Era for Business Resilience

Introduction of Distinctive Company Suffixes

Private companies limited by shares now conclude with “Limited Company” or “LTD”, while public companies bear “Public Limited Company” or “PLC”, among other designations. The differentiation ensures immediate recognition of a company’s legal structure by the public.

Establishment of the Office of the Registrar of Companies

The Companies Act, 2019 (Act 992) introduces the Office of the Registrar of Companies, centralising the registration and regulatory oversight of businesses within a single authority. This office will regulate companies, partnerships, and business names, aiming to make business operations more efficient and transparent.

Abolition of Minimum Capital Requirement

In a significant departure from previous legislation, Companies Act, 2019 (Act 992) eliminates the minimum capital requirement for company formation. This reform is anticipated to lower barriers to entry for entrepreneurs, stimulating innovation and economic diversification.

Management of Unclaimed Dividends

The legislation mandates the transfer of unclaimed dividends to an interest-bearing account after three months, and subsequently to the Registrar if unclaimed for twelve months. This process ensures the safeguarding of shareholders’ dividends while maintaining transparency.

Regulation of Pre-Incorporation Contracts

The Companies Act, 2019 (Act 992) extends the timeframe for the ratification of pre-incorporation contracts to 18 months post-incorporation. This provision offers legal protection for early transactions undertaken in the name of the entity, ensuring that businesses can operate smoothly from the outset.

Penalties for Errors and Omissions in Documents

The Companies Act, 2019 (Act 992) introduces penalties for inaccuracies or omissions in documents submitted to the Registrar. This underscores the importance of precision and accountability in corporate documentation, promoting a culture of transparency and integrity.

Redefinition of Company Regulations as the Constitution

The Companies Act, 2019 (Act 992) renames the’ companies regulations to its constitution, offering companies the flexibility to adopt a registered constitution or operate under default legal frameworks. This change provides businesses with the autonomy to tailor their governance structures to their specific needs.

Enhancement of Shareholder Powers through Derivative Actions

Companies Act, 2019 (Act 992) enhances shareholder powers by allowing derivative actions, enabling shareholders to initiate legal proceedings on behalf of the entity in cases of misconduct by directors. This provision strengthens corporate governance and accountability.

02

Need for Business Resilience in Ghana

Current themes challenging businesses

No organisation is immune but there is an opportunity to come together to understand challenges and collaboratively solve them.

- Lisa Jenkinson

01 Cyber Security

Technology makes things possible, but possible does not always mean safe.

02 Consumer Demands

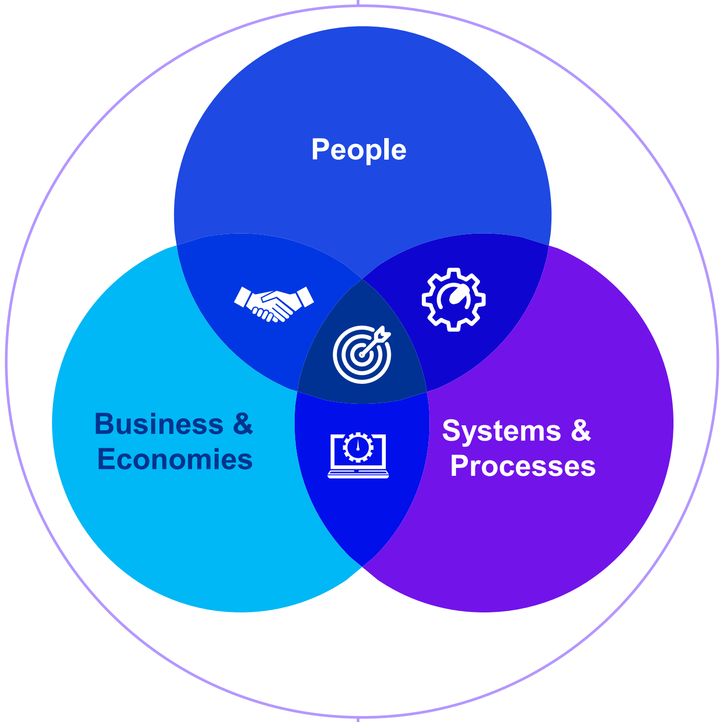
Customers are increasingly demanding seamless, personalised experiences which requires businesses to create holistic "customer episodes" rather than isolated interactions

