Dr. Otivbo Faith Amede

Senior Lecturer
University of Benin
Faculty of Management Sciences
Department of Accounting
E-mail: otivboamede@gmail.com
Orcid: https://orcid.org/0000-0002-9071-0510

Prof. Ofuan James Ilaboya

Professor in Accounting
University of Benin
Faculty of Management Sciences
Department of Accounting
E-mail: ofuan.ilaboya@uniben.edu
Orcid: https://orcid.org/0000-0002-8161-8245

DOES CORPORATE GOVERNANCE CURE FINANCIAL DISTRESS? CASE STUDY ANALYSIS OF DISTRESSED FIRMS

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Abstract

The paper examined the concepts of corporate governance and financial distress. This was achieved by a review of case studies. The review of literature showed that few studies have actually attempted to address the question of whether corporate governance can cure a financially distressed firm. In an attempt to fill this gap, the study this paper examined corporate governance cases of firms that were financially distressed or eventually collapsed. The idea is to be able to take a position as to whether corporate governance can be used as an antidote to financial distress. To achieve this objective, the paper conducted a case study analysis of financial distress cases from different jurisdictions (Multinational, African and Nigerian firms). Documentary evidences on financial distress and challenges of corporate governance were also reviewed. The result of the case study analyses showed that corporate governance can be a cure for financially distressed firms with a condition that key stakeholders in the firm implement the corporate governance provisions.

Keyword**: Corporate governance, financial distress**

1. INTRODUCTION

Amid corporate governance reforms and implementations, firms are failing as a result of poor governance mechanisms (Chauke & Sebola, 2018; Havemann, 2019; Manual & Al-Tawqi, 2020). This raises the question that constitutes the objective of this paper: Does corporate governance cure financial distress?

Corporate governance assumed global relevance in both academic and regulatory debates after the global financial crisis of 2007 and 2008. The seminal paper of Jensen and Meckling (1976) had already popularised the concept owing to the propagation of the principle-agent relationship. In the center of the debates is the role of corporate governance in ensuring that the shareholders' wealth is treated with due attention by management and in ensuring that the firm remains a going concern. This is against the backdrop of the separation of ownership (i.e. the capital providers or principals) and control (i.e. management or agents) in modern corporations – where the latter is saddled with the responsibility of managing the wealth of the former group. Thus, without proper monitoring and governance mechanisms, managers may decide to pursue goals different from those of the shareholders (Martins & Junior, 2019). The concept of corporate governance, therefore, originated from the efforts to regulate the actions of management in order to protect the interest and wealth of the shareholders and other external stakeholders (Manual & Al-Tawqi, 2020).

In practice, concerns on the need for strong corporate governance practices were heightened after the high-profile financial scandals that led to the collapse of some industry giants in both developed and developing countries. The highly publicised cases of Enron, Lehman Brothers, Worldcom (U.S.), Parmalat (Italy), Xerox (Japan) Saambou bank and Fidentia (South Africa); Oceanic bank and Cadbury Plc (Nigeria) are all typical examples of high-profile business collapses that were attributed to weak corporate governance amongst other factors (Afrifa & Tauringana, 2015; Ozili, 2020). Consequently, several regulatory changes have since been implemented by different nations in order to strengthen the corporate governance practices of all firms. For example, the Sarbanes-Oxley Act of 2002 was introduced by the U.S. legislature in reaction to the aforementioned scandals. Similarly, Nigeria had the code of best practice on corporate governance (2003) and other industry-specific codes that developed thereafter. The recently implemented 2018 Nigerian code of corporate governance (NCCG, 2018) for both public and private companies is indicative of regulatory efforts towards boosting corporate governance practices in organisations in order to enhance their performance (Alalade, Onadeko & Okezie, 2019).

However, in spite of the periodic corporate governance reforms in different countries, majority of the firms continue to find themselves in financial distress. For example, Monagham (2018) cited in Chenchehene (2019), posits that "almost half a million UK businesses began 2018 in significant financial distress" (p.1). Looking at the average Z-Score values observed in most Nigerian studies, focusing mainly on the banking sector (Egbunike & Igbinovia, 2018; Egbunike &

Ibeanuka, 2015; Nwidobie, 2017; Wurim, 2016 at 0.467, 0.183, 0.199 and 1.365 respectively), it may not be out of place to presume that the majority of companies lie within the 'distress zone'. It is also worthy to note that since the unveiling of the new 2018 Nigerian code of corporate governance by the Financial Reporting Council (FRC) of Nigeria on January 15th, 2019, as many as ten (10) companies have been delisted from the Nigerian Stock Exchange (NSE). Even though some were delisted voluntarily (e.g. Dangote Flour Plc), most of the reasons were attributable to deficiencies in governance and inefficient management (see Table 1 in Appendix). Anecdotal evidence shows that most of the delisted distressed firms did subscribe to principles of corporate governance and had certain measures in place, even though the pre-2018 codes in Nigeria did not entirely incorporate coercive rules since they were based on 'comply or explain' basis. However, compliance with those did not stave off the persistent poor returns of some firms.

