

## Review

# Corporate governance issues and its implementation: The Nigerian experience

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### Abstract

**This paper examines the operational environment of corporate governance, and the need for corporate governance to be made compulsory and compliance enforced on limited liability companies and public institutions. Shareholders and investors should be assured of protection against the malfeasance managers. The paper also advocates the enforcement of the codes of best practices on corporate governance in Nigeria (i.e. Transparency, Due process, Quality of management, Data integrity and Disclosure Requirement).**

**Keywords:** Nigeria, Corporate governance, public institutions, shareholders, accountability.

## INTRODUCTION

Financial scandals around the world and the collapse of major corporate Institutions in USA and Europe have brought to the fore, once again, the need for the practice of good corporate governance. An important theme of corporate governance is the nature and extent of accountability of particular individuals in the organization and mechanisms that try to reduce or eliminate the principal-agent problem. There has been renewed interest in the corporate governance practices of modern corporations since 2001, particularly due to the high profile collapses of a number of large corporations, most of which involved accounting fraud. A related but separate thread of discussion focuses on the impact of corporate governance system on economic efficiency with a strong emphasis on shareholders welfare. While investors need to be protected through regulation, it is also important for the issuers of securities they invest in, to adhere to good corporate practices which enable the company to attract financial and human capital, perform efficiently and thereby perpetuate itself by generating long term economics value for its shareholders while respecting the interest of stakeholder and society at large. Countries with strong corporate governance practices attract capital inflow. Considering the current

global economic meltdown, both domestic and international investors are likely to shy away from countries that do not guarantee investor rights nor provide for adequate corporate disclosures or ensure sound board practices.

Corporate governance as a concept is viewed merely as being concerned with the structures within which a corporate entity or enterprise receives its basic orientation and direction (Rwegasira, 2000).

One of the most famous definitions of corporation governance was provided by Sir Adrian Cadbury in the report on financial aspect of corporate governance in the United Kingdom in 1992. According to Adrian, Corporate governance is “the system by which companies are directed and controlled”. In its principles of corporate governance (2004), the Organization for Economic Co-operation and Development (OECD) defined corporate governance as a set of relations between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set and the means of attaining those objectives and monitoring performance are determined. According to Oman (2001), corporate governance is the private and public institution, including laws, regulations and accepted business practices, which in the market economy; govern the relationship between corporate managers and entrepreneurs on one hand, and those who invest resources in corporations on the other.

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Okehalam and Akinboade (2003), defined corporate governance as the manner in which the power of a corporation is exercised in the stewardship of the corporation's total portfolio of assets and resources with the objective of maintaining and increasing shareholder value and satisfaction of other stakeholders in the context of its corporate mission. Corporate governance implies that companies not only maximize shareholders wealth, but balance the interest of shareholders with those of other stakeholders, employees, customers, suppliers and creditors, so as to achieve long-term sustainable value. From the different perspective of corporate governance given above, we can summarize that the term is concerned with the processes, systems, practices and procedures as well as the formal and informal rules that govern institutions and the manner in which these rules and regulations are applied and followed.

### **Theoretical framework**

Nigerian, as an emerging economy, looks to the private sector for the required quantum leap of development. A sound system of corporate governance is imperative to ensure that managers and directors of enterprises carry out their duties within a framework of accountability and transparency (Report of the Committee on Corporate Governance, 2003).

According to Monks (1996), "The challenge of corporate governance is to find a way to maximize wealth creation over time, in a manner that does not impose inappropriate cost on third parties or on society as a whole". Wealth creation includes the wealth created for employees and the community as well as investors. While inappropriate costs include agency cost imposed on investors as reflected. For example, the excessive Chief Executive Officer (CEO) pays. They also include externalized cost imposed on society at large, such as pollution and criminal behavior.