03 ESG

Environmental, Social, and Governance (ESG) considerations are becoming increasingly central to strategic planning, financial reporting, and regulatory oversight for entities.

04 Supply Chain

The persistence of regional conflicts and national wars continues to disrupt supply chains and the global market.



Current themes challenging businesses (Cont'd)

No organisation is immune but there is an opportunity to come together to understand challenges and collaboratively solve them.

- Lisa Jenkinson

05 Technology & innovation

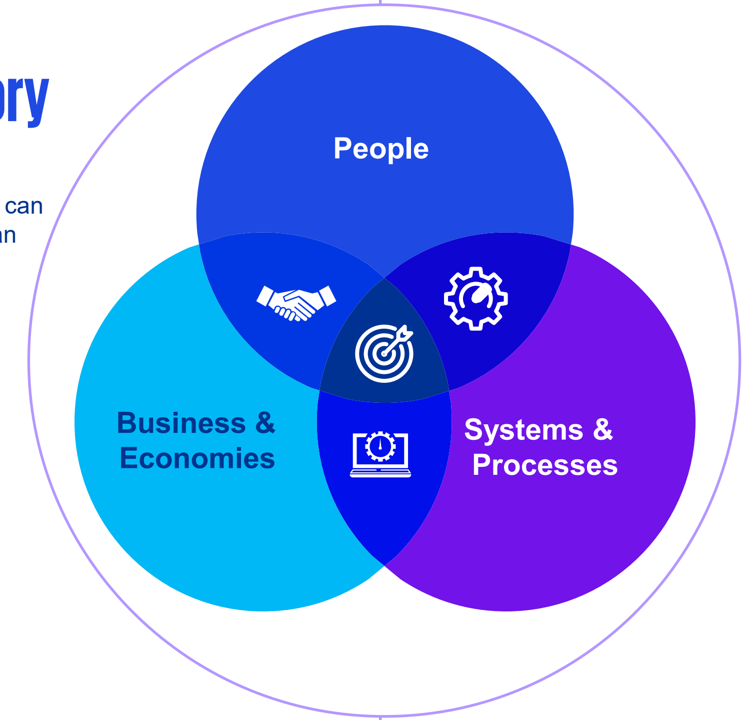
Entities that embrace new technologies can utilise technology as a tool to enhance efficiency and drive growth.

06 Adapting to Regulatory Changes

Non-compliance with changing regulations can be costly and have an adverse impact on an entity's reputation.

07 Right Leadership and People

Having the right people in the right roles and fostering a culture of doing the right things is key to building resilience. Without the right talent in place, even the best systems and structures cannot ensure long-term business success.



Why Business Resilience?

Economic and Financial Rationale

Economic Stability: Business resilience helps entities navigate economic challenges by maintaining a stable financial foundation, diversifying revenue streams, and ensuring sustainable cash flow.

Financial Health: A resilient business maintains a healthy balance sheet, which is critical for long-term success. This involves prudent financial management, such as controlling expenditures, safeguarding financial sector stability, and removing barriers to private investment.

Attracting Investment: Resilient businesses are more attractive to investors, as they demonstrate the ability to manage risks and adapt to changing market conditions. This can lead to increased foreign direct investment (FDI) and support the growth of the private sector.

Protecting Stakeholder Interests

Employees: Business resilience ensures job security and stability for employees. By implementing effective crisis management and continuity planning, businesses can protect their workforce during economic downturns or unexpected events.

Shareholders: Resilient businesses are better positioned to protect shareholder interests by maintaining profitability and ensuring transparent governance. This includes providing accurate financial statements, safeguarding dividends, and enabling shareholders to take legal action against directors in cases of misconduct.

Creditors: Business resilience helps companies meet their financial obligations to creditors, reducing the risk of default. This builds trust and strengthens relationships with financial institutions, enabling businesses to access credit and other financial services when needed.

Promoting Economic Recovery and Growth

Economic Recovery: Business resilience is vital for economic recovery, especially in the aftermath of crises such as the COVID-19 pandemic. Resilient businesses can adapt to new market conditions, innovate, and contribute to the overall recovery of the economy.

Sustainable Growth: By fostering a resilient business environment through the promotion of financial stability, innovation and competitiveness, Ghana can achieve sustainable economic growth. Resilient businesses can drive economic growth by creating sustainable jobs, generating revenue, and contributing to the country's GDP.

Climate Resilience: Business resilience also includes the ability to adapt to climate change and environmental challenges. By investing in sustainable practices and technologies, businesses can reduce their environmental impact and contribute to the long-term sustainability of the economy.

Innovation ◆ Adaptability ◆ Trust ◆ Stability ◆ Sustainability

03

Corporate Governance Failures

Case Study: Banking Sector Crisis (2017-2018)

Collapse of 7 Banks

The collapse of seven major Ghanaian banks between 2017 and 2018 exposed severe flaws in corporate governance practices. This financial crisis had a devastating impact on the economy and underscored the urgent need for stronger corporate governance standards.

UT Bank and Capital Bank: In August 2017, the Bank of Ghana (BoG) revoked the licenses of UT Bank and Capital Bank due to insolvency. These banks were subsequently taken over by GCB Bank.

Beige Bank, Royal Bank, UniBank, Sovereign Bank, and Construction Bank: In August 2018, the BoG consolidated these five banks into a new entity called Consolidated Bank Ghana Ltd. The primary reason cited for their collapse was insolvency.

Three critical root causes

Poor governance

Board members and senior management exhibited a marked lack of oversight and accountability, often prioritising personal interests over the banks' well-being. This resulted in severe mismanagement

Risk management failures

The affected banks exhibited weak risk management practices. Inadequate risk assessment and mitigation led to a surge in defaulted loans. Furthermore, loans were frequently granted to management associates without thorough evaluation

Regulatory lapses

Non-compliance with regulations, particularly in areas such as minimum capital requirements, single obligor limits, and the quality of financial reporting, exposed the banks to risks and contributed to failures.

Loss of Deposits ▼ **Job Losses** ▼ **Economic Instability**

Poor Governance | **Lack of Transparency** | **Inadequate Risk Management**

Common Themes

Case Study: Ghana Airways Crisis (2004)

Collapse of Ghana Airways

Corporate governance failures can have profound effects on entities, particularly in state-owned enterprises where public trust and accountability are paramount.

Ghana Airways, established in 1958, was once a symbol of national pride and economic ambition. However, its decline and eventual collapse in 2004 underscored significant issues in corporate governance that led to operational inefficiencies, financial mismanagement, and loss of stakeholder confidence.

Three critical root causes

Poor governance

Weak governance frameworks led to frequent changes in leadership, poor decision-making, and inadequate oversight of the airline's operations and finances.

Risk management failures

The airline lacked robust risk management processes and controls, which led to exposure to financial instability, operational disruptions, and strategic missteps.

Operational inefficiencies

The airline experienced severe operational inefficiencies, including, poor maintenance practices, and ineffective resource management. These inefficiencies hindered the airline's ability to compete in the global market, leading to financial losses.