Thus, in the midst of new corporate governance reforms and implementations, firms are still failing as a result of poor governance mechanisms (Chauke & Sebola, 2018; Havemann, 2019; Manual & Al-Tawqi, 2020). This raises the question that constitutes the objective of this paper: Does corporate governance cure financial distress? In assessing this question, a look at extant literature showed that while some researchers (Adegbie, Akintoye, & Ashaolu, 2019; Ali, Liu, & Su, 2018; Ayoola & Obokoh, 2018; Martins & Junior, 2019; Manab, Aziz, & Othman, 2017; Miglani, Ahmed, & Henry, 2015; Witiastuti & Suryandari, 2016) argue that financial distress could be avoided if a firm implements good corporate governance strategy, others (Afrifa & Tauringana, 2015; Khan & Javid, 2016; Rahmawati & Handriyana, 2018) claim that compliance with corporate governance codes is not enough to prevent financial distress. A study by three Australian Professors of Accounting (Abernethy, Grafton, & Soderstrom, 2016) gave the following conclusions "while it may be true that a firm that scores highly on corporate governance measures is less likely to default in the future, we cannot say for certain that it avoided default because of these attributes" (p.8).

Similarly, a further check on available literature suggests that while there is ample empirical research (Ayoola & Obokoh, 2018; Manzaneque, Priego, & Merino, 2016; Darrat, Gray, Park, & Wu, 2014; Nworji, Olagunju, & Adeyanju, 2011) on the impact of corporate governance on firm financial distress, survival, sustainability and other related terms; conceptual papers discussing the issues of the role of corporate governance on financial distress are sparse in Nigeria. Yim (2019) noted that the issues related to corporate governance and collapse remain unresolved in literature, providing ample opportunity for further research. A number of studies have been conducted on corporate governance and on the fact that financial distress of firms is a result of weak corporate governance (Afrifa & Tauringana, 2015; Ozili, 2020; Ayoola & Obokoh, 2018; Manzaneque, Priego, & Merino, 2016; Darrat, Gray, Park, & Wu, 2014; Nworji, Olagunju, & Adeyanju, 2011). However, there are few studies that addressed corporate governance as a means of resolving financial distress in firms, but did not critically analyse whether it was a cure or not. This study critically reviews whether corporate governance is indeed a cure for firms' financial distress given the continued failure of corporate governance.

Previous studies (Patriandari, Rianto & Ristianti, 2023; Zaitunniah, Kurniaty, & Rahmi 2022; Uduwalage 2021) were of the view that corporate governance significantly affects financial distress using secondary data from listed firms, but this research differs by contributing to the ongoing discourse on the role of corporate governance in mitigating financial distress through a comprehensive case study approach by scrutinizing a number of real cases covering various industries and regions. This study aims to enrich the existing body of knowledge by identifying the contextual nuances that govern the impact of governance mechanisms on financial distress outcomes, and as such provides practical implications for organisations, policymakers and practitioners. It offers actionable insights on how to enhance governance practices to better address financial distress, and emphasizes the need for transparency, communication, stakeholder engagement and ethical conduct.

Following the Introduction, section 2(two) focuses on extant literature on Distress and Corporate Governance. Section 3(three) addresses existing cases of financial distress, Section 4(four) summarises the findings and section 5(five) concludes the paper.

1.1. Financial Distress

The term financial distress has been described differently by different authors. However, the underlining idea in the definitions goes in the same direction – persistent poor performance. Early scholars like Baldwin and Scott (1983), defined financial distress as what occurs "when the firm's business deteriorates to the point where it cannot meet its financial obligations" (p. 505). Whitaker (1999) describes entrance into financial distress as the first year whereby cash flows are lower than the current maturities of long-term debt. Lee and Yeh (2004) described a financial distress situation as when the net worth of a company drops below half of its capital stock. For the purpose of this paper, however, financial distress can be loosely described as a state of consistent decline in the financial condition of an entity before liquidation becomes eminent. A firm can be adjudged to be in financial distress when it is having difficulty in paying pecuniary obligations to its creditors using its liquid assets. The deepest point of such financial distress may result in 'default'. Thus, it could be asserted that financial distress predates or precedes business collapse.

Financial distress usually sets in when the liabilities of a firm exceed the value of its existing assets, resulting in the company's inability to service its debt due to a number of factors such as cash flow problems caused by low sales against high operating expenses or managements discretionary financial engagements (Kihooto, Omagwa, Wachira, & Ronald, 2016). In literature, the term financial distress has been used interchangeably with terms such as failure, insolvency, default and bankruptcy. However, while financial distress is understood to mean that a firm is facing extreme financial difficulties (Ayoola & Obokoh, 2018), failure, default and bankruptcy are usually used to describe businesses that have ceased operations (Akani & Uzah, 2018). Witiastuti and Suryandari (2016) equated extreme financial distress to delisting from the stock exchange or bankruptcy. However, the former term is more suitable in the Nigerian context since bankruptcy, in the existing circumstances, is not a common practice in the Nigerian context and also requires legal processes. Ayoola and Obokoh (2018) go a step further and clarify that bankruptcy, liquidation, corporate failure and collapse are the extreme and irredeemable outcomes of financial distress. Thus, a firm can get into financial distress and still not 'go down' as many financially distressed firms escape bankruptcy by early detection and reconstruction of their operations. Simply put, not all distressed firms get delisted or go 'bankrupt'.