According to Osaze (2007), the whole essence of corporate governance is to assure transparency, investor protection, full disclosure of executive actions and corporate activities to stakeholders, environmental impact assessment of corporate activities, assurance of performance related to executive compensation and full disclosure of executive compensation. Corporate governance issue took centre stage after the collapse of Enron Corporation and MCI Incorporation (formerly WorldCom) in the USA and the subsequent enactment of the Sarbanes-Oxley (SOX) act No. 404 of July, 2002. In response to the failure of Enron Corporation in 2001, the 7<sup>th</sup> largest company in America at the time, Senator Paul Syprose Sarbanes, the Chairman of the Senate Banking, Housing and Urban Affairs Committee, in collaboration with congressman Michael Oxley, held a series of hearings that resulted in the passage of a bipartisan bill designed to reform the accounting industry

and restore the investor confidence that has been eroded following the collapse of Enron. The public company accounting reform and investor protection Act, also called the "Sarbanes-Oxley Act" (SOX) was signed into law on July 30<sup>th</sup> 2002 (Osaze, 2007). According to Nana and Omorokpe (2011), comparable failures in Australia (HIH, One Tel) resulted to the eventual passage of the CLERP reforms. In 2003, the committee on corporate governance of public companies in Nigeria (CCGPCN) was formed with the mandate to identify weaknesses in corporate governance practice in Nigeria and fashion out necessary changes that will improve Nigeria's corporate governance practices. Such as, the enhancing of corporate discipline, transparency and accountability.

In 2008, the Securities and Exchange Commission (SEC) inaugurated a National Committee Chaired by M. B. Mahmood for the review of the previously issued 2003 code of corporate governance for public companies in Nigeria to address its weakness and to improve the mechanism for its enforceability. The Board of SEC believes that the new code of corporate governance will ensure the highest standards of transparency, accountability and good corporate governance.

### **Corporate governance in Nigeria**

Corporate governance is not an entirely new concept in Nigeria. There are a number of corporate governance provision in the Companies and Allied Matters Act, 1990, the Bank and other Financial Institutions Act, 1991 (as amended) the Investment and Securities Act, 1999 (as amended) the Securities and Exchange Commission Act, 1988 (as amended). These laws which place the responsibility for regulating corporate governance on the CAC, SEC and CBN reflect some of the OECD principles of corporate governance following the growing concerns on issues of corporate governance and realizing the need to align with the International Best practices, the Securities and Exchange Commission (SEC) in collaboration with the corporate Affairs Commission (CAC) inaugurated a seventeen member committee to identify weaknesses in the current corporate governance practice in Nigeria and fashion out necessary changes that will improve our corporate governance practices. The final report of the committee was eventually approved by the Boards of the SEC and CAC and released as the code of best practices on corporate governance in Nigeria for public quoted companies in 2003. The code of corporate governance issued in 2003 focused on the following issues.

#### **The Board of Directors**

- Responsibilities of the Board of directors.
- Composition of the Board of directors

- Chairman and chief Executives positions
- Proceedings and frequency of meetings
- Non-Executive directors
- Executive directors
- Compensation of Board members
- Reporting and control

### **Shareholders**

- Shareholder's rights and privileges
- Institutional shareholders and shareholders activism

### **Audit committee**

- Responsibility of audit committee
- Composition of audit committee
- Qualification and experience of audit committee members
- Terms of reference of audit committee
- Meetings of audit committee

### **Responsibilities of the Board**

The Board is accountable and responsible for the performance and affairs of the company. It should define the company's strategic goals and ensure that its human and financial resources are effectively deployed to attaining those goals. The board should also ensure that the company is properly managed and to oversee the effective performance of the management in order to protect and enhance shareholder value and to meet the company's obligations to its employees and other stakeholders.

### **Composition of the Board**

The board should be of a sufficient size relative to the scale and complexity of the company's operations and be composed in such a way as to ensure diversity of experience without compromising independence, compatibility, integrity and availability of members to attend meetings. It should comprise a mix of executive and non-executive directors, headed by a chairman. The majority of Board member should be non executive directors.

