6.0 RESEARCH RESULTS

CORPORATE GOVERNANCE OF TENAGA NASIONAL BERHAD BEFORE AND AFTER PRIVATISATION

-A Study of Compliance and Breach of Cadbury's Code-The Code of Best Practice.-

No.	*Corporate Governance Characteristic*	*Before Privatisation*	*After Privatisation*
1.0	***The Board of Directors***		
1.1	Regular meeting, retain full and effective control over the company and monitor the executive management	Complied. From evidence it appeared to be too restrictive.	Complied. More regular but effective with the board committees.
1.2	Clearly accepted division of responsibilities at the head of the company, ensuring balance of power and authority, such that no one individual has unfettered powers of decision.	Complied. Weak representation from inside with the Treasury calling the shots	Not fully Complied. Weaker representation from inside but an unclear role between the regulator and the owners.
	Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board, with a recognised senior member	Not applicable. The chairman is non-executive.	Complied. Stronger representation from regulator and owner. Chief Executive Officer appointed by Government.
1.3	The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in board's decisions. (Note 1)	Not full complied. Too many of directors are government officers.	Complied. A better mix of qualified professionals and corporate figures.
1.4	The board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands. (Note 2)	Complied. Treasury regulations very comprehensive	Complied. With the board committees this is assured.

		on this.	
1.5	There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice if necessary, at the company's expense. (Note 3)	To be checked out. Normally on the instruction of the government.	To be checked out. There seem to be a lot of outside consultants being used lately

2.0	Non-Executive Directors		
2.1	Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct.	Breach. They bring instructions from their government departments.	Not Fully Complied. Many are nominees from Government or political parties. Views may have already been set.
2.2	The majority should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement, apart from their fees and shareholding. The fees should reflect the time which commit to the company. (Notes 4 and 5)	Complied. However, they could not stray from set government policies.	Maybe not fully complied. Most of them are either Civil servants or political nominees of the Minister of Finance or Minister of Energy, Telecommunication and Post.
2.3	Non-executive directors should be appointed for specified terms and reappointment should not be automatic. (Note 6)	Complied. Except for the chairman the rest served less than three years.	Breached. There were many who has served 4 to 9 years.
2.4	Non-executive directors should be selected through a formal process and both this process and their appointment should be a matter for the board as a whole. (Note 7)	Breached. All selected by the Government.	Breached. 6 selected by the Minister of Finance and 5 by those connected to the ruling party.

3.	***Executive Directors***		
3.1	Directors' service contracts should not exceed three years without shareholders' approval. (Note 8)	Breached. Except for the last one the others served more than 3 years.	Not Fully Complied. 1st Chief Executive Officer more than 3 years but the other directors less than 2 years.
3.2	There should be full and clear disclosure of directors' total emoluments and those of the chairman and highest- paid United Kingdom director, including pension contributions and stock options. Separate figures should be given for salary and performance related elements and the basis on which performance is measured should be explained.	Complied. Very minimal being paid out to create an incentive except for the General Manager and the Managing Director who had to perform.	Not Fully Complied. Published in the Annual Report. It is on an increasing trend.
3.3	Executive directors' pay should be subject to the recommendations of a remuneration committee made up wholly or mainly of non-executive directors. (Note 9)	Complied. Drawn out by Public Service Department and approved by the Minister of Finance.	Breach. Decided by the owner.

4.	Reporting and Controls		
4.1	It is the board's duty to present a balanced an understandable assessment of the company's position. (Note 10)	Complied.	Complied. Very comprehensive that a few awards have been won.
4.2	The board should ensure that an objective and professional relationship is maintained with the auditors.	No information.	No information.
4.3	The board should establish an audit committee of at least 3 non-executive directors with written terms of reference which deal clearly with its authority and duties.(Note 11)	Breached. There was no audit committee in National Electricity Board.	Complied. A full explanation found in the annual reports.

4.4	The directors should explain their responsibility for preparing the accounts next to a statement by the auditors about their reporting responsibilities. (Note 12)	No Information.	Complied.
4.5	The directors should report on the effectiveness of the company's system of internal control. (Note 13)	Complied. National Electricity Board's account were quite comprehensive and computerised.	Complied. New computer system being used.
4.6	The directors should report that the business is a going concern, with supporting assumptions or qualifications as necessary. (Note 13)	Complied.	Complied.

	NOTES		
	These notes include further recommendations on good practice. They do not form part of the Code.		
1.	To meet the company's recommendations on the composition of sub-committees of the board, boards will require a minimum of three non-executive directors, one of whom may be the chairman of the company provided he or she is not also its executive head. Additionally, two of the three non-executive directors should be independent in the terms set out paragraph 2.2 of the Code.	No such committees existed.	Complied. There are 5 committees formed and operational.
2.	A schedule of matters specifically reserved for decision by the full board should be given to directors on appointment and should be kept up to date. The Committee envisages that the schedule would at least include: (a) acquisition and disposal of assets of the company or its subsidiaries that are material to the company;	No Data Complied.	Complied. Term of Reference of board committees ensures this. Complied.

