CONTEMPORARY REGIME OF CODES OF CORPORATE GOVERNANCE IN NIGERIA: A REBIRTH THROUGH ETHICAL FRAMEWORK*

Abstract
There are two categories of laws applicable to corporate law practice, to wit: general laws/principal enactment and sector-specific laws. The regime of code of corporate governance is typically an avenue to circumvent issues, which had fallen against corporate entities, which the provisions of the principal laws do not adequately provide for. The codes are however, seen as advisory templates to be adopted by corporate bodies, hence, this article looks into selected codes of corporate governance as they relate to corporate establishments in Nigeria. Thus, the revival of corporate governance in Nigeria via the application of ethical framework is the subject of this article. It is impossible to exaggerate the significance of corporate governance in Nigeria given its profound effects on both the national economy and society at large. The article explores the Nigerian ethical foundation for corporate governance and how it has changed through time. The role of different stakeholders, including the board of directors, shareholders, regulators, and the general public, in maintaining successful corporate governance is further explored in the article. The article identifies the difficulties that remain in implementing the ethical framework and suggests solutions. The article maintains that a strong ethical framework is required to fulfil the aim of reviving corporate governance in Nigeria, which is essential for long-term economic growth and development.

Keywords: Corporate, Governance, Code, Laws and Companies

1. Introduction

It is a general law that once an organization is incorporated under the relevant laws, and following the prerequisites provisions, such organization inherits a legal personality making a legal entity. The legal personality inherited by the organization automatically makes the entity a separate entity distinct from its known or unknown owners vesting it with the abilities to sue and be sued in relation to any rights or liabilities arising from any contracts or event.[1] It follows that organization which has been duly incorporated inherits incidents or dividends of incorporation. Agreeably, the organization which has been incorporated and formed into a company is one whose being was orchestrated by some human beings. It follows that in event of rise of any liability or rights, it is the company that will sue or be sued for enforcement of any right or liability; except where there is

***Eseni Azu Udu**, Ph.D (Nigeria), Ph.D (UNIZIK), Associate Professor and Dean, Faculty of Law, Alex Ekwueme Federal University, Ndufu-Alike, Ebonyi State, Nigeria. P.O. Box 1397, Abakaliki, Ebonyi State, Nigeria. Email: udu.eseni@funai.edu.ng. Phone: 08061397135;
****Gabriel Chigozie Ezeh**, LLB, BL, LLM (UI) Postgraduate College, University of Ibadan, Nigeria. Email: gabezeh@gmail.com. Phone: 07033663011.

[1] P.P.S. Gogna, *A Textbook of Company Law: Corporate Law* (Revised Edition, Delhi: S. Chand & Co. Ltd., 2017), 112.

order of the court for lifting the veil of incorporation or for any other rights forming the exception to the rules in *Foss v. Harbottle*.[2]

A company cannot manage itself, it is human beings that will manage the affairs of the company and help in maintaining the sustainability of the company until its dissolution; thus, a 'company cannot die but can be killed'. In order to ensure that the affairs of the company are carried out in ways and manners that are not prejudicial or against the interests of the investors, the public, or government; there are laid down principles which companies incorporated under the Companies and Allied Matters Act (CAMA) in Nigeria are meant to abide under.[3] It is these principles that form the provisions and contents of corporate governance principles and ethics.

Whereas some of these principles and ethics are general for all the incorporated companies existing in Nigeria; some of them are sector specific meant to regulate certain industries and others are size specific, meant to regulate either the private limited companies (Ltd.) or the public limited company (Plc.). The spirit behind the formulation and enactments of these corporate governance principles and ethics is to prevent or minimize the risks of corporate failure, extinction of companies, loss of investments, mismanagement of resources, etc.[4] However, observations show that there have been cases of companies not adhering to the principles and ethics of corporate governance, thus leading to corporate failure at the board level or in the long run, the collapse and extinction of the companies.[5]

Corporate governance is the bedrock of any corporate establishment, this is because, it covers the principal issues that make and keep the establishment as a corporate entity. The general principles of corporate governance cover issues relating to membership, meetings, directorship and audition of a company. Corporate governance also covers the rules and regulations of meetings to be held by the company within a given period of time. It stipulates the types of meetings to include Statutory meetings;[6]Annual General Meeting[7]and Extra Ordinary General Meetings.[8]

[2] N.S.C. Ogbuanya, *Essentials of Corporate Law Practice in Nigