

The Role of the Founder in the Future of Private Organization that has gone Public: The Case of CAL Bank, Ghana

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Abstract

What happens to a founding managing director after an organization “goes public” has not received much attention in the literature, however, this issue is becoming more common in developing countries, particularly in Africa where unusual confluence of forces occurs. First, entrepreneurship is actively encouraged by the government. Second, privately founded organizations are “going public” as a means to raise capital and expand, and third founders of organizations because of cultural influences are somewhat paternalistic (see Bawayo, 2009) toward the organizations they founded and want to continue to “manage things” even after the organization has “gone public”. This study examines one such case in Ghana and discusses the insight it offers.

Introduction

This study examines the continuing role of a founder of a business organization after it has gone public. Even though it is a case study of an incident that occurred in Ghana, the insights gained from the study are invaluable to the literature on entrepreneurship and corporate governance.

The governments of many developing countries, particularly in Africa, in an effort to “jumpstart” their economies and reduce the high rate of unemployment, have embarked on promoting entrepreneurship (Gibb, 2011; Hebert and Link, 1989), entrepreneurship education (Lee and Wong, 2003; Uddin and Bose, 2011; Jusoh and Koku 2016) and the liberalization of certain sectors of the economy which used to be exclusive province of the government. These include, but are not limited to areas such as tertiary education and banking. While this effort in Ghana has been lauded by many international agencies such as the International Monetary Fund as a positive step, it appears the laws in many countries including Ghana have not kept up with the economic and legal challenges that come along with these “liberalizations” efforts. This is particularly true in the area of corporate laws, corporate governance, and the laws that govern the banking sector.

This study which highlights one of such cases in Ghana is an important study for several reasons. First, because Ghana is the first African nation to be independent from Britain its examples are often emulated not only by other African countries, but also by many other and ex-

colonies of Britain. Second, because of its colonial heritage, Ghana shares similar legal framework, procedures and laws with all other ex-colonies, many of whom may be suffering from the same or similar problems. Hence, how Ghana deals with the problem may become instructive to other nations.

Background

The literature on entrepreneurship lists amongst other things the joys of creation, personal traits and the love of challenge as some of the motivators of entrepreneurs (Douglas and Shepherd, 2002). However, several reasons including the need for professional managers (Alchian, and Demsetz, 1972; Fama, 1980; Jensen and Meckling, 1976), or the emergence of other activities that make the founder happy or happier (Coase, 1937) may eventually lead to the separation of managers from the owner(s) who founded the organization. The problems associated with the separation of managers from the owners (agency problems) have received an extensive coverage in the literature (Jensen and Meckling, 1976; Beatty and Zajac, 1984). It is interesting to note however that the fundamental root of agency problems can also be traced to the size of the organization (Coase, 1937). Often, it is the case that the organization is getting too large and cannot be effectively handled by the owner-manager and therefore other professional managers are hired, or as the case is with the subject of this study, the owner-manager wants the organization (a bank) to become larger (in terms of financial capability) so that it can undertake several other activities that a full-fledged financial institution is allowed to undertake.

CAL Bank was founded in 1990 by Mr. Afare Apeadu Donkor as a privately-held financial institution. The organization and its founder have won several awards for innovation and leadership in management over a period of 14 years – from 1990 to 2004. In 2004 the founder-manager decided to go public in order to raise money and have access to capital so that the organization could take advantage of other economic opportunities that the owner saw on the horizon. Oil and gas had just been discovered in Ghana's territorial waters and many, including the founder-manager of Cal Bank, thought it meant many more economic opportunities. For this sole reason, which was confirmed later by the founder-manager, in an interview for this study, he (the owner-manager) decided that it was best to "go-public" with the company. In hindsight, he may have regretted this decision as it was a move that lead to his personal troubles.

"Going public" with an organization means that the organization which was previously privately held makes an initial public offering (IPO) of its shares. It allows an organization such as CAL Bank to have access to capital which was the founder-manager's primary objective. However, it also attracted investors who were not necessarily sympathetic to his role or did not share his vision for the bank. Thus, the pursuit of capital ended up with his eventual ouster from the bank that he founded. Some of the issues we tried to unravel in this study are whether any laws were broken with his ouster and whether other legal means were available for the founder manager to raise funds or to preserve his position?

Methodology

We use the case method approach (Eisenhardt, 1989) in which many of the important role players have been interviewed. Prominent amongst these individuals are the 1) original founder of the CAL Bank (a financial institution) who served as its managing director (MD) until he was ousted after the bank went public, 2) the new Managing Director (Mr. Frank Adu Jnr.) who

became the MD after the bank went public, 3) the legal secretary of the bank (the bank's attorney), and 4) a disinterested third party attorney of corporate law in Ghana.

Even though a series of questions were sent to the interviewees ahead of time in order to aid them in preparing for the interview, open-ended questions were primarily used for the interview. The open-ended question format is best used in a study such as this since it allows for follow-up questions and opportunities to probe further. All the interviews which lasted for about ninety minutes each were recorded and content analyzed.

Furthermore, secondary sources which consist primarily of written documents such as the corporate annual reports and newspaper articles were also analyzed for the study.

Analysis and Results

It was evident from our interview with founder- manager that he sought to safeguard his position as the Managing Director of the organization (CAL Bank) after the organization has gone public by becoming a single individual person with largest percentage of the bank's shares (10.8%). This was corroborated with public records (see Table 1 below).

However, being the single individual person with largest percentage of the bank's shares did not immunize Mr. Afare Apeadu Donkor from ouster. First, he held only 10.8 percent of the bank's shares hence holders of the remaining 88.2% percent could ouster him if they acted in unison. Second, the ouster of the founder-manager was based on an allegation of impermissible self-dealing and fraudulently granting himself loans to purchase his initial shares in the bank when the bank went public. He was also alleged to have taken unauthorized loans from the bank to acquire a real estate, and allegedly approved loans in the names of Blackwood Hodge and Vanguard Assurance (other private companies) without the knowledge of these companies.

These were serious allegations that violated section 41 (c) of the then banking code of Ghana 1989 (PNDC 225) which, amongst other things, disqualifies a director of a bank or any financial institution from continuing to serve as director of a bank or any other financial institution, where he/she was adjudged bankrupt, or had suspended payment to, or compounded with, his creditors. The directors of CAL bank, as required by law, properly notified authorities of Bank of Ghana, the legal entity, which is empowered to supervise the activities of financial institutions in the country. The Bank of Ghana after its investigations removed the founder-manager (Mr. Afare Apeadu Donkor) as the bank's MD. However, the founder-manager in an interview for this study asserted that the allegations were false and made-up by his detractors. He may have been vindicated by a court of law which held in 2008 that the actions of the Bank Ghana were improper. This was also corroborated with newspaper reports (see Yeboah, 2008, see also Setorwo, 2008 in the *Daily Graphic* – the largest circulating daily newspaper in Ghana).

The founder- manager based on ruling from the court and on Section 184 (2) of the Company Code (of Ghana) which, amongst other things, provides that a Company's regulations may lawfully provide for the termination or vacation of office in circumstances additional to those specified in the forgoing subsection. Section 185 (1) of the said code states that "subject to the provision of Section 300 of this code and to the following subsections, a company may by ordinary resolution at any general meeting remove from office all or any agreement with any director petitioned for the removal of the new MD and for his reinstatement." A request made by Mr. Afare for reinstatement as the Managing Director partly in pursuant to this section of the company code was however rejected by the board at its meeting.

The new MD in an interview for this study asserted that the founder-manager was within his right to make the petition, but the board was also within its right to reject the petition and by

rejecting Mr. Afare Donko's petition has affirmed confidence in him. Other lawyers who have been interviewed for the study agreed with the current MD.

There is no special legal provision that carves out any role for the founder-manager of a company that goes public unless, of course, the founder- manager retains over 50% of the outstanding shares. In fact, even retaining the largest percentage of individual shares in itself as did by the founder-manager of CAL Bank (who as stated held 10.8% of the outstanding shares) could not immunize him from ouster.

Conclusion and lessons learned

Some founder-managers, at some point in time either, voluntarily or involuntarily part ways with the organizations that they founded after the organization has gone public. While there are not many examples of such cases in Ghana, famous world examples include Steve Job who was ousted from Apple in 1985 (and later invited back when the badly faltered), and Bill Gates who voluntarily relinquished his position at the helm of MicroSoft in 2008.

Founder-managers generally have a vision for the organization and feel or think that they should be unconstrained to pursue this vision even after the organization has gone public. This is particularly true in many developing countries and in Ghana where the founders even feel paternalistic towards the organization that they founded (see Bawayo, 2009). Unfortunately, this unbridled vision puts the founders on collision course with other shareholders. While company laws of Ghana have not addressed the role of a founder after an organization has gone public, the organization, as a network of contracts (Jensen and Meckling, 1976), could have an enforceable contract with the founder-manager that is acceptable to both parties even if organization has gone public. This is an option in which the founder could carve out his role in the future of the company.

It is worthwhile mentioning that there are other avenues available to the founder-manager to have access to capital without going public. Inviting venture capitalists, angel investors, and other partners who are similarly minded to keep the organization private are other possibilities that must be carefully explored. The role of the founder-manager in the future of an organization that has gone public is an issue that is likely to come up more often in the near future (at least in Ghana) as the government for several reasons, particularly to reduce unemployment, continues to actively promote entrepreneurship and as many organizations that were privately held seek to expand their operations and raise funds by "going public".

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Table 1

The five (5) largest shareholders of CAL Bank are shown in the table below:

Five Largest Shareholders of CAL Bank		
Name	No. of Shares	Holding %
Social Security & National Insurance Trust (SSNIT)	43,649,526	26.10
Afare Apeadu Donkor, Mr.	18,120,000	10.84
Ofori Daniel, Mr.	13,455,045	8.05
STD Nominees (Pty) Ltd/Renaissance Capital (Cyprus) Ltd	6,006,321	3.59
Adu Jnr. Frank, Mr.	5,222,803	3.12

Table 1.1.2 CAL Bank Annual Report 2008