



## SAUDI ARABIA REGULATIONS ON CORPORATE GOVERNANCE



Algoere Turki Naif S<sup>1+</sup> <sup>1</sup>PhD Student, Faculty of Law, Universiti Kebangsaan Malaysia  
Hasani Mohd. Ali<sup>2</sup> <sup>2</sup>Professor of Law, Universiti Kebangsaan Malaysia

(+ Corresponding author)

### ABSTRACT

#### Article History

Received: 2 November 2018

Revised: 6 December 2018

Accepted: 9 January 2019

Published: 11 February 2019

#### Keywords

Corporate governance  
Saudi Arabia  
Directors' duty.

The concept of corporate governance has been introduced and developed to address financial scandals and corporate misconducts as experienced by various countries across the world. This paper discusses the recent development of corporate governance in Saudi Arabia. Saudi Arabia has amended its corporate governance regulation in 2017 for the purpose of promoting accountability, transparency and stewardship of investors' capital. The methodology adopted in this paper is the content analysis approach wherein related literature was discussed and analysed, particularly the local laws and other relevant documents. The finding of this study reveals that despite the Saudi Regulation on corporate governance was amended in 2017 in order to cure the defect of the earlier Regulations; still, there are other pending issues that are not in conformity with the international best practices. Thus, addressing these identified issues will go a long way in meeting the objectives of the Capital Market Authority; reflect the conventional developments in the corporate sector and upgrades the Saudi Arabian corporate reputation.

**Contribution/ Originality:** This study contributes to existing literature by examining the recent development brought by the new corporate governance regulations 2017 in Saudi Arabia. The finding exhibits that not with standing the new development under the Saudi Regulations 2017, there are still are some provisions that are not consistent with the international standard.

## 1. INTRODUCTION

The Capital Market Authority (CMA) of Saudi Arabia has released a novel Regulations on corporate governance in 2017 for the companies listed on Saudi Arabia Exchange (Tadawul Saudi Arabia is among the countries that have a potential of huge foreign investments with a better share value. Therefore, there is an anticipation that in the nearest future, there will be more competition among the foreign companies demanding best practices of corporate governance so as to enhance corporate performance. Also, to have an enable ground for the prospective investors to invest adhering to Saudi Arabia 2030 Vision, a royal decreed plan to help in diversifying the economy of Saudi Arabia and distant it from heavy reliance on oil revenue. For these purposes, Saudi Arabia must reflect worldwide principles and universally accepted standards and practices of corporate governance so as to meet new demands and opportunities). Saudi Arabia needs to continually improve its corporate governance. Against this background, Saudi Arabia in 2017 amended its Regulations on corporate governance in order to promote accountability, ethical behaviour, transparency and stewardship of investors' capital. The new Regulations replacing

the 2006 version provides board members and shareholders with better rights and enhanced transparency about their own duties and tasks, and the driven forces behind these new Regulations are explained later in this study.

This paper outlines the recent evolution of corporate governance in Saudi Arabia and identifies the inadequacy and areas that required improvement for a better good governance. This paper commences with a synopsis of corporate governance and followed with the discussion on the development of company law in Saudi Arabia with emphasizes on Sections that border on corporate governance. Subsequently, the paper examines the relevant developments that give rise to corporate governance in Saudi Arabia. The paper further examines current Saudi Regulations on Corporate Governance (SRCG) 2017. The paper provides a reflection on the SRCG 2017 especially in that whether the improvements will cause the business environment in Saudi Arabia to be more open, fair and attractive for businesses to flourish and enhance the reputation of Saudi Arabia as a place to do business generally.

## 2. AN OVERVIEW OF CORPORATE GOVERNANCE

Corporate governance law and practice is at ongoing process of improvements. The debate on the concept of corporate governance has a long-standing history. It is as far back as the South Sea Bubble in 1720 and institutional shareholders, multinational and transnational corporations emerged during the Second World War II. Due to the displeasure with the managerial capitalist approaches based on expectations of discrete shareholding and share value maximization. The above resulted in a number of industry-led reviews and governmental commissions focusing on good governance. This led to the development of corporate governance as a separate discipline (Clarke, 2007). Tricker (1994) states that the study on corporate governance as a separate discipline from company law had only been acknowledged relatively recently.

In a related development, Goo and Carver (2003) argue that the concept of corporate governance has been in existence since the creation of joint stock companies but have subsumed by issues relating to corporate law and practice. The issues only captured world's attention in late 1970 when the term "corporate governance" became fashionable and has assumed an economic, political and dynamic of its own. Several factors have contributed towards the development of corporate governance such as a threat of takeovers of companies and consequences of losing jobs; corporate collapse due to the recession; shareholders' awareness of corporate accountability; and the emergence of institutional shareholders among others (Goo and Carver, 2003).

