



Corporate Governance of Open and Distance Learning (ODL) Institutions: Special Reference to Open University Malaysia

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Corporate governance refers to a system that controls the relationship between the company (board of directors / director/ management team) and stakeholders. The corporate failures of Enron, Arthur Andersen, Worldcom, Parmalat, Kirch, Grand Tibidabo, Royal Dutch Shell and many others are claimed to be related to weak or a lack of corporate governance. In the private education industry, open and distance learning (ODL) methods have become increasingly popular. In Asia itself, there are seven out of eleven mega universities (universities with over 100,000 active students in degree-level courses) in the world. These include Allama Iqbal Open University, Pakistan, Open University of China, Indira Gandhi National Open University, Sukhothai Thammathirat Open University, Thailand, Universitas Terbuka, Indonesia, and Korea National Open University. In Malaysia, ODL is also offered by the private universities such as the Open University Malaysia (OUM), Wawasan Open University (WOU), Universiti Tun Abdul Razak (UNIRAZAK) and Asia eUniversity (AeU). Different from most of the public universities which are not a body corporate, all ODL institutions in Malaysia are companies and therefore subjected to good and proper corporate governance for sustainability of the business. This paper examines the corporate structure of ODL institutions with special reference to OUM, which is the first ODL institution in Malaysia. The main objective of this paper is to analyse the governance framework which is applicable to ODL institutions. The research methodologies adopted by this paper are doctrinal and statutory analysis.



Key words: *Corporate Governance, Open and Distance Learning, OUM.*

Introduction

Higher educational institutions (HEIs) are among the most important contributors to the developed nation vision of any country. This is due to the fact that the higher educational institutions (universities) are considered as important producers of knowledge (Reichert, 2006) and therefore become the key institutions in a knowledge based economy. It is commonly viewed in Asia that higher education is more than the provision of a public good but is also a strategic move toward greater growth and social solidarity (Asian Development Bank, 2012). For Malaysia, the universities' role in the development of human and intellectual capital is one of the key focuses of the Ninth Malaysian Plan 2006–2010, which approximately 50 billion ringgit was allocated to in education infrastructure (Asian Development Bank, 2012). The Malaysian education sector plays a very important role towards attaining the developed nation mission in 2020. Currently, Malaysia has 20 public universities, 46 private universities and nine foreign university branch campuses; 32 active private university colleges and 388 private colleges. In addition to that, there are 33 polytechnics' and 92 Community Colleges (Senarai, 2017). These higher educational institutions (HEIs) offer a wide range of tertiary qualifications at affordable prices.

Vincent-Lanrin (2004) identified four features that have a strong impact on the current trends of university. First, tertiary education systems have become increasingly large and encompass a variety of needs. Second, the massification of education, by a shift from elite to mass provision of education, has resulted in increased student numbers and diverse programmes. Thus, the missions and the positions of the university in society has evolved and needs to be considered. Third, issues are being raised on the different directions that tertiary education systems take in a more globalized and literalized world. Fourth, information and communication technologies have opened new avenues for teaching and research in tertiary education (Norzaini, et al., 2010). This is evidenced by the scenario nowadays where one of the popular modes of learning is through open and distance education. This can be seen by the establishment of open universities in almost all of the Asian countries. In Asia itself, there are seven out of eleven mega universities (universities with over 100,000 active students in degree-level courses). These include Allama Iqbal Open University (AIU - Pakistan), Anadolu University (Anadolu-Turkey), China Central Radio and TV University (CCRTVU –



China, (currently known as the Open University of China), Indira Gandhi National Open University (IGNOU - India), Sukhothai Thammathirat Open University (STOU - Thailand), Universitas Terbuka (UT - Indonesia) and Korea National Open University (KNOU - Korea).

In order to cater to the needs and demands of society, currently in Malaysia there are higher learning institutions that offer open and distance learning modes of study to their students. The private higher educational institutions that offer this mode of study, and is granted Open and Distance Learning (ODL) status by the government, are Open University Malaysia (OUM), Wawasan Open University (WOU), Universiti Tun Abdul Razak (UNIRAZAK), Asia e-University (AeU), Al-Madinah International University (MEDIU) and International Centre for Education in Islamic Finance (INCEIF) (MOHE, 2011). Besides these institutions, some of the public higher educational institutions also offering distance learning programs including Universiti Sains Malaysia (USM), Universiti Kebangsaan Malaysia (UKM) and Universiti Putra Malaysia (UPM).