Service Disruptions ▼ **Job Losses** ▼ **Economic Impact**

Poor Governance | **Lack of Transparency and Accountability** | **Inadequate Risk Management**

Common Themes

Business Failures Resulting from Poor Governance Practices

01


FINANCIAL TIMES

Bankman-Fried charged with fraud and conspiracy over FTX collapse

Governance:

- Failure of Leadership and
- Ethical governance

Risk Management:

- No centralised control of money
- Compromised system integrity

Compliance:

- Noncompliance with government authorities
- Inaccurate bookkeeping

02

Governance:

- Failure of Leadership and Ethical governance
- Weak Board Oversight

Risk Management:

- Concentration risk

Compliance:

- Misleading disclosure to regulators, investors and the public
- Lack of transparency

03

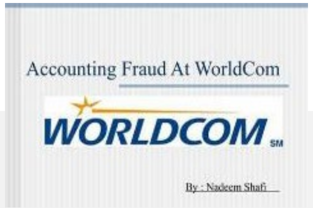
Risk Management:

- Inadequate Risk Assessment
- Unethical Debt Collection Methods

Compliance:

- High Interest Rate

04



Governance:

- Ethical Leadership
- Board Oversight

Risk Management:

- Inadequate Risk Assessment
- Lack of Internal Controls

Compliance:

- Accounting irregularities
- SEC Regulatory violations

04

The Connection

Role of the Board in Business Resilience

The board of directors plays a pivotal role in shaping an entity's resilience. Their oversight, strategic acumen, and risk management capabilities are essential for navigating uncertainties and ensuring the entity's long-term sustainability.

01 Oversight

Setting the Tone at the Top: The board establishes the ethical and governance culture within the entity, which directly influences how the entity responds to challenges.

Risk Appetite and Tolerance: The board defines the entity's risk appetite and tolerance, providing clear guidelines for management to make decisions.

Performance Monitoring: The board oversees the entity's performance against strategic objectives, identifying potential threats and opportunities.

02 Strategy

Strategic Vision: The board contributes to developing a long-term strategic vision that considers potential disruptions and ensures the entity's adaptability.

Scenario Planning: The board encourages scenario planning to anticipate future challenges and develop contingency plans.

Resource Allocation: The board oversees the allocation of resources to build resilience, including investments in technology, talent, and supply chain diversification.

03 Risk Management

Risk Oversight: The board provides oversight of the entity's risk management framework, ensuring it is aligned with the entity's risk appetite.

Crisis Management: The board develops and reviews crisis management plans, ensuring the entity is prepared to respond effectively to unexpected events.

Risk Culture: The board fosters a risk-aware culture where employees feel empowered to identify and report potential risks.

There's a different kind of deliberation and decision-making required in the boardroom today

01 Revisit and refine strategic planning process

02 Develop a vivid picture of the future and make the "what-if" conversations mandatory

03 Rigorously test strategic assumptions and look beyond the immediate competition

04 Ensure that strategy-setting is an iterative process

05 See resilience as part of the discussion

06 Take a critical look at crisis readiness

07 Keep stakeholders front and center

08 ESG has moved from important to imperative

09 ESG should be driven by strategy and linked to incentives

10 Ground your ESG story with a disclosure framework and disciplined process

Building Blocks for Business Resilience

Transparency, accountability, and stakeholder engagement are fundamental to building trust and business resilience. Here is why:

01

Transparency

Financial Reporting: Accurate and timely financial reporting builds credibility with investors, creditors, and other stakeholders.

Risk Disclosure: Transparent communication about the entity's risk profile enhances stakeholder understanding and trust.

Operational Performance: Sharing information about the entity's operations builds confidence in its ability to manage challenges.

02

Accountability

Board Accountability: The board is accountable for the entity's performance and adherence to governance standards.

Executive Accountability: Clear accountability mechanisms for management ensure that individuals are responsible for their actions.

Stakeholder Accountability: Engaging stakeholders in decision-making processes fosters a sense of shared responsibility.

03

Stakeholder Engagement

Two-Way Communication: Build strong relationships with stakeholders through open and honest communication.

Stakeholder Mapping: Identify and prioritise diverse stakeholders and understand their interests and expectations.

Value Creation: Demonstrate a commitment to creating value for all stakeholders, not just shareholders.

Build Resilience Through...

An effective business resilience framework needs to be

1 Enterprise-wide

Moving away from siloed functions to develop an end-to-end view, driven by customer needs and linked to organisational goals

2 Measurable

Putting business resilience on the same footing as financial resilience, with specific and quantifiable KPIs, thresholds, stress-tests and reporting

3 Flexible

Enabling the entities to react appropriately to unknown situations and adapt to changing circumstances, instead of following rigid action plans

4 Top-down

Integrating business resilience into overall organisational management, starting at the top with adequate attention from senior management

Data-informed decision making

Effective risk management requires a deep understanding of critical success factors and leading risk indicators. By harnessing the power of data, organisations can identify emerging risks and take proactive measures to mitigate them.

Knowledge sharing

Given the complexity of today's business environment, entities must cultivate a culture of knowledge sharing and collaboration. By fostering open dialogue and understanding across different disciplines, entities can better anticipate emerging trends and opportunities.

Customers and community

To achieve sustainable success, organisations must prioritise customer-centric and community-oriented strategies, executed by a highly engaged workforce and supported by committed stakeholders.

Innovation and diversification

By fostering innovation and diversifying product offerings, organisations can position themselves for long-term success. Additionally, a hybrid sourcing approach, combining local and global procurement or opportunities, can significantly improve business sustainability.

Better use of technology

The accelerating pace of technological change presents both challenges and opportunities. Entities that embrace and leverage emerging technologies will be better positioned to thrive in the future.

Mindset

Acknowledge that strategies used in the past may not necessarily be sustainable in the future. Though useful for insights, historical assumptions and information do not guarantee future outcomes.

Governance Principles for Effective Business Resilience

The following governance principles are key to building business resilience.

01 Independence and Objectivity

The board should comprise independent directors who can provide unbiased oversight and make objective decisions. Independence ensures that the board can effectively challenge management and hold them accountable for their actions.

02 Integrity and Ethics

The board must uphold high standards of integrity and ethical behaviour. This involves promoting a culture of honesty, transparency, and accountability within the entity. Ethical behaviour is essential for maintaining stakeholder trust and ensuring long-term success

03 Accountability and Transparency

The board must ensure that the entity operates with transparency and accountability. This involves providing clear and accurate information to stakeholders, setting performance metrics, and regularly reviewing progress. Transparency and accountability are critical for building trust and credibility

04 Fairness and Equity

The board must ensure that the entity's actions are fair and equitable to all stakeholders. This involves treating all stakeholders with respect, addressing their concerns, and ensuring that their interests are considered in decision-making. Fairness and equity are essential for maintaining stakeholder support and ensuring a successful business resilience strategy.

05

Good Corporate Governance Practices

Leading Corporate Governance Practices

Strong corporate governance is the bedrock of business resilience. It provides the framework for effective decision-making, risk management, and stakeholder engagement.

Strong Board Governance

Independent Directors: A board composed of a majority of independent directors ensures objectivity and reduces conflicts of interest.

Succession Planning: A well-structured succession plan for both executive and board positions guarantees continuity and stability.

Board Diversity: A diverse board brings varied perspectives and enhances decision-making.

Regular Evaluation: Consistent evaluation of board performance and individual director contributions is essential.

Effective Risk Management

Comprehensive Risk Assessment: Identifying, assessing, and prioritising potential risks is crucial.

Risk Mitigation Strategies: Developing and implementing strategies to mitigate identified risks.

Risk Monitoring and Reporting: Continuously monitoring risks and providing regular reports to the board.

Scenario Planning: Preparing for different potential future scenarios to build resilience.

Transparent Communication

Clear Communication Channels: Establishing open and transparent communication channels with stakeholders.