From early 21st century, a few severe financial outrages and numerous issues of corporate misconduct have compelled scholars to dedicate increasing attention to corporate governance. Due to this financial crisis experienced by various countries across the globe, corporate governance provisions have been put forward in restructuring corporations (Demirag and Solomon, 2003). Corporate governance conveys an improved management as well as better judicious distribution of company's resources which together improve corporate performance, and the achievement rising from this improved performance will develop to upsurge the value of shareholdings (Mobius and Chan, 2000). In a related development, Meteb (2015) argues that the corporate governance brings about proper organisation through which the goals of corporates are developed with strong gritty ways on how to accomplish such goals and the performance investigation structures. Therefore, a virtuous governance structure should embrace appropriate enticements for the management in order to achieve the goals of a company (Meteb, 2015).

Additionally, corporate governance associates with the means through which the investors assure themselves of having a profit from their share (Singh, 2010). Corporate governance is based on how the corporation is being managed and organised to enable it function at the peak level and show the way the management and Board are held responsible to shareholders so that shareholders profit from the corporate performance (Goo and Carver, 2003). In order to achieve this, it is essential to have a better transparency in the procedures through which a company is managed and organised, and appropriate and regular communication of vital corporate's information to shareholders and prospective shareholders (Goo and Carver, 2003). Goo and Carver (2003) argue that corporate governance is about "the relationship among the various participants in determining the direction and performance

of corporations.” The major participants are; the management, board of directors and shareholders, and the other participants are customers, employees, creditors, suppliers and the community (Monks and Minow, 2004).

Corporate governance plays an important function for the present multifaceted and vigorous corporate setting particularly after the economic outrages around the world and the present downfall of the main corporate banks/institutions in the USA, Europe and South East Asia that have established the need for the preparation of virtuous corporate governance (Marai *et al.*, 2017). Corporate governance aims at minimizing economic risks and foster public and investor confidence in the financial market provides a proper risk management structures and procedures in financial organizations, and improve financial risk administration and financial performance (Ruparelia and Njuguna, 2016). Furthermore, Corporate governance serves as mechanisms through which companies solve their conflict between companies’ stakeholders by giving a solid and operative monitoring on company’s administrators that can safeguard the financial report organised by the administrators is reliable and trustworthy (Husseinali *et al.*, 2016). Still, on the significance of corporate governance, Alkhtani (2010) opines that due to the adoption of corporate governance principles in the listed corporations in Saudi Arabia as well as banks have increased intensely, particularly in addressing the economic crisis of 2006.

Poor corporate governance results in poor management and earnings which affect the share value and liquidation of shares (Mobius and Chan, 2000). When the market notices bad corporate governance, all shareholders may exit at the same time, resulting in a quick decline in the share price and liquidity. Investment turns extremely less attractive to other investors (Goo and Carver, 2003). It is not sufficient to have in place rules and procedures that comply with the best practice of corporate governance if they are not enforced or supervised. Thus, upright corporate practices necessitate a culture of transparency and trustworthiness within a company.

The corporate governance is evolving dynamically throughout the world in order to encourage good atmosphere for investments and business to prosper and flourish. As reflected in the UK, a leading jurisdiction in corporate governance law and practice, the Financial Reporting Council U K (2018) has released a reviewed corporate governance code alongside updated Guidance on Board Effectiveness to support directors and their advisers in applying the Code (FRC, 2018).

### **3. COMPANY LAW AND CORPORATE GOVERNANCE IN SAUDI ARABIA**

#### *3.1. Regulatory Laws and Agencies for Corporations in Saudi Arabia*

There are various laws and agencies regulating the operation of companies in Saudi Arabia. The first law is Saudi Companies Act which was first enacted in 1965 to regulate the operations of Companies in Saudi Arabia which is based on British Companies Act (Falgi, 2009; Alghamdi, 2012; Branson, 2012; Hill *et al.*, 2015). The main function of the Saudi Companies Act 1965 is to regulate the commercial companies, such as partnership; joint stock companies; liability companies; limited liability companies; as well as foreign companies (Alshehri, 2012; Al Mulhim, 2014). In order for Saudi Arabia to keep pace with the conventional developments on the corporate sector, the Ministry of Commerce has employed numerous efforts to enact the new law with improved features. The new Companies Act became effective on May 2, 2016 and has brought a lot of significant changes which have been described as a step forward towards reforming corporate sector in Saudi Arabia (Alshowish, 2016). The 2016 Saudi Companies Law is the first attempt to deal with issues pertaining to corporate governance while the governance codes will fill the gap if the law is ambiguous.

Another regulatory law is the Capital Market Law 2003 which establishes Capital Market Authority (CMA). CMA started unofficially in the early 1950s in Saudi Arabia before it was recognized by the Saudi Government. The CMA is an independent government organization with full legal, administrative and financial freedom that reports directly to the Prime Minister (Falgi, 2009; Alkhtani, 2010). The main goal of the CMA is to regulate and develop the ‘Saudi Arabian Capital Market’ consisting establishing regulations, rules and instructions which related to the Saudi Stock Exchange (Alshehri, 2012; Meteb, 2015).

Historically, following the Souk Al-Manakh crisis in Kuwait, the government of Saudi Arabia in 1984 established a committee in-charge of regulating and developing the stock market (Al-Harkan, 2005). This committee comprised of representatives from the Ministry of Finance and National Economy; Ministry of Commerce and SAMA (Basheikh, 2002; Al-Harkan, 2005). This committee delegated the responsibility of the capital market to SAMA (Basheikh, 2002). In order to accomplish this task, SAMA established a specific unit called the Stock Control Department, which is responsible for supervising the daily stock transactions (Basheikh, 2002; Al-Harkan, 2005). In March 2007, the Council of Ministers agreed to establish the Saudi Stock Exchange (Tadawul) as a joint stock company to look after the day-to-day operations of the Tadawul (Alshehri, 2012). Piesse *et al.* (2012) opine that the features of the Saudi stock market are that it is one of the largest, has one of the highest annual turnovers, is one of the most active and has one of the highest capitalizations in MENA.

### *3.2. Relevant Developments that Contributed to the Rise of Corporate Governance in Saudi Arabia*

There are numerous rules and regulations that contributed to the development of corporate governance in Saudi Arabia. The development of corporate governance is divided into two phases. The first phase began when the Ministry of Commerce and Industry in 1985 directed the enforcement of the Disclosure and Transparency standard (Meteb, 2015). This led to the recognition of corporate governance and this transparency and disclosure are regarded as one of the most significant components of corporate governance best practice (Meteb, 2015). The action of issuing this practice was one of the vital decisions in the growth of accounting and reporting practices in Saudi Arabia. Al Mulhim (2014) observed that prior to the issuance of this practice, the adherence to the disclosure requirements had been very low.

Another development during the first stage, is the creation of the 'Supreme Economic Council' in 1999. According to Al Kahtani (2013) this was among the earliest steps in the development of corporate governance by the Saudi executive authority. It is intended that the economic development would be a major concern in all the new developments in Saudi Arabia (Al Kahtani, 2013). Further, the establishment of the Saudi Arabian General Investment Authority which is intended to improve investments as well as the enactment of the Saudi Arabian Foreign Investment Law in 2000 to regulate the conditions for investing in Saudi Arabia paved way for the development of corporate governance in Saudi Arabia (Al Kahtani, 2013). The second stage witnessed the enactment of Capital Market Law of 2003 and the issuance of regulations by the Board of the CMA established by the Capital Market Law (Falgi, 2009; Meteb, 2015). The board has issued regulations regarding corporate governance. In 2006, Regulations on corporate governance was launched in compliance with global standards on disclosure and transparency, shareholders' rights, General Assembly and Board of Directors (Falgi, 2009; Meteb, 2015).

Despite the fact that the Board of CMA wants the listed companies to offer proof of the executed and unexecuted SRCG articles with such elucidations and excuses in their Board annual financial reports as provided under Article 1(c) of SRCG 2006. A number of listed companies including big companies such as Mouwasat Medical Services Company and Al Baha Investment and Development Company were in breach of this obligation. Thereafter, the Board of CMA punished these corporations for their failure to comply with a requirement of the law (Al Kahtani, 2013). The CMA Board does not allow the listed companies the right to disregard this obligatory provision in their "Boards of Directors' annual financial reports" but are eligible to a waiver of the enforcement of non-binding provisions (Al Kahtani, 2013). Al Kahtani (2013) observes that there are conflicting reports regarding the extend of compliance with the SRCG by the companies. In 2009, the Board of CMA gave the statistics that 96% of the listed companies had complied with the SRCG. Conversely, it was reported in 2009 that the SRCG was at a premature stage and as time goes on, the listed companies will replicate the international good corporate governance practices in their dealings (Al Kahtani, 2013).

### 3.3. Corporate Governance in Saudi Arabia

Prior to 2006, there were no precise regulations on corporate governance in Saudi Arabia. CMA was only recognized in 2003 and it took CMA 3 years before it issued a regulation on corporate governance (Al Mulhim, 2014). The Saudi stock market suffered an enormous crash in February 2006 (Alshehri, 2012; Hill *et al.*, 2015). As a result of that, CMA was compelled to approve new regulations for corporate governance to protect shareholders and other stakeholders (Al Mulhim, 2014; Hill *et al.*, 2015). The SRCG 2006 is firmly influenced by the 2004 “Organization for Economic Co-operation and Development (OECD) Principles” (Alshehri, 2012; Meteb, 2015). The SRCG 2006 adopts a “comply or explain” policy which requires corporations to reveal in the board's report provisions that have been executed and those that are not executed, and elucidate the explanations for non-compliance (Falgi, 2009; Alshehri, 2012; Al Mulhim, 2014; Hill *et al.*, 2015). For a country's business to be globalized and enhance economic growth, foreign investments must be allowed so as to accomplish the above targets. Therefore, with the issuance of SRCG 2006, foreigners in Saudi were allowed to invest in Saudi Investment funds (Hill *et al.*, 2015).

Hill *et al.* (2015) opine that the SRCG is mainly inclined from the Anglo-Saxon Model which centres on make best use of shareholders' wealth and it is based on the “principles of agency theory” as against the continental and the Japanese models. The Anglo-Saxon Model was developed by the more individualistic business societies in the UK and the US. The controlling parties under this model are the board of directors and shareholders (Ross, 2015; Bin Harun, 2016). Companies in Germany and Italy represent this model. The companies under this model have an Executive Board (in charge of company's management) and a Supervisory Council (controls the Executive Board), and Government and domestic interest are the solid influences in the continental model (Ross, 2015). Whereas the Japanese Model has a sense of joint responsibility and balance (loyalty between customers and suppliers) Regulators play a great role in corporate policies and thus, it is the most concentrated and rigid model (Ross, 2015).

In order to ensure uniformity with the international superlative practices in corporate governance, the SRCG 2006 was amended in 2009. In April, 2017, the Board of CMA of Saudi Arabia released new Regulations on corporate governance for joint stock companies listed on the Saudi exchange code on corporate governance. The new SRCG 2017 provides better rights to shareholders and Board members and transparency towards their respective duties and responsibilities. One of the purposes is to attract foreign investments in Saudi Arabia and to supplement the CMA's own rules with those of the recently reviewed Companies Law 2016. By improving the regulatory omission of listed companies, the CMA strive to carry its standards in line with those of other prominent universal exchanges. The following subheadings highlight the features of SRCG 2017.

#### A. Board of Directors

With respect to Board of Directors, Articles 16 to 41 of the SRCG 2017 contain detailed rules and principles governing Board of Directors such as Chairman, Independent Directors and the Secretary of the Board as well as appointment, board formation, conditions of membership, responsibilities, termination, distribution of competencies and duties, auditing, meeting procedures and training among others. Besides, the SRCG 2017 advocates that the fiduciary duties should be based on the principles of openness, uprightness and devotion.

Prior to the promulgation of SRCG 2017, the company is not required to inform the authority about the names of the Board members and the explanation of their membership within 5 business days from the commencement of the Board's term. However, with the coming into force of SRCG 2017, a company is obliged to notify the Authority the names of the members of the board alongside with their membership description within 5 business days from the date of the commencement of Board's term or from the date of their appointment as well as any subsequent changes thereon (Article 17(d) SRCG 2017). Another development that was incorporated into SRCG 2017 is that, it stipulates certain conditions for the members of the Board which is not expressly provided in SRCG 2006 or 2009. Article 18 of the SRCG 2017 requires a member of the Board to be professionally capable and has the prerequisite

knowledge, experience, independence and skill which will empower him/her perform his/her functions effectively. SRCG 2017 further states that a member of the board should have an ability to lead and guide, must be competent, possesses financial knowledge and must be physically fit to undertake the assigned functions (Article 18(1-5) of the SRCG 2017).

Additionally, the SRCG 2017 has a dedicate Article on the issues affecting the independence of the Board which is not provided under the previous SRCG. The SRCG provides instances under Article 20(c)(1-10) where the independence of the Board will be in questions in addition to some of the provisions on the independence of the Board contained in the previous SRCG. The Board under Article 20 is required to yearly assess the level of the member's independence and make sure that there are no connections or situations that may affect his/her independence. To further ensure the independence of the Board, Article 28 of the SRCG 2017 prohibits the appointment of a person as a Chief Executive Officer during the first year following the end of his service as the Chairman of the Board. Article 16 of the SRCG 2017 provides that the majority of the Board members shall be Non-Executive Directors and the number of Independent Directors shall not be less than two members or one-third of the Board members, whichever is greater. It is forbidden to hold simultaneously the position of Chairman of the Board and any other executive position in the Company such as Managing Director, the Chief Executive Officer, or the General Manager, even if the Company's regulations provided for the contrary.