There are many reasons why studying about financial distress is considered important. Obviously because it is valuable to a wide range of stakeholders. For example, investors would like to ascertain the financial health of firms in which they plan or choose to invest; companies would desire information on the drivers of financial distress risk as well as the kind of practices that can mitigate such risks; even banks would wish to evaluate the creditworthiness of a borrowing firm to aid loan decisions and setting of interest rates. On the other hand, policy makers and regulators are equally interested in both the predictors and mitigators of financial distress risk among listed firms in order to either guide further policy reforms or determine when a firm should 'go into administration'. These are the plausible reasons for the recent upsurge on research that pertains to financial distress.

1.2. Corporate Governance and Financial Distress

To assess the role of corporate governance in financial distress, this section adopted a case study approach by discussing selected case studies of corporate governance issues that resulted in financial distress and eventual business collapse in Nigeria.

Table 1

Summary of Prior Research Findings

S/N	Author(s)/Year	Topic/Objective	Country	Methodology	Major Findings
1.	Zaitunniah, Kurniaty,& Rahmi (2022)	Corporate governance and financial distress	Indonesia	Sampled 297, Indonesia firms (2018–2020). Used univariate and multivariate analysis	Found that the board of directors had a significant negative effect on financial distress. This indicates that the larger the number of the board of directors is significant, the smaller the company experiences financial distress.
2.	Robi, & Mudjiyanti (2021)	Corporate governance and financial distress	Indonesia	Used 40 companies-years observations for Five (5) year. Used Z-Score to measure financial distress.	The board of directors has a positive and significant effect on financial distress.

3.	Noriza Mohd Nasir & Mazurina Mohd Ali (2018)	Corporate governance and financial distress	Malaysia	Sampled Bursa Malaysia firms from years firms (2010-2016) Binary Logistic Regression analysis are used to analyse the collected data	Board activity has a significant relationship with financially distressed companies in Malaysia.
4.	Uduwalage (2021)	Does corporate governance enhance financial distress predictions	Sri- Lanka	Used information regarding 205 non financials from Sri Lanka companies during the period of six years. Used panel data estimation technique.	Corporate governance enhanced the predictive power of financial distress
5.	Yin-Hua Yeh, Tsun-siou Lee(2004)	Corporate governance and financial distress	Taiwan	Binary logistic regressions are then fitted to generate dichotomous prediction models in Taiwanese listed firms.	Firms with weak corporate governance are vulnerable to economic downturns and the probability of falling into financial distress increases when corporate governance deteriorates.
6.	Chenchehene (2019)	Corporate governance and financial distress.	U.K	The data was obtained from the annual reports of 100 financially distressed and 100 financially non-distressed firms listed on the London Stock Exchange for the period 2009 to 2016	Stakeholders should adhere to corporate governance mechanism by taking cognisance of external factors to deter firms from being financially distressed.
7.	Mumford (2003)	Corporate governance and financial distress. When structures have to change	U.K	Used Library research.	Shifts in control are associated with the UK statutory insolvency procedures.
8.	Fitri Humairoh, & Suci Nurulita (2022)	Effects of corporate governance on financial distress	Indonesia	The sampling technique used is purposive sampling technique and obtained a sample of 113 companies with a total of 78 data observations. The method used is multiple regression analysis.	Institutional ownership affected financial distress, while the board of directors, audit committee, managerial ownership, and independent commissioner did not affect financial distress
9.	Li, Crook, Andreeva, & Tang, (2020)	Predicting the risk of financial distress using corporate governance measures.	U.K	The study used financial ratios and macroeconomic variables in a panel data structure over a 17-year period.	The results suggest that although corporate governance alone is not sufficient to accurately predict financial distress, it can add to the predictive power of financial ratios and macroeconomic factors.
10.	Zhiyong Li, Crook, & Andreeva(2015)	Corporate Governance and Financial Distress: A Discrete Time Hazard Prediction Model	Korea	A discrete time hazard model and a wide selection of 35 corporate governance characteristics in predicting corporate credit risk by using a panel dataset of ten years for 1688 companies.	State control, institutional ownership, salaries of independent directors, the Chair's age, the CEO's education, the work location of independent directors and concurrent CEO positions are significantly related to the risk of financial distress

Table 2

Institutional Framework of Corporate Governance.