Corporate Governance and Educational Institutions

"Governance" means the process of decision-making and the process by which decisions are implemented (or not implemented). Governance can be used in several contexts such as corporate governance, international governance, national governance and local governance (UNESCAP. 2009).

The institute on Governance defines governance as the interactions among structures, processes and traditions that determine how power and responsibilities are exercised, how decisions are taken, and how citizens or other stakeholders have their say. Fundamentally, it is about power, relationships and accountability: who has influence, who decides what, and how decision-makers are held accountable.

The term corporate governance refers to how an organisation is formally governed and managed. According to Oxford University Gazette (2006), the term 'governance' refers to the processes of decision-making within an institution [which] ... enable an institution to set its policies and objectives, to achieve them, and to monitor its progress towards their achievement. Corporate governance deals with the ways to control management, balancing the interest of all stakeholders and other parties who can be affected by the corporation's conduct in order to ensure responsible behaviour by corporations and to achieve the maximum level of efficiency and profitability for the corporation (Jean J. du Plessis, 2005). The academic, professional, and policy field focused on how business institutions



must be ruled, directed, and accounted for the welfare of all people involved (Artero, 2007).

With regards to educational institutions, John Hall and Oliver Hyamas (1998) are of the view that the concept of governance is about checks and balance within the HEI to ensure that it is well managed, about the allocation of responsibility and power to fulfil those responsibilities and about duties. It links with the concept of trusteeship and the conduct of meetings.

Governance in higher education usually refers to the structure and process for decision making at the institutional level or system level (Mark, 2013). It may also refer to internal management structures, decision making arrangements and leadership roles and the relationships between these function and the governing boards. Robin (2013) describes corporate governance as the conformance framework of an organisation, which is a key component of university governance. Like other organisations, corporate governance within universities is primarily concerned with accountability and assurance as well as the protection of organisational resources.

The role to rule and direct the institution is played by the ultimate decision maker's, i.e the board of directors, in order to control management. Usually, the board of directors receives certain powers from shareholders and then delegate authority to the management of the institution, but they can never delegate responsibility.

Governance is not only where to go but also who should be involved in decision making and in what capacity. In attaining the decisions, the actors should apply all the governing principles of corporate governance i.e, transparency, responsibility and accountability.

Open and Distance Learning (ODL)

The growth of distance learning in Malaysia began in the early 1970s, through the off campus program in University of Science Malaysia (USM). In 1995, Masters in Family Medicine of National University of Malaysia (UKM) received a Commonwealth of Learning (COL) and ICDE award for best practice in distance learning (Robin and Steve, 2004).

'E-learning' and 'distance learning' can be used interchangeably. 'E-learning' means 'learning' through electronic means. There is no definite definition of open and distance learning (COL, 2000). There are various approaches to define the term. The COL summarises the characteristics that are commonly quoted by the definitions as follows:



- separation of teacher and learner in time or place, or in both time and place;
- institutional accreditation; that is, learning is accredited or certified by some institution or agency. This type of learning is distinct from learning through your own effort without the official recognition of a learning institution;
- use of mixed-media courseware, including print, radio and television broadcasts, video and audio cassettes, computer-based learning and telecommunications. Courseware tends to be pre-tested and validated before use;
- two-way communication allows learners and tutors to interact as distinguished from the passive receipt of broadcast signals. Communication can be synchronous or asynchronous;
- possibility of face-to-face meetings for tutorials, learner–learner interaction, library study and laboratory or practice sessions; and
- use of industrialised processes; that is, in large-scale open and distance learning operations, labour is divided and tasks are assigned to various staff who work together in course development teams.

For Malaysia, the definition of distance education is provided under S2 of the Malaysian Private Higher Educational Institutions Act 1996 which provides:

“distance education” means instruction or training on or teaching of higher education—

- (a) exclusively through the medium of electronics;
- (b) exclusively through correspondence;
- (c) partly through the medium of electronics and partly through correspondence and other methods of instruction, training or teaching; or
- (d) partly through the medium of electronics and partly through correspondence or other methods of instruction, training or teaching

The concept of open and distance education is also related to the concept of lifelong learning. ‘Lifelong learning’ refers to a situation where students no longer find it necessary to stop working, nor to leave the workplace, in order to be able to pursue further studies. Therefore, many students will be able to follow university courses from home. E-learning is a chance for lifelong education to become a reality.