Besides the above developments, the SRCG 2017 under chapter 3 provides specific provisions on competencies of the Chairman, Board members, members' duties as well as duties of an Independent Director which are nowhere to be found under the previous SRCGs. Under Article 27 of the SRCG 2017, the Chairman of the Board shall be head of the Board and controlling its tasks, and the active performance of its duties. In addition, Article 28 of the SRCG 2017 prohibits the appointment of the Chief Executive Officer during the first year following the end of his/her appointment r tenure as the "Chairman of the Board".

### *B. Shareholder Rights*

Prior to the coming into effect of SRCG 2017, there were no explicit provisions on the rights of shareholders in respect of the right to fair treatment; rights related to shares; and communication with shareholders. SRCG 2017 has comprehensive provisions on Shareholder's rights as a modification of the existing rights under the previous SRCGs. These rights inter alia include: fair and equal treatment among shareholders (Article 4 of the SRCG); right against discrimination among shareholders of the same class (Article 5 of the SRCG); fair distributions, equal rights related to access of corporate information and communications (Articles 6 & 7 of the SRCG); rights to attend and vote in General Assemblies and Board and Audit member selections (Articles 8-15 of the SRCG). Article 9 of the SRCG 2017 provides a clear mechanism for the distribution of dividends and insolvency pay outs.

### *C. Conflicts of Interest*

The scope of conflict interest policy under the previous SRCG is only limited to the Board. However, the SRCG 2017 extended the scope of the conflict of interest policy beyond Board to include Executive Management or any other employees of the Company dealing with the Company or other Stakeholders (Article 43). Apart from the above, the SRCG 2017 mandates a Board to develop a written and explicit policy to address a genuine and probable conflicts of interest situations which may have an undesirable consequence on the performance of the Executive Management, Board members or any other employees of the Company when dealing with other Stakeholders or Company (Article 43 of the SRCG 2017). Thus, SRCG 2017 encompasses provisions on the Board's avoidance, assessment and disclosure of any conflict of interest. The SRCG requires a company to have policies and procedures in relation to related party transactions, conflicts situations (with or for the company or its competitors), accepting gifts, conflicted persons and conforming to the endorsement, renewal and dissolution of the Board as provided in the laws (Article 42-49 of the SRCG 2017).

#### *D. Committees*

Under the previous SRCGs, Nomination and Remuneration are classified as one committee; there were no detail provisions on the composition, functions, meetings of committees; and the power of the Audit Committee to review the internal and external auditor's reports were not so broad. With the coming into effect of SRCG 2017, Nomination and Remuneration are separate committees and Articles 83 to 88 contain provisions associated with the "formation, composition, membership, powers, procedures, responsibilities, policies, meetings and announcements of committees for remuneration, risk management and audit" among others. On the composition of the Remuneration Committee Article, Article 60(a) of the SRCG 2017 provides that the Board of a company by a resolution should set up a remuneration committee with members not from executive directors and should have at least an independent director. Article 60(b) of the SRCG 2017 provides further that upon the recommendation of the Board, the General Assembly of a company should give a regulation for the remuneration committee as well as its duties, procedure and rules for selecting its members and their remuneration. In addition, Article 62 of the SRCG provides a policy on remuneration which should be considered by the Remuneration committee.

Furthermore, Article 68 of the SRCG provides that the "Company shall publish the nomination announcement on the websites of the Company and the Exchange and through any other medium specified by the Authority; to invite persons wishing to be nominated to the membership of the Board, provided that the nomination period shall remain open for at least a month from the date of the announcement". As regards to the composition of the Risk Management Committee, Article 70 of the SRCG 2017 provides that the Board of a company by its resolution should form a Risk Management Committee where the Chairman and the majority members of the committee should be non-executives and the members should have a sufficient level of knowledge in risk management and finance.

With respect to setting up an Audit Committee, Article 54(a) of the SRCG 2017 provides that an audit committee should be formed by a General Assembly's resolution. The Article above provides further that the number of members should not be less 3 or 5 from shareholders with at least one Independent Director, one of the members should be specialized in finance and accounting and none from Executive Director. Article 54(b) of the SRCG 2017 states that the chairman of the audit committee shall be an Independent Director. Also, Article 54(c) of the SRCG 2017 provides that the "General Assembly upon a recommendation of the Board, shall issue a regulation for the audit committee which shall include the rules and procedures for the activities and duties of the committee, the rules for selecting its members, the means of their nomination, the term of their membership, their remunerations, and the mechanism of appointing temporary members in case a seat in the committee becomes vacant". Additionally, Article 54(d) of the SRCG 2017 prohibits a person who has worked in the finance department of the company, external auditor during the preceding 2 years or executive management from being a member of the audit committee. Another remarkable development brought by SRCG 2017 was that, under Article 58 of the SRCG 2017, an Audit Committee is required to devise a means of allowing the employees of the Company to confidentially provide their remarks on any incorrectness in the financial or other reports of the Company.