Nigeria	South Africa	U.S.A
In Nigeria, the primary institution responsible for overseeing corporate governance is the Corporate Affairs Commission (CAC). The CAC is a government agency established under the Companies and Allied Matters Act (CAMA) and operates under the Federal Ministry of Industry, Trade, and Investment. Its primary role is to regulate and supervise the formation, incorporation, and management of companies in Nigeria.	Companies and Intellectual Property Commission (CIPC): The CIPC is a statutory body established under the Companies Act, responsible for the registration, regulation, and monitoring of companies and intellectual property rights in South Africa. It oversees compliance with company legislation, including aspects related to corporate governance.	Securities and Exchange Commission (SEC): The SEC is the primary regulatory agency responsible for enforcing federal securities laws and regulating the securities industry. The SEC plays a crucial role in promoting transparency, investor protection, and fair practices in corporate governance. It requires public companies to comply with disclosure requirements, financial reporting standards, and governance regulations
The Securities and Exchange Commission (SEC) is another key institution involved in corporate governance in Nigeria. The SEC is the apex regulatory body for the Nigerian capital market. It is responsible for promoting fair and efficient securities markets and ensuring compliance with corporate governance standards for public companies.	Johannesburg Stock Exchange (JSE): As the largest stock exchange in Africa, the JSE plays a vital role in promoting and regulating corporate governance among listed companies. The JSE requires listed companies to adhere to the JSE Listings Requirements, which include corporate governance provisions and disclosure obligations	Stock Exchanges: The major stock exchanges in the U.S., such as the New York Stock Exchange (NYSE) and NASDAQ, have their own listing requirements and regulations that include corporate governance provisions. These exchanges set standards for corporate governance practices and require listed companies to comply with certain rules and regulations.
Financial Reporting Council of Nigeria (FRCN) plays a crucial role in corporate governance oversight. The FRCN is responsible for developing and enforcing accounting, auditing, and financial reporting standards in Nigeria. It sets the Corporate Governance Codes for public and private companies, providing guidelines on best practices and transparency.	Financial Sector Conduct Authority (FSCA): The FSCA is the primary regulatory body for the financial services sector in South Africa. It regulates and supervises financial institutions, including banks, insurers, asset managers, and pension funds, with a focus on ensuring sound corporate governance practices within the financial industry.	Public Company Accounting Oversight Board (PCAOB): The PCAOB is a non-profit corporation established by the Sarbanes-Oxley Act of 2002. It oversees and regulates the auditing profession, including the auditing of public companies. The PCAOB sets auditing standards, conducts inspections of auditing firms, and enforces compliance with auditing and ethical standards.
Nigerian Stock Exchange (NSE), as the primary stock exchange in Nigeria, promotes good corporate governance practices among listed companies. The NSE has developed listing rules and regulations that include corporate governance provisions to ensure transparency and accountability.	The Companies Tribunal is an independent body established under the Companies Act. It primarily deals with company-related disputes, compliance matters, and investigations. It ensures adherence to corporate governance principles and resolves disputes related to governance issues.	Financial Industry Regulatory Authority (FINRA): FINRA is a self-regulatory organization that oversees broker-dealers and their registered representatives. It enforces rules and regulations related to securities transactions, including aspects of corporate governance, such as conflicts of interest and fair dealing.
Industry-specific regulatory bodies, such as the Central Bank of Nigeria (CBN) for the banking sector and the National Insurance Commission (NAICOM) for the insurance sector, also contribute to corporate governance oversight within their respective industries.	King Committee on Corporate Governance: The King Committee is a voluntary body that develops and updates the King Reports on Corporate Governance. These reports provide guidelines and principles for good corporate governance in South Africa. The reports are widely regarded as a leading reference for corporate governance practices in the country.	State Corporation Commissions: Each U.S. state has a regulatory agency known as the State Corporation Commission or similar names. These agencies oversee and regulate corporations and business entities operating within their respective states. They enforce state-level corporate laws and regulations and may have specific corporate governance requirements.

2. CASE STUDY ANALYSIS

It is commonly acknowledged that corporate governance is a crucial instrument for preventing and resolving financial crises in businesses by fostering effective and transparent management and offering sufficient responsibility and oversight measures (Lee & Yeh 2004; Khan & Javid, 2016; Adegbie et al. 2019).

When it comes to corporate governance, the USA, Nigeria, and South Africa each have particular institutional frameworks, and their respective experiences offer intriguing insights into how corporate governance has impacted businesses facing financial hardship.

The efficiency of corporate governance in relieving financial distress in various nations can be significantly influenced by institutional contexts, notably in the areas of corporate governance, company law, accounting, and taxes (Wurim, 2016). The Sarbanes-Oxley Act of 2002 in the United States, which contains provisions for internal control, risk management, corporate governance, and financial reporting, acts as a powerful impetus for enhancing corporate governance (Deakin, 2010). In Nigeria, the 2011-issued Code of Corporate Governance focuses on the key goals of good corporate governance, which include fostering shareholder confidence, upholding high standards of accountability and transparency, and safeguarding shareholders' interests (Ogiedu & Odia, 2013). The King III Report from 2009 advocates for good corporate governance in South Africa, emphasizing ethics, accountability, strategy, and openness (Rossouw & Styan, 2018).

2.1. Nigerian Case

2.1.1. Cadbury Plc (Nigeria, 2006)

Cadbury Plc is a multinational company formally incorporated on 9 January 1965 and listed on the NSE in 1976. It is a subsidiary of a British confectioner and soft drinks giant (Cadbury Schweppes) which owned about 50.02% of the company shares while Nigerian citizens and institutional investors owned 49.98% as of February 2006 (Ogiedu & Odia, 2013). They are into the manufacturing of consumer goods, including Bournvita and Tom Tom, among others. As of 2005, they were rated as the leading makers of confectionery in Nigeria. Cadbury Nigeria has its headquarters in Lagos and as at 2006, had about 2,300 employees and a reported turnover and pre-tax profit of £122 and £22 million respectively as at 2005.