Legal and Regulatory Governance Framework for HEI in Malaysia

This section attempts to answer the research question: (i) What are the legal and regulatory framework governing the higher educational institutions in Malaysia, especially ODL



institutions. Up to 1990, there was clear separation of the higher educational system in Malaysia where, the higher education was primarily provided by the public sector. While the private sector was very active in the education sector, its involvement in the provision of higher education was very minimal (Ettien, 2018). In other words, higher education in Malaysia before the mid-1980s was not diversified, but in the late 1980s, the trend towards diversification in the provision of higher education became very evident. Foreign universities and colleges were actively involved with local partners in offering academic and technical programmes in Malaysia. By the early 1990s, the important role of the private providers of higher education in the Malaysian higher education system was very clear. The educational reforms governing both public and private higher education in Malaysia were carried out in 1996 due to the intensification of the globalisation process and the internationalisation of higher education, where the higher education system seemed incapable of coping with the demands of transnational higher education. Due to this fact, several statutes were introduced in 1995-1996 which provides necessary policy and legal frameworks for the restructuring of private higher education system, as well as public higher education system (Ezati, Madanda & Ahikire 2018). These Acts are (i) the Education Act 1996 (Amendment to the Education Act 1961), (ii) the Universities and University Colleges Act 1971, (iii) the Private Higher Educational Institutions Act 1996, (iv) the National Council of Higher Education Act 1996 and (v) the Malaysian Qualification Agency Act 1996.

Open University Malaysia

In 1998, a consortium of eleven public universities created a company, namely Multimedia Technology Enhancement Operations Sdn Bhd (**METEOR**) to play an important role in realizing the country's vision of achieving the status of an industrialized nation by the year 2020. The eleven Public Universities are:

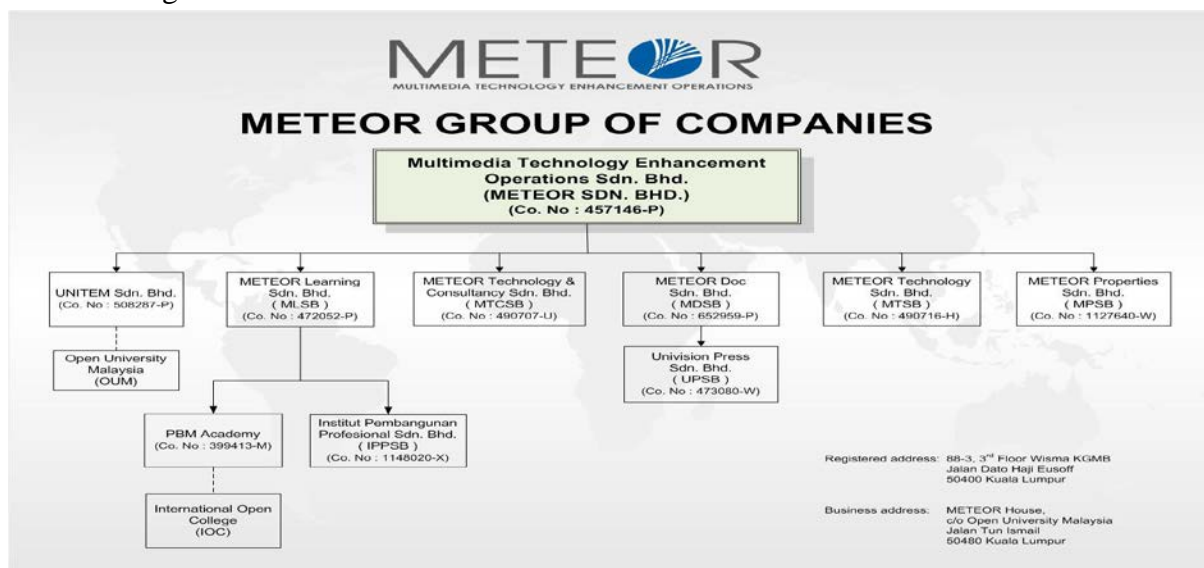
- i) Universiti Malaya (UM)
- ii) Universiti Kebangsaan Malaysia (UKM)
- iii) Universiti Teknologi Malaysia (UTM)
- iv) Universiti Utara Malaysia (UUM)
- v) Universiti Sains Malaysia (USM)
- vi) Universiti Putra Malaysia (UPM)
- vii) Universiti Islam Antarabangsa Malaysia (UIAM)
- viii) Universiti Malaysia Sarawak (UNIMAS)
- ix) Universiti Malaysia Sabah (UMS)
- x) Universiti Pendidikan Sultan Idris (UPSI)

xi) Universiti Teknologi MARA (UiTM)¹

METEOR's main aim is to provide comprehensive and enhanced technology solutions to all industries, focusing on areas such as learning, research and consultancy (Gjonbalaj & Gjoka 2018). METEOR was incorporated as a company under the Companies Act 1965 on 23 January 1998. In 1999, METEOR was asked by the Ministry of Education (MOE) to form UNITEM Sdn Bhd (UNITEM), which was then incorporated as a private limited company (limited by shares), under the Companies Act 1965 on 20 February 2000. The Memorandum of Association (MOA) of UNITEM provides that the objects for which a company is established are among others for the establishment and management of private educational institutions and the commercialization of research and development and educational advancement related matters.

Due to this fact, Open University Malaysia (OUM) (formerly known as UNITEM) then was established in August 2000 followed by its official launch on 26 August 2002 by the then Prime Minister of Malaysia YAB Dato Seri Dr. Mahathir Mohamad. OUM enrolled its first students in August 2001 and it is expected that OUM will ultimately take overall distance learning programs from the public universities and will deliver open and e-learning opportunities throughout Southeast Asia (Robin and Steve, 2004).

Table 2: Organizational Chart of METEOR

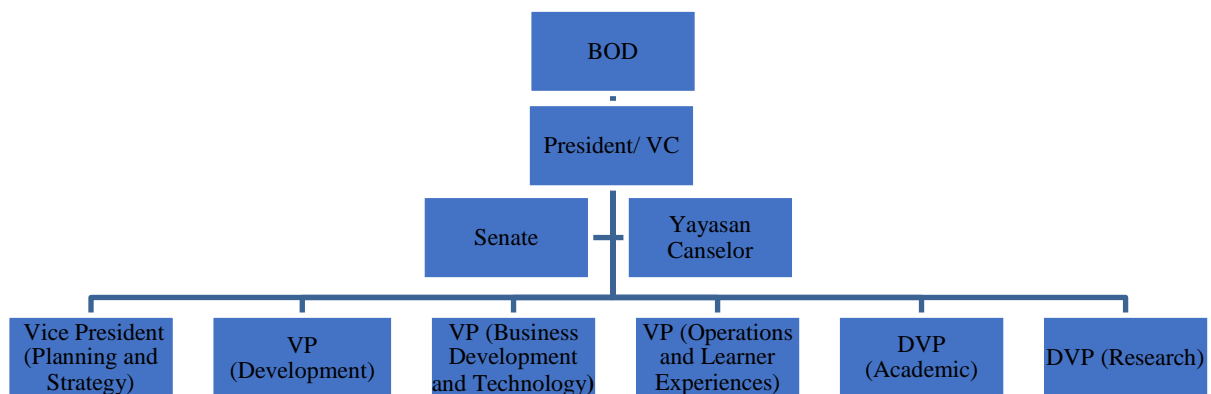


¹ <http://meteor.com.my/index.php?c=oum&v=main&domid=1&lang=eng>

From the above chart, METEOR has many subsidiary companies which are:

- i) METEOR Technology & Consultancy Services Sdn Bhd, which main business is to provide consultancy and services related to IT and technology
- ii) METEOR Learning Sdn Bhd; provides consultancy related to training and executive and full time programs
- iii) METEOR Doc Sdn Bhd; provides printing services and
- iv) UNITEM Sdn Bhd which was incorporated to manage OUM which provides open and distance learning programs.