Moreover, Article 56 of the SRCG 2017 provides that in a situation where a "conflict arises between the recommendations of the audit committee and the Board resolutions, or where the Board refuses to put the committee's recommendations into action such as appointing or dismissing the external auditor or determining its remuneration" among others shall give justifications and the reasons for not complying with audit committee's recommendations.

#### *E. Stakeholders*

Under the previous SRCGs, there is no specific and dedicated Article on the relationship of the Board with Stakeholders. However, Article 83 of the SRCG 2017 requires the Boards of listed companies to produce comprehensive and written policies on their transactions with various stakeholders, including employees and

incentives given to them. These written policies should state how to safeguard their relevant rights, confidentiality of information, deal with protests on professional behaviour, social contributions, treatment of employees and dealing with non-compliance with these procedures and policies. Further, Article 85 of the SRCG 2017 requires the documentation of employee incentive schemes and pay outs. Distinct policies governing social responsibilities, professional and ethical corporate standards and social initiatives should be made available.

#### *F. General Disclosures and Transparency*

Another important development of SRCG is that, Article 89 of the SRCG 2017 requires a company to reveal and present the current and perfect information to the corporation's various stakeholders as mandated by the Companies Law and the Capital Market Law. The board must preserve rules on information disclosure, and offer an unvarying Board report along with that of the audit committee's report and frequently preserve information on the company's website (Article 90 of the SRCG 2017). Article 90(8) of the SRCG 2017 mandates the "remuneration of the Board members and Executive Management" should be disclosed in accordance with the standard template in the Regulations. The records of the company such as minutes, reports, documents and other papers should be preserved for a period of 10 years, or longer especially when there is a pending trial in court (Article 96 of the SRCG 2017).

With regards to the notice of the meeting of the General Assembly, Article 13(d) of the SRCG 2017 states that the place, date, and agenda of the said meeting shall be broadcasted at least 10 days before the date of the meeting. Further, the invitation shall be made available on the website of the, Company's website Exchange and in a daily newspaper which should be circulated in the area where the Corporation's head office is located. Article 13(d) of the SRCG states further that the Corporation may invite the "General and Special Shareholders' Assemblies" to assemble by means of modern technologies.

#### **4. SAUDI CODE ON CORPORATE GOVERNANCE 2017: PENDING ISSUES AND CONCERNS**

Corporate governance conveys a healthier administration and more judicious distribution of corporation's resources which improve corporate performance, and the earnings arising from this improved performance will nurture to upsurge the value of shareholdings. Despite the fact that the CMA has issued SRCG 2017 in order to cure the defect of the earlier SRCG still, there are other pending issues and concerns that are not in conformity with the international best practices in corporate governance.

One of the concerns is the issue of the long tenure of directors. Meaning to say, in the event where a company wants to retain an Independent Director beyond 9 years, what will be the procedure for his/her re-appointment vis-a-vis the independence of the Board. The SRCG 2017 is silent as to the procedure to be followed in re-appointing an Independent Director beyond 9 years. In some jurisdictions such as Malaysia, the Malaysian Code on Corporate Governance (MCCG) 2017 depresses an Independent Director from serving beyond 9 years. In the event where a company wants to retain an Independent Director beyond 9 years, shareholders' endorsement is required, whereas retaining an Independent Director beyond 12 years will require shareholders' endorsement through the "two-tier voting process" (Practices 4.2 & 4.3 of Principle A Board Composition II MCCG 2017). Another issue is that, Article 13(d) of the SRCG 2017 provides that the place, date, and agenda of the General Assembly's meeting shall be broadcasted or communicated at least 10 days before the date of the meeting. Such notice is insufficient, especially where members have tight schedules. It is important to give sufficient time or notice like 28 days so as to enable the participants to reschedule their commitments (where necessary) in order to attend the meeting.

Furthermore, Hill *et al.* (2015) observe that one of the main weaknesses of SRCG involves the definition of independence particularly in respect of the definition of a "relative". The SRCG 2006 define "relative as a first-degree relative, which includes father, mother, spouse, or child". According to Hill *et al.* (2015) this definition neglects other closely linked family members such as uncles, siblings, cousins or aunts. However, the SRCG 2017

incorporates siblings within the definition of a relative but still does not include uncles, aunts and cousins. It is important to note that Family relationships are strong in Saudi Arabia, making companies still look like family businesses. The authors of this study align their thought with Hill *et al.* (2015) that relatives serving simultaneously on boards or committees of the board may influence decision-making or lead to conflicts of interest.