In October 2006, some material overstatements were discovered in their prior accounts by the board of directors and reported to SEC which led to the setting up of an independent audit which was carried out by PricewaterhouseCoopers (PWC). The outcome of the special audit revealed that Cadbury's financial statements had been overstated during the period 2002-2005, to the tune of ₦15billion by some of their executives to fulfil their personal interests. This led to the immediate sack of the then CEO and the finance director. The SEC also set up an Administrative Proceedings Committee (APC) to further investigate the directors, the external auditor (Akintola Williams Delloite), the Registrars (Union Registrars Limited) and some key management staff for gross misconduct and violation of SEC rules and the Code of Corporate Governance, among other extant laws guiding company's operations. All the investigated parties as aforementioned were found guilty of a handful of offences, including fraud, gross negligence, and preparation of fraudulent financial reports. The Cadbury scandal was tagged as the Nigerian version of the famous Enron Corporation financial scandal (UK Essays, 2018).

Consequently, the parent company (Cadbury Schweppes Pic) had to make a provision of £15million as impairment of goodwill held in respect of Cadbury Nigeria Plc, in order to avoid total collapse, as their shares were suspended from trading on the NSE based on the misleading financial statements. Just like in the case of Enron, Cadbury's share price nosedived from about ₦60 to ₦34 after the revelation of the fraudulent activities of their management (Okaro, Okafor, & Ofoegbu, 2013). Consequently, for their dishonourable roles in the Cadbury scandal, the CEO and the CFO were sanctioned and received a life ban from, (i) operating in the Nigerian capital market, (ii) holding any position in any Nigerian quoted company for life; and or (iii) being employed in the financial services industry of any sort. The other actors in the fraudulent reporting practice were also indicted and sanctioned. For example, the external auditor and the union registrars were ordered to pay a fine of ₦20 million and ₦8.3 million respectively within 21 days or forfeit their registration with the SEC. Several other ex-directors, audit committee members and senior management employees were also suspended from holding leadership positions or serving as directors of Nigerian quoted companies for a period of one year. However, "the administrative sanctions imposed were considered by many as inadequate considering the magnitude of the offence. The issue of third parties who suffered losses as a result of the overstated financial statements was not addressed" (Ogiedu & Odia, 2013, p.176).

A look at the Cadbury's case showed it was a pure case of bad corporate governance, not just poor or weak governance. For example, engaging in sale and stock buy backs and issuance of fake stock certificates, false suppliers' certificates, and overstatement of profits and misrepresentation of sales figures for period of four consecutive years without any discovery show the level of gross failure and deficiency of all the corporate governance mechanisms. Instead, the CEO even received awards prior to the investigations as 'Chief Executive of the Year 2006'. Apart from the failure of different organs of the company, their governance structures were also defective. For example, CAMA Section 359 (3 & 4) specified that the audit committee should not consist of more than one executive director. However, Cadbury had three executive directors in their audit committee in the periods of the investigations (UKEssays, 2018). Similarly, Cadbury's board did not establish a remuneration committee which allowed the CEO, the CFO and other executive directors to receive offshore remunerations and omitting such in company's reports. According to the Nigeria's code of corporate governance, remuneration of executive directors should be set by Remuneration Committee which comprises of all or most of the non-executive directors. Also, the board equally failed in their oversight function as the management failed to transfer the funds for the declared dividends payments to shareholders within the required 7 working days after AGM and the Union Registrars also failed to report such breach to the SEC. Thus, virtually all the dimensions of corporate governance structure in the company failed to perform their duties and or were highly compromised, including the external auditor. It was indeed a case of bad corporate governance.

2.2. African Cases

2.2.1. Steinhoff International (South Africa, 2017)

Steinhoff International is a South African international holding company founded by a German (Bruno Steinhoff) in 1964. Although incorporated in the Netherlands, the company moved its headquarters to South Africa and got listed in Johannesburg Stock Exchange (JSE) in 1998 – trading at R4.00. They are equally listed on the Frankfurt Stock Exchange and trade in furniture and household goods. They also have operational bases in both Europe and United States, including Australia and New Zealand. According to Rossouw and Styan (2018), Steinhoff International is rated among the top-10 performing companies listed on the JSE. In the first quarter of 2016, Steinhoff international had a market capitalisation of about R300 billion – making it one of the largest trading companies on the JSE (Rossouw & Styan, 2018).

The financial crisis of Steinhoff surfaced in the final months of 2017 soon after the resignation of its CEO, Markus Jooste, when it emerged that their external auditor (Deloitte Netherlands) did not want to approve the 2017 financial statements. Styan (2018) notes that Steinhoff has had Deloitte South Africa as its auditors for more than 20 years before Deloitte Netherlands took over in December 2015, just two years before the signs of financial irregularities were discovered. The new auditors had in September 2017 approached the Steinhoff audit committee for some audit evidence which the CEO assured them it would be provided. The audit evidence pertains to one of their subsidiaries (Steinhoff Europe) where Markus Jooste is also the CEO, while Deloitte is not the auditor of Steinhoff Europe. The CEO soon embarked on a travel to Europe and was expected to make a return with the requested audit evidence, only for him to tender his resignation letter as CEO on 5th December, 2017. Jooste's letter was described as ambiguous although he reportedly stated he made some "big mistakes". Reports emerged that Steinhoff's earnings were overstated to about R250 billion. The Steinhoff share price, which traded at R45.65 on that 5 December, immediately plummeted to R6.00 on 8 December and continued to fall over the days (Rossouw & Styan, 2018).