Timely Disclosure: Providing timely and accurate information to stakeholders about the entity's performance and risks.

Financial Reporting: Adhering to accounting standards and providing clear financial statements.

Social and Environmental Reporting: Disclosing the entity's impact on society and the environment.

Stakeholder Engagement

Identifying Stakeholders: Recognising and understanding the interests of various stakeholders.

Active Listening: Engaging with stakeholders, including employees, shareholders, creditors, and customers, is vital. Actively listening to their concerns and addressing their needs helps build support for the entity’s recovery efforts.

Involvement in Decision-Making: Involving stakeholders in the decision-making process ensures that their interests are considered, fostering a sense of ownership and commitment to the entity’s success.

Benefits of Good Corporate Governance in Business Resilience

Enhanced Credibility

Transparent and accountable practices foster trust, enhance the entity's reputation, and solidify its credibility by adhering to legal and ethical standards.

Better Outcomes for All Parties

Good corporate governance fosters a culture of fairness, equity, performance and sustainability, leading to increased shareholder value, employee satisfaction, customer loyalty, and positive community impact, ultimately driving long-term growth and success.

Increased Stakeholder Trust

Open, honest communication, coupled with ethical conduct, fosters trust and loyalty among stakeholders, leading to enduring relationships essential for long-term success.

Improved Recovery Chances

Effective corporate governance enables entities to proactively plan for and respond to crises through strategic foresight, efficient resource allocation, and robust risk management, thereby increasing the likelihood of a successful recovery while securing necessary financial resources, in cases of crises.

Long-Term Sustainability

Good corporate governance ensures long-term sustainability by focusing on the long-term interests of stakeholders, and balancing economic, environmental, and social impacts, fostering a positive and enduring relationship with stakeholders.

06

Conclusion

Highlights

Highlight 1

Business resilience has evolved over time and is now essential for addressing critical factors such as Cybersecurity, ESG, consumer demands, and advancements in Technology and AI.

Highlight 2

The lack of adequate corporate governance systems led to most financial crisis in Ghana and globally. It has become imperative for entities to practice sound corporate governance in order to become resilient

Highlight 3

There is a strong positive relationship between corporate governance and business resilience which are situated on three key pillars namely: risk management, strategy and sustainability.

Call to Action

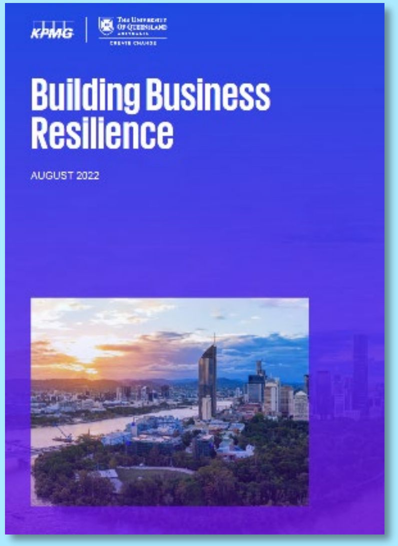
Embracing Good Corporate Governance for Successful Business Resilience in Ghana

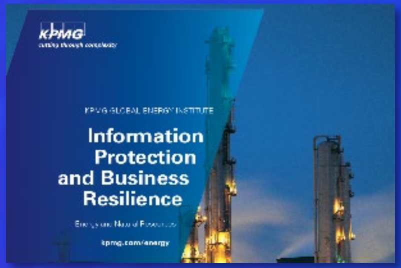
Final Thoughts

"*The future of **Business Resilience** in Ghana depends on effective **Corporate Governance***"

Thought leadership

Through our global experience in Corporate Governance and Business Resilience, we have produced a bank of articles and blogs on a series of topics to help you along your resilience journey. These topics range from “here and now” challenges that you may be facing, to industry specific challenges, to those we envisage many facing in years to come.





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