Besides, Hill *et al.* (2015) opine that there are benefits of having female representation in the board room because of their representation may result in “greater innovation through diversity of thought, a focus on the social philanthropy of firms’ activities, and development of the Board through a keen focus on performance results.” Norway as a leading nation in terms of the number of women serving on board, Nielsen and Huse (2010) considered the contributions of women as members of the board. Their findings reveal that the representation of women as Board Members increases board development activities, and reduced the level of conflict. Further, Nielsen and Huse (2010) added that these consequences are accredited mainly to leadership styles more projecting in female leaders, which can be translated to other cultures.

In a related study, Branson (2012) states numerous benefits to corporations for having women among the directors of a company. Among the benefits of having women on board include: results in constructive role models for women in the intermediate and lower ranks of companies; brings boardroom diversity aids in avoidance of “groupthink,” or the phenomenon where a desire for conformity or harmony in the group results in an illogical or dysfunctional decision-making result. It also brings about “market reciprocity” and high performance, especially where the target markets include women; and female representation on boards is in conformity with the international laws and conventions by upholding equal job opportunities for men and women (Branson, 2012). Therefore, these benefits mentioned above for having women on the Board are lacking in Saudi Arabia corporate sector. This is because the SRCG 2017 does not prescribe certain quota to women regarding Board and Senior Management positions as obtained in other jurisdictions. For instance, Norway introduced a ground breaking quota for women on Board with 40.9%; then followed by Sweden (27%); Finland (26.8%); UK and South Africa (17%); USA (16.9%) among others (Hill *et al.*, 2015). Similarly, in promoting gender diversity agenda in Malaysian corporate sector, the new Malaysian Code on corporate governance 2017 requires each company to make efforts to guarantee that “women candidates” are included in its employment exercise for Board and Senior Management Positions (Guidance 4.4 of the Principle A Board Composition II MCCG 2017). The Malaysian Code on corporate governance 2017 further requires the Board of large companies to have at least 30% women directors (Guidance 4.5 of the Principle a Board Composition II MCCG 2017).

## 5. CONCLUSION

Saudi Arabia amended its Regulations on corporate governance in 2017 for the purpose of promoting accountability, transparency and stewardship of investors’ capital. The 2017 amendment incorporates some improvements into corporate governance and replaces the previous version of the long overdue regulation of 1965. Inspired by many corporate governance improvements around the world, this new Code will strengthen the significance of good governance as a condition precedent for attaining good financial management in Saudi Arabia. Saudi Arabia is among the countries that have a potential for huge foreign investments due to its plan of diversifying its economy (Vision 2030). Best practices of corporate governance are essential in order to enhance corporate performance. The discussion highlights that the SRCG 2017 provides board members and shareholders with better rights, greater clarity and more transparent as to their own roles and responsibilities than ever before. The finding further also illustrates that the SRCG framework is to modernize and develop Regulations that will enhance the Saudi Arabian economy and capital market; as well as improving accountability of Saudi listed company’s Executives and Board members. In furtherance of that, CMA has taken significant steps toward that end and keeping up-to-date the SRCG. These efforts are to enhance Saudi Arabia’s economic reputation so that it would sustain its economic status and characteristics among its peers. Regardless of these efforts and the changes brought

under SRCG 2017 as highlighted above, still there are pending issues and concerns as identified above that need to be addressed. Addressing these identified issues and concerns will go a long way in meeting the objectives of the CMA; reflect the conventional developments on the corporate sector, upgrading the Saudi Arabian corporate reputation; enhance corporate performance and provide an enabling environment for the prospective investors to invest. At the same time, the efforts should be continuous and not merely relying on a one-size-fits-all approach to complex corporations in Saudi Arabia. Saudi Arabia needs to develop its own model of corporate governance to allow each corporation and their constituents to enforce good corporate governance in a way which make sense for them.