After the development, the board convened AGM in April 2018 and made massive changes on the leadership of the company, leaving out only three of the original board members. PricewaterhouseCoopers (PwC) were contacted to conduct an independent forensic investigation to uncover the details of all that went wrong. The report of the PwC investigation revealed massive insider dealings by a number of the former management team which result in substantial inflation of earnings and asset values. There were also some fictitious transactions with eight unrelated third party entities between 2009 and 2017 amounting to about $7.36 billion. Meanwhile, Steinhoff had already announced that their previous financial statements would have to be restated beginning from 2015, while the 2017 was grossly delayed. This raised serious concerns about the conduct of the board and the external auditor. By March 2019, the share price had gone further down by 96% from what it was when prior to the discovery of the scandal in December 2017. The market capitalisation, which was R300 billion in 2016, plummeted to about R8.4 billion. The new management addressed the investors in September 2019 and informed them of decisions to sell-off the company's non-retail assets and also reduce workforce in order to address the company's debt which amounted to €10.4 billion (R156 billion) (Rossouw & Styan, 2018).

As it stands, more is yet to be known of 'who did what' at Steinhoff as none of the previous management has been sanctioned. The national parliament of South Africa are still hearing on the Steinhoff scandal since it also affected the state pension funds in the excess of R20 billion due to the massive downturn in Steinhoff's share price. Financial commentators are attributing the scandal to governance issues. For example, due to the freedom allowed by governance code for companies to adopt a suitable board structure, Steinhoff is the only South African company that operates a two-tier board structure (Styan 2018). The first tier is the 'supervisory' headed by a major shareholder and has non-executive directors as members while the second tier is the 'management board' consisting of only three members which are all executive directors (i.e. the CEO, CFO and COO). The framework of this two-tier board is that the management tier must be carrying the supervisory tier along, which in turn, must report to the shareholders. Thus, it became easy for the management to hijack the company. The Steinhoff crash was tagged as South Africa's equivalent of the Enron scandal and is the largest corporate failure on the JSE (Mail & Guardian, 2017).

2.3. Foreign Cases

2.3.1. Enron Corporation (USA, 2001)

Enron was formed in 1985 by Kenneth Lay as a result of the merger between Omaha-based Inter-North Inc., and Houston Natural Gas Company (both natural-gas-transmission companies). The latter was the merger company and saw its name renamed to Enron. Not long after the merger, the U.S. Congress deregulated the sale of natural gas (i.e. around early 1990s) leading to Enron's loss of its exclusive rights to operate its pipelines. In a bid to survive, Enron transformed itself into a trader of energy derivatives contracts, thereby becoming an intermediary between natural gas producers and the users. The strategy, as created by Jeffrey Skilling, was to create a 'gas bank' whereby Enron buys from the network of gas-producers and suppliers, stores and sells to the network of gas consumers at a contractually agreed price – and assuming the underlining risks. Thanks to the innovative ideas and models of Skilling, Enron soon became the largest seller of natural gas in North America by 1992, its trading of gas contracts earned pre-tax profit of about $122 million. Enron equally diversified by creating an online trading website (EnronOnline) in November 1999. Its stock grew astronomically by up over 300% and by year ended 2000; Enron's stock price had reached as high as approximately $90 per share as at January, 2001 (Brickey, 2003).

As the boom continued, they began facing intense competition by rival energy trading companies. The share began plummeting gradually. In a bid to overcome pressures from shareholders, the management adopted the 'mark-to-market (MTM) accounting' where companies are at freedom to use discretional valuation models based on their own assumptions and valuing their financial situation based on the "fair value" of the company's assets, which may change as market conditions change. The implication is that future expected gains from trading contracts are reported into current income statements, giving the impression of higher current profits. For example, the company would build an asset and immediately observed the expected profits thereof in their reports, even without having made any dime out of the assets. They continued transferring their troubled assets and mountains of debt to the 'special purpose entities (SPEs) and did so in dubious ways to keep their losses off their books and make them look less severe. They ended up concealing debts of over $1.5billion via off-balance-sheet partnership. Unfortunately, their long-term serving external auditor (Arthur Anderson), who held dual roles as their consultant, had this knowledge and connived with management to conceal and eliminate the incriminating evidence of the wrongdoings. The auditor reportedly received audit fees estimated to be about 250% above the normal audit fees (Kinney & Libby, 2002).

In early 2001, CEO Kenneth Lay retired and the innovator (Jeffery Skilling) stepped in as CEO only to resign six (6) months later citing 'personal reasons'. By this time, a number of financial analysts had begun downgrading their stock and looking into details of the financial statements. Soon after, SEC began investigating Enron's transactions with the SPEs. The CFO was fired two days later, and by the time the details of the accounting fraud became public, their stock price crashed from about US$90 per share to less than $1 (about $0.26) by the end of November 2001. The shareholders filed a lawsuit of $40 billion after the crash of their stock. On 2 December 2001, Enron filed for bankruptcy.