Management Structure of OUM



The highest executive body in OUM is the Board of Directors (BOD), followed by President/Vice Chancellor. Thereafter are Senate and Yayasan Canselor. This is followed by (on the same level) Vice President (Planning and Strategy), Vice President (Development), Vice President (Business Development and Technology), Vice President (Operations and Learner Experiences), Deputy Vice President (Academic) and Deputy Vice President (Research).

Article 9 of the University's Constitution (Constitution) provides that OUM Authoritative Body is an executive body and shall implement all the powers given by the Constitution. The Authoritative Body consists of the Board of Directors (BOD), Senate, Faculty, Committee for Recruitment and Promotion (Pihak Berkuasa Perlantikan dan Kenaikan Pangkat), Committee for Welfare and Students Discipline (Pihak Berkuasa Kebajikan dan Disiplin Pelajar), Committee for Examination (Pihak Berkuasa Peperiksaan) and any other body appointed by the statute².

² Art 19: Statute provides that anything which the President thinks fit and can be amended and repealed by the

BOD is the highest executive body of the University and shall implement all the powers given by the Constitution.³ BOD shall consist of the following:

- a) President;
- b) Three Vice Chancellors or Rectors from any Public Higher Educational Institutions;
- c) Representative from Ministry of Higher Education, Malaysia; and
- d) Members appointed on the advice or nominated by the President.⁴

Part V of the Constitution clearly provides financial provisions of the University. The BOD is given power to regulate the financial matters of the University.⁵

Corporate Governance in OUM

METEOR and UNITEM Sdn Bhd were incorporated under the Companies Act 1965. Therefore, they are subjected to the provisions under the Companies Act 1965 (now, under the Companies Act 2016) and also their MoA and AoA. OUM is established and managed by UNITEM Sdn Bhd as required by the PHEI Act 1996. Being a private higher educational institution, OUM is subjected to the provisions of PHEI Act 1996 and governed by its Constitution. Like other organisation, principles of good governance are also applicable to OUM in order to sustain its business, i.e open and distance learning programs.

Various parties are expected to implement the principles of good governance particularly in decision making. In many cases, the director(s) and management team will be directly responsible for the responsibility, transparency and accountability requirements. Therefore, it is important to identify who the decision makers are in OUM.

Being a separate entity upon its incorporation, shareholders of a company cannot in law control the directors directly but instead operate indirectly through two major organs, i.e the shareholder's meeting and the board of directors' meeting. This is supported by Zuhairah (2011) where she mentioned that:

“Under company law, the decision making organ is divided into two i.e the BOD and

President.

³ Art 10

⁴ Refer Appendix 3

⁵ Part V consist of Art 26 – Art 34



members. The BOD decides for the company through the board's meetings and the members decide through the company's meetings that is Annual General Meeting (AGM) or Extraordinary General Meeting”.

It can be concluded that the decision makers can be induced from the corporate structure of the organisation itself. As for OUM, for the daily management decisions, the decision makers can be:

- President,
- Authoritative Body (except BOD) – Composition and powers shall be provided by BOD – Art 9 (3),
- Art 14 as for promotion exercises, the BOD may delegate the power to President to promote any of OUM staff except for SVP and VP.
- Senate – the highest academic body of OUM- responsibilities: to general orders regarding teaching and learning, academic programs, research and examination, awarding academic awards including degree, diploma, cert and any other academic awards.

Conclusion

All ODL institutions in Malaysia are private and are for profit organisations with a corporate body structure. Being corporate bodies, all the ODL institutions are subjected to the good and proper corporate governance structure for sustainability of the business. In addition to that, being private institutions, which solely depend on their own source of income, sustainability of business and maintaining the institutions is very important. Therefore, the institutions have to really practice and have a good and proper governance structure which conforms to the legal regulatory framework. Zuhairah (2011) is of the view that all organisations, including higher learning institutions, be it public or private, exercising corporate governance practices to ensure long term business success (Zuhairah, 2011).

This paper highlighted the framework of corporate governance structures of OUM, one of the ODL private institutions in Malaysia. The OUM structure might not be similar to other ODL institutions in Malaysia. In some other countries the education sector already has a code or guidelines related to governance. For example, in Australia, The National Framework for Governance of Education was introduced ,in 2004, and for the USA, The Association of Governing Bodies of Colleges and Universities is already active. Future study should be carried out to look into and investigate the national framework for private higher educational institutions in Malaysia especially for ODL institutions.



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