**Funding:** This study received no specific financial support.

**Competing Interests:** The authors declare that they have no competing interests.

**Contributors/Acknowledgement:** Both authors contributed equally to the conception and design of the study.

## REFERENCES

- Al-Harkan, A.A., 2005. An investigation into the emerging corporate governance framework in Saudi Arabia. PhD Thesis, Cardiff Business School, University of Cardiff.
- Al Kahtani, F.S., 2013. Current practices of Saudi corporate governance: A case for reform. A Thesis Submitted for the Degree of Doctor of Philosophy in School of Law, Brunel University.
- Al Mulhim, A.B., 2014. An investigation into the relationship between corporate governance and firm performance in Saudi Arabia after the reforms of 2006. Ph.D. Thesis, University of London.
- Alghamdi, S.A., 2012. Investigation into earnings management practices and the role of corporate governance and external audit in emerging markets: Empirical evidence from Saudi listed companies. PhD Thesis, Durham University.
- Alkhtani, S.S., 2010. The relevance of international financial reporting standards to Saudi Arabia: Stakeholder perspectives. PhD Thesis, University of Stirling.
- Alshehri, A., 2012. An investigation into the evolution of corporate governance and accountability in Saudi Arabia. PhD Thesis. King's College London, University of London.
- Alshowish, A.M., 2016. An evaluation of the current rules and regulatory framework of corporate governance in Saudi Arabia: a critical study in order to promote an attractive business environment. PhD Thesis, Lancaster University Basheikh.
- Basheikh, A.M., 2002. Financial reporting in Saudi Arabia and bank lending decisions. PhD Thesis, University of Portsmouth.
- Bin Harun, M.S., 2016. The impact of corporate governance and its consequences on CSR disclosure: Empirical evidence from Islamic banks in GCC countries. PhD Thesis, Plymouth University, United Kingdom.
- Branson, D.M., 2012. Initiatives to place women on corporate boards of directors – a global snapshot. *Journal of Corporation Law*, 37(4): 793-814.
- Clarke, T., 2007. *International corporate governance: A comparative approach*. U. K & New York: Routledge.
- Demirag, I.S. and J.F. Solomon, 2003. Guest editorial: Developments in international corporate governance and the impact of recent events. *Corporate Governance: An International Review*, 11(1): 1-7. Available at: <https://doi.org/10.1111/1467-8683.00297>.
- Falgi, K.I., 2009. *Corporate governance in Saudi Arabia: A stakeholder perspective*. PhD Thesis, University of Dundee.
- Financial Reporting Council U K, 2018. Available from <https://www.frc.org.uk> [Accessed July 24, 2018].
- Goo, S.H. and A. Carver, 2003. *Corporate governance; The Hong Kong debate*. Asia: Sweet & Maxwell.
- Hill, B., M. Lunn, W. Morrison, J. Mueller and C. Robertson, 2015. Saudi Arabia: An overview of executive compensation, board structure, and sustainability. *Drake Management Review*, 4(1/2): 20-33.
- Husseinali, A., C.F. Fah, S.M. Ramadili and T.H.S. Chowdury, 2016. Corporate governance reforms and financial reporting quality at Middle East stock markets. *International Journal of Economics, Commerce and Management*, 4(1): 121-138.

- Marai, A., O. Elghariani and V. Pavlović, 2017. Practice and effectiveness of internal corporate governance mechanisms in Saudi Arabia stock market: A review of empirical evidence. *Megatrend Revija*, 14(1): 63-82. Available at: <https://doi.org/10.5937/megrev1701063m>.
- Meteb, A.M., 2015. The importance of corporate governance in Saudi Arabia economy. *Journal of WEI Business and Economics*, 4(1): 14-27.
- Mobius, M. and D. Chan, 2000. Corporate governance in Hong Kong - gaps that need to be filled. In Chee-Keong Low (Ed.), *Financial markets in Hong Kong*. Singapore: Springer. pp: 125-140.
- Monks, R. and N. Minow, 2004. *Corporate governance*. Oxford: Blackwell Publishing.
- Nielsen, S. and M. Huse, 2010. The contribution of women on boards of directors: Going beyond the surface. *Corporate Governance: An International Review*, 18(2): 136-148. Available at: <https://doi.org/10.1111/j.1467-8683.2010.00784.x>.
- Piesse, J., R. Strange and F. Toonsi, 2012. Is there a distinctive MENA model of corporate governance? *Journal of Management and Governance*, 16(4): 645-681. Available at: <https://doi.org/10.1007/s10997-011-9182-5>.
- Ross, S., 2015. What are some examples of different corporate governance systems across the world? Available from <https://www.investopedia.com/ask/answers/051115/what-are-some-examples-different-corporate-governance-systems-across-world.asp> [Accessed April 18, 2018].
- Ruparelia, R. and A. Njuguna, 2016. The evolution of corporate governance and consequent domestication in Kenya. *International Journal of Business and Social Science*, 7(5): 153-163.
- Singh, P., 2010. Corporate governance and the importance of investors protection. *Proceedings of Tuanku Jaafar Law Conference: International Conference on Corporate Governance and Corporate Responsibility*. Malaysia: UKM. pp: 192-201.
- Tricker, R.I., 1994. *International corporate governance*. Singapore: Prentice Hall.

*Views and opinions expressed in this article are the views and opinions of the author(s), International Journal of Asian Social Science shall not be responsible or answerable for any loss, damage or liability etc. caused in relation to/arising out of the use of the content.*