After the collapse of Enron, their auditor became the first casualty, had their licence withdrawn for concealing and shredding Enron's financial documents from SEC. Enron's former CEO, Lay, was equally convicted of six counts charge but he later died of heart attack prior to his sentencing. The CFO, Fastow, was also found guilty and sentenced to five years in prison (released in 2011). The CEO, Skilling, bagged the harshest sentencing that was later reduced to 14 years in prison (released in 2019) in addition to paying $42 million to the Enron fraud victims (Deakin, 2010).

The argument that Enron was a corporate governance scandal is considered valid because the board of directors, which should normally represent the shareholders' interests, failed to live up to expectations; thereby allowing the management to misuse the shareholders' wealth. The wording of the Sarbanes-Oxley Act of 2002 was clear evidence that the Enron's case was that of a failed corporate governance system.

3. SUMMARY AND DISCUSSION OF THE OBSERVATIONS

As can be observed from the paper, especially from the reviewed case studies, virtually all cases of corporate financial distress and business collapses have some traits of corporate governance shortcomings as contributing, if not originating factors. In dissecting some of these factors, the paper observed that weak monitoring played a major part, both on the part of the regulators and the board of directors. In the latter case, the management of some of the collapsed firms managed to keep the board at bay while the fraudulent financial dealings went on for several years before being detected and or revealed by either the board or the auditor. The cases of Cadbury Nigeria and Steinhoff International are typical examples of where the board and the external auditor respectively raised alarm of discovered fraudulent practices. On the part of the regulatory bodies, the same lack of early detection played out in most of the cases as some of the regulatory approaches taken were more reactive than proactive. The monitoring of forward-looking components and red-flags, as early warning signs, were largely weak and/or overlooked. This suggests that asides encouraging companies to adhere to corporate governance codes, the regulators and board of directors must be proactive in their monitoring roles in order to prevent or reduce the opportunity of management in pursuing their personal goals.

Furthermore, the pattern of sanctioning the erring executives and the companies was another issue worth mentioning. There is also a lack of stringent punitive sanctions for erring managers and the enforceable legal framework for prosecution is rather too slow. For example, the majority of the CEOs and other executives of the studied collapsed firms were only dismissed and fined, except for the Oceanic bank and the Enron cases where convictions were secured in the court of law. What about the punishment for their fraudulent activities by which numerous investors lost the value of their wealth? The managers of Enron were convicted not too long after Enron's collapse scandals, although one did not live to witness his sentencing. But for Nigeria, it is on the record that the trial of the former CEO of the collapsed Intercontinental bank was terminated by a judge, although it earned the judge a compulsory retirement from the bench and the case reopened in 2015 (Enumah, 2018). Howbeit, not much has been heard of the trial since the last adjournment of October 24, 2019 (that is, 10 years after) (Sahara Reporters, 2019).

More so, it was also observed that the institutionalised corruption syndrome in Nigeria is another cogent factor increasing the level of corporate financial distress. The mind-set of most executives, irrespective of educational status or position of authority, appears to be rooted on how to maximise their personal gains by exploiting the loopholes in any given position. Considering the dates of some of the case studies (e.g. Cadbury and Enron), one may be tempted to contend that different corporate governance modifications over the years may have taken care of such reoccurrences. However, observing that the case like Steinhoff International (South Africa) just recently occurred and the details of both scandals only became public knowledge in 2019. More so, it occurred just after the April 2017 implementation of South Africa's newest corporate governance code (called King IV Code); it then gives the impression that corporate governance alone does not prevent financial distress. Thus, the compliance with corporate governance codes could just be like a box-ticking exercise in order to escape sanctions from regulatory bodies, while the workability of the governance frameworks is determined by the management and willingness of all the players (regulators, the board, auditors, etc.) to play their roles effectively and ethically.

The above leads to the discussion of the major question of the paper: does corporate governance cure the financial distress? There are two ways in giving answers to the above question as both YES and NO could suffice. In taking a position on the above, it could be recalled that out of the five (5) financially distressed banks that were declared technically bankrupt and had each of their CEOs sacked and replaced by the CBN in 2009 (see sub-section 4.1.2), only one (Union bank) emerged from that distressed situation and was able to retain its stand-alone status and name till date. Thus, was it that corporate governance was able to cure the financial distress? On one hand, the answer could be 'YES' because the CEO change is part of corporate governance mechanisms, it could also be NO because it took more than the corporate governance restructuring since the other four (4) banks were not able to be revamped as a result of CEO change. On the case of Union bank that survived, it took the special qualities of the then newly appointed female CEO to be able to revamp the ailing bank in a matter of two financial years, attracting consortium of foreign investors to the tune of $500m, before leaving the post to head one of the current power distribution companies (DICSOs) in South-South Nigeria (Francisco, 2012).