### **Chairman and Chief Executive of the Board**

The Chairman of the Board should be a non-executive director. His primary responsibility is to ensure effective operation of the Board and that it works towards achiev-

ing the company's strategic objectives. He should not be involved in the day-to-day operations of the company. The position of the chairman of the Board and the chief executive officer shall be separate and held by different individuals. This is to avoid over concentration of power in one individual which may rob the Board of the required checks and balances in the discharge of its duties.

### **Proceedings and Frequency of Meetings**

To effectively perform its oversight function and monitor management performance, the Board should meet at least once every quarter. And every director should be required to attend at least two-thirds of all Board meetings.

### **Non-Executive Directors**

Non-executive directors should be persons of high caliber with broad experience, integrity and credibility. They should bring independent judgment as well as necessary scrutiny to the proposals and actions of the management on issues of strategy, performance evaluation and key appointment.

### **Executive Directors**

Executive directors should be involved in the day-to-day operations and management of the company. They should be responsible for the departments they head and should be answerable to the Board through the CEO/MD. Executive directors should not be involved in the determination of their remuneration, and they should be persons knowledgeable in relevant areas of the company's activities in addition to possessing such other qualification needed for their specific assignments or responsibilities.

### **Compensation for Board Members**

Compensation for Board of directors should be fixed by the Board and approved by shareholders in general meeting. The Board should undertake a periodic peer review of its compensation and remuneration level to ensure that the company remains competitive.

### **Reporting and Control**

In their annual report to Securities and Exchange Commission (SEC) public companies shall indicate their level of compliance with the code of corporate governance.

### **Shareholder's Rights and Privileges**

The Board should ensure that shareholders statutory and general rights are protected at all times. They should ensure that all shareholders are treated equally. No shareholder, however large his shareholding, and whether institutional or otherwise, should be given preferential treatment or superior access to information or other materials.

### **Institutional Shareholders and Shareholders Activism**

Shareholders of public companies should play a key role in good corporate governance. In particular, institutional shareholders and other shareholders with large holding should seek to positively influence the standard of corporate governance in the companies in which they invest. They should demand compliance with the principles and provisions of this code. They should seek explanations whenever they observe non-compliance with the code.

### **Responsibility of Audit Committee**

Every public company is required under section 359(3) and (4) of the CAMA 1990 to establish an audit committee. It is the responsibility of the Board to ensure that the committee is constituted in the manner stipulated and is able to effectively discharge its statutory duties and responsibilities. In addition to its statutory functions, the audit committee should assist in the oversight of the integrity of the company's financial statement, compliance with legal and other regulatory requirements, assessment of qualification and independent of external auditors, and performance of the company's internal audit function as well as that of external auditors. Members of the committee should have basic financial literacy and should be able to read financial statement. At least one member should have knowledge of accounting or financial management.

### **Composition of Audit Committee**

The composition of audit committee shall be equal number of directors and shareholders subject to maximum of six (6) members. Membership of the committee shall be by nomination from shareholders of which such nomination must be submitted to the company's secretary at least twenty-one (21) days before the date of annual general meeting (AGM).

### **Meetings of Audit Committee**

There should be as many meeting as the audit

Committee's role and responsibilities require. Smith's report recommends that there should be no fewer than three meetings during the year. Poor corporate governance had contributed to companies failures which pose serious consequences to the national economy. A survey by SEC in 2003 showed that corporate governance was at a rudimentary stage, as only about 40% of quoted companies in Nigeria had recognized codes of corporate governance in place. The code of best practices on corporate governance released by the Central Bank of Nigeria in April 2006, covers the principles and practices that promote good corporate governance. These principles and practices are; Equity ownership, Organizational structure, Quality of Board membership, Board performance appraisal, Quality of management, Reporting relationship, industry transparency, Due process, Data integrity, Disclosure requirements, Risk management and the role of Internal and External auditors.

