

CORPORATE GOVERNANCE IN UGANDA: THE ROLE OF BANK FINANCE

A THESIS

SUBMITTED TO THE

STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES

AT THE STANFORD LAW SCHOOL,

STANFORD UNIVERSITY

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

FOR THE DEGREE OF

MASTER OF THE SCIENCE OF LAW

By

Winifred Mary Tarinyeba ©

May 2006

ABSTRACT

Neither the current literature nor empirical studies on corporate governance have paid much attention to corporate governance in Africa. In particular, there has been no attempt to explore the potential for alternative institutions, which may perform the functional role of law in fostering sound corporate governance practices.

This study seeks to examine the role of informal mechanisms of control, specifically bank finance, in shaping and influencing corporate governance in Uganda. It involves both a conceptual review of the literature on corporate governance systems and an empirical component involving 30 public companies and 6 banks in Uganda. Based on my research, I found that company law in Uganda is extremely weak and enforcement inadequate. In addition, the ownership of companies is highly concentrated and companies predominantly raise external finance from banks. Therefore, as in many jurisdictions, banks in Uganda are a part of the corporate governance system. They are able to deter the improper conduct of corporate insiders, ensure compliance with core company law obligations, such as keeping proper books of accounts and audits. However, as opposed to other jurisdictions, such as Germany, where the governance role of banks for a long time has centered on the fact that banks hold significant stock in corporations and as such, are able to exert their influence, banks in Uganda are not permitted to hold stock in non-financial firms. In addition, while the traditional role and influence of banks is gradually declining in Germany, banks are likely to remain at the center of the corporate governance system in Uganda, because of the significance of bank finance compared to other forms of corporate finance.

Scholars have long traced the trajectory of law, finance and governance. Legal centrists, in particular, have advanced the “law matters” theory— that the nature of a legal system, its legal rules and quality of enforcement are fundamental in shaping corporate governance systems. In contrast, there are jurisdictions in which legal rules or formal mechanisms of control have not played a significant governance role; instead, informal mechanisms have performed the functional role of law. As a result, the extent to which

either formal or informal mechanisms of control shape and influence corporate governance varies across jurisdictions. Informal mechanisms are particularly important in circumstances in which legal rules and enforcement institutions are inadequate to support a sound governance system. This research seeks to explore the role and impact of informal mechanisms of control, specifically bank finance, in shaping corporate governance in Uganda.