	(b) investments, capital projects, authority levels, treasury policies and risk management policies. The board should lay down rules to determine materially for any transaction, and should establish clearly which transactions require multiple board signatures. The board should also agree procedures to be followed when, exceptionally, decisions are required between board meetings .	Complied.	Complied.
3.	The agreed procedure should be laid down formally, for example in a Board Resolution, in the Articles, or in the Letter of Appointment.	Complied. Circulars and directives from Government.	Not enough data to confirm.
4.	It is for the board to decide in particular cases whether this definition of independence is met. Information about the relevant interests of directors should be disclosed in the Directors' Report.	This was not disclosed. Most of the directors are civil servants.	Breached. The board does not decide.
5.	The Committee regard it as good practice for non-executive directors not to participate in share option schemes and for their service as non-executive directors not to be pensionable by the company, in order to safeguard their independent position.	Complied. No shares issued outside the government.	Complied.
6.	The Letter of Appointment of the non-executive directors should set out their duties, term of office, remuneration, and its review.	No data	No data
7.	The committee regard it as good practice for a nomination committee to carry out the selection process and to make proposals to the board. A nomination committee should have a majority of non-executive directors on it and be chaired either by the chairman or a non-executive director.	Breach. Appointed by the Government.	Breached. Directors appointed by Minister of Finance.
8.	The Committee does intend that this provision should apply to existing contracts before they become due for renewal.	Not applicable.	Not applicable.
9.	Membership of the remuneration committee should be set out in the Directors' Report and its chairman should be available to answer	Complied. Done by Public Services	Breached.

	questions on remuneration principles and practice at the Annual General Meeting. Best practice is set out in PRO NED's Remuneration Committee guidelines, published in 1992.	Department	
10.	The reports and account should contain a coherent narrative, supported by the figures, of the company's performance and prospects. Balance requires that setbacks should be dealt with as well as successes. The need for the report to be readily understood emphasises that words are as important as figures.	Complied but quite conservative by today's standards.	Complied.
11.	The Committee's recommendations on audit committees are as follows:	There was no audit committee.	Complied.
	(a) They should be formally constituted as sub-committees of the main board to whom they are answerable and to whom they should report regularly; they should be given terms of reference which deal adequately with their membership , authority and duties; and they should normally meet at least twice a year.	Breached.	Complied.
	(b) There should be minimum of three members. Membership should be confined to the non-executive directors of the company and a majority of the non-executives serving on the committee should be independent of the company, as defined in paragraph 2.2 of the Code	Breached.	Complied.
	(c) The external auditor and, where an internal audit function exists, the head of internal audit should normally attend committee meetings, as should the finance director. Other members should also have the right to attend.	Breached.	Complied.
	(d) The audit committee should have a discussion with the auditors at least once a year, without executive board members present, to ensure that there are no unresolved issues of concern.	Breached.	No Data
	(e) The audit committee should have explicit	Breached.	Complied.

	authority to investigate any matters within its terms of reference, the resources which it needs to do so, and full access to information. The committee should be able to obtain outside professional advice and if necessary to invite outsiders with relevant experience to attend meetings. (f) Membership of the committee should be disclosed in the annual report and the chairman of the committee's full report.	Breached.	Complied.
12.	The statement of directors' responsibilities should cover the following points:	Complied.	Complied.
	o The legal requirement for the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company (or group) as at the end of the financial year and of the profit and loss for that period;	Complied.	Complied.
	o the responsibility of the directors for maintaining adequate accounting records, for safeguarding That assets of the company (or group), and for preventing and detecting fraud and other irregularities;	Complied.	Complied.
	o confirmation that suitable accounting policies, consistently applied and supported by reasonable and prudent judgements and estimates, have been Used in the preparation of the financial statements;	Complied.	Complied.
	o confirmation that applicable accounting standards have been followed, subject to any material departures disclosed and explained in the notes to the accounts. (This does not obviate the need for a formal statement in the notes to the accounts disclosing whether the accounts have been prepared in accordance with applicable accounting standards.) The statement should be placed immediately before the auditors' report which in future will include a separate statement (currently being developed by the Auditing Practices Board) on the responsibility of the auditors for	Complied.	Complied.

	expressing an opinion on the accounts.		
13.	The Committee notes that companies will not be able to comply with paragraphs 4.5 and 4.6 of the Code until the necessary guidance for companies has been developed as recommended in the Committee's report.	-	-
14.	The company's statement of compliance should be reviewed by the auditors in so far as it relates to paragraphs 1.4, 1.5, 2.3, 2.4, 3.1 to 3.3, and 4.3 to 4.6 of the Code.	-	-

6.1 *Analysis of measures*

In this study the test for governance is just whether TNB complies or breaches the Code of Best Practice recommended by the Cadbury's Committee. This is a simple measurement scale to apply but the result obtained is reasonably accurate because there are 43 criteria being applied. The only problem with this measure is when the company partially comply or breach. Thee degree of compliance or breach could not be determined.

Of the 43 criteria recommended it appears that they are more towards the measurement of accountability and very little on the way the organisation is governed allows the Management to drive the company forward with little interference from the Government. A measure on the degree of interference need to be constructed to make this study covers the whole concept of corporate governance.

6.2 Summary of research results

Based on the available data and testing them for compliance and breach of the Cadbury's Code-Code of Best Practice- in corporate governance, the following result was obtained:

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No.	COMPLIANCE/BREACH	***Before Privatisation***	***After Privatisation***
1.	Compliance	21	26
2.	Not Full Compliance	1	5
3.	Breach	11	6
4.	Inadequate Information	6	5
5.	Not Applicable	4	1
6.	TOTAL CRITERIA TESTED	43	43

7. CONCLUSION AND RECOMMENDATIONS

7.1 Summary and conclusions

Based on the information gathered and the test carried out on the corporate governance of Tenaga Nasional Berhad the following can be said:

1. *Management's ability to be able to drive the company free from overdue constraint covered by government interference, fear of litigation, or fear of displacement.*

Over the years this ability has been steadily eroded. The present management of Tenaga Nasional Berhad are much worse off than their predecessors in their ability to