### **Corporate irresponsibility in Nigeria**

Though the concept of corporate governance is not new in Nigeria, it is only of recent that cases of gross abused of corporate governance are reported in Nigeria. Some of these include the case of Lever Brothers Plc., under the leadership of Late Chief Rufus Giwa and Cadbury Nigeria Plc., under the leadership of Mr. Bunmi Oni. While the allegation of abused of corporate governance principles leveled against the management of Lever Brothers in the Late 1990s were well publicized, the outcome of the investigations and sanctions, if any, were not made public. On the other hand, following the investigation in the case of Cadbury Nigeria Plc., the Securities and Exchange Commission (SEC) was reported to have decided among other measures that the company should pay fines for several breaches of corporate governance codes established against it (Ahmad, 2008).

According to Sanusi (2003), the widespread of corporate Scandals and failures that were witnessed in the Late 1990s and the early 2000s had their root in dishonest management decisions and in some cases, outright cover-ups of illicit activities. These, he said, had wrecked many companies and consequently, the lives of millions of innocent citizens who had a stake in then. Other case of abuse of corporate governance are; the recent gross financial misconduct committed by the former managing directors of the Union Bank of Nigeria Plc., Oceanic Bank of Nigeria Plc., and the Intercontinental Bank of Nigeria Plc., also recently, the Directors General of the Nigerian Stock Exchange (NSE) and the Nigerian Securities and Exchange Commission (SEC) were found to have committed serious breach of corporate governance codes.

### **The principles of corporate governance**

The revised OECD principles of corporate governance

were endorsed in April 2004. The main area covered by the OECD principles includes;

**Rights and Equitable Treatment of Shareholders:** - Organization should respect the rights of shareholders and help them to exercise those rights. They can help shareholders exercise their rights by effectively communicating information that is understandable and encouraging shareholders to participate at General meetings.

**Interests of other Stakeholders:** - Organization should recognize that they have Legal and other obligations to all legitimate stakeholders, i.e. employees, customers government etc.

**Roles and Responsibility of the Board:** - The Board members have various ranges of skills and understanding to be able to deal with various business issues and the ability to review and challenge management performance.

**Integrity and Ethical Behaviours:** - Ethical and responsible decision making is not only important for public relations but it is also a necessary element in risk management and avoidance of lawsuits.

**Code of Conduct:** - Organizations should develop a code for their Directors and Executives to promote ethical and responsible decision making.

**Disclosure and Transparency:** - Organizations should clarify and make publicly known the roles and responsibilities of the Board and management, to provide shareholders with a level of accountability. They should also implement procedure to independently verify and safeguard the integrity of the company's financial reporting systems. Disclosure of material matters concerning the organization should be timely and balanced to ensure that all investors have access to clear and factual information.

## CONCLUSION

The need for corporate governance in Nigeria extends far beyond resolving problems stemming from the separation of ownership and control. Corporate governance is no longer a new concept worldwide but a norm of corporate behavior and performance expectations. Nigeria cannot differ in ensuring compliance.

Until recently, Corporate Scandals were unheard of in Nigeria and even where they were reported, no known deterrent sanctions have been meted out on the culprits. This is because Nigeria lacks the necessary political and institutional framework to enforce good corporate governance.

However, if Nigerian investors and shareholders are to be assured of protection against the malfeasance of corporate managers under the limited liability companies

and public institutions, governance must be compulsory and compliance enforced.

## RECOMMENDATIONS

Governance in any country requires transparency so that the people can effectively judge whether their interests are being served. Good corporate governance must also act in a transparent manner so that owners of companies and investors can make informed decisions about their investments.

In order for good corporate governance to have a meaningful impact in Nigeria, the necessary political will and institutional framework, including a legal system to enforce compliance must be put in place.

Second, the government should establish institute of Corporate Governance for the teaching and promoting good corporate governance, just as we have the institute of administrative college in Nigeria for the training of Administrative Officer.

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