Also supporting the YES answer is Thorburn (2004) who posits that where there is strong corporate governance and renewed assurance of adequate protection of investors' rights, outside investors can be induced or attracted to provide financing to a distressed firm – which can quicken the firm's emergence from a distress position. The case of Cadbury Nigeria is also another example of cases where strong protection of investors' rights results in increasing the likelihood that the firm will successfully emerge from a distress situation. Thus, it is a valid argument that good corporate governance can cure financial distress. Our position is, however, at variance with those of the three aforementioned Australian Professors (Abernethy et al, 2016) who took the position that "it is unclear whether firms in financial distress can stave off default by simply hiring more experienced managers and board members" (p.2). However, if Cadbury Plc reshuffled their management and were able to shove off the shackles of financial distress, it means that strong corporate governance can cure financial distress. However, such impacts are moderated by the personal attributes and competencies of the introduced management team. Thus, considering that the possible moderating factors may not play out in all situations, giving a NO as the answer is also not completely out of place.

4. CONCLUSION

The recurrent cases of business collapses and corporate financial scandals among prominent firms of public interest have continued in most countries around the world. Among the underlying causes are unaddressed financial distress due to weak corporate governance, managerial incompetence and financial rascality. Since corporate governance shortcomings are usually both the originating and contributing factors in most corporate financial crisis, there is then the expectation that incidences of financial distress can be mitigated or even cured where it already exists, through good corporate governance. This assumption was reinforced owing to the recent implementations of new corporate governance codes by different countries, including Nigeria. The paper was prompted by the continuing financial distress in some notable firms amidst several corporate governance code modifications. This led to the major objective of this paper which is to examine the viability that corporate governance can be an antidote to corporate financial distress.

In pursuing this cogent objective, the paper relied on available literature and documentary evidences of prior case studies of situations where poor corporate governance and its shortcomings resulted in extreme financial distress, and in most of the cases, eventual business collapse. Going by the outcome of the reviews and the observations thereof, the paper takes a position that corporate governance can mitigate or be an antidote for financial distress, however, it depends on the joint efficiency of its implementations by all the concerned parties. In essence, it can be concluded that no matter how sound a country's corporate governance codes (or a company's corporate governance structures) are, the expected impact of effective governance may not be achieved unless all the players imbibe sufficient ethical and moral inclinations to do what is right without prompting. Holding other external factors constant, in an event that the above qualities are lacking, corporate governance alone may not prevent or salvage financial distress.

Flowing from the above, a possible area for further studies would be the assessment of the determinants of financial distress and corporate failure from the dimensions of (i) internal corporate governance factors, (ii) external factors, and (iii) personal attributes of CEOs. This could be achieved in a triple-model approach where the forecast ability of the models would be compared to determine which one possesses the most predictive accuracy in explaining the variances in financial distress. In addition, all the reviewed case studies of corporate failures revealed that a single international auditing firm was hired and that the external auditors in most of the cases were compromised and failed to report observed unethical insider dealings. This paper sees the need for regulatory bodies to reconsider their stance on mandatory joint auditing for publicly listed companies – as it would be more difficult to compromise two independent auditors than a single audit partner. Regulatory bodies must provide stiffer sanctions and punishments for fraudulent managers to act as deterrent. Until the erring management begins to pay dearly for the consequences of unethically bad behaviours and financial rascality, there may be no end to the malaise of corporate failures.

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Dr. Otivbo Faith Amede
Viši predavač
Sveučilište u Beninu
Fakultet za menadžment
Odjel za računovodstvo
E-mail: otivboamede@gmail.com
Orcid: https://orcid.org/0000-0002-9071-0510

Prof. Ofuan James Ilaboya
Profesor računovodstva
Sveučilište u Beninu
Fakultet za menadžment
Odjel za računovodstvo
E-mail: ofuan.ilaboya@uniben.edu
Orcid: https://orcid.org/0000-0002-8161-8245

MOŽE LI KORPORATIVNO UPRAVLJANJE RIJEŠITI FINANCIJSKE POTEŠKOĆE? ANALIZA STUDIJE SLUČAJA PODUZEĆA S POTEŠKOĆAMA

Sažetak

U radu se ispituje koncept korporativnog upravljanja i financijskih poteškoća. To je postignuto pregledom studija slučaja. Pregled literature pokazao je da se malim brojem istraživanja pokušalo utvrditi može li korporativno upravljanje oporaviti tvrtku u financijskim poteškoćama. U nastojanju da se popuni taj jaz, u ovom radu ispituju se slučajevi korporativnog upravljanja tvrtkama koje su imale financijske poteškoće ili naposljetku doživjele slom. Zamisao je rada istražiti može li se korporativno upravljanje smatrati protuotrovom za financijske poteškoće. Kako bi se postigao ovaj cilj, analizirane su studije slučaja tvrtki s financijskim poteškoćama iz različitih jurisdikcija (multinacionalne, afričke i nigerijske tvrtke). Također su pregledani dokumentirani dokazi o financijskim poteškoćama i izazovima korporativnog upravljanja. Rezultati analize studije slučaja pokazali su da korporativno upravljanje može oporaviti poduzeća u financijskim poteškoćama, uz uvjet da ključni dionici poduzeća primjenjuju propise vezane uz korporativno upravljanje.

Ključne riječi: korporativno upravljanje, financijske poteškoće.

JEL klasifikacija: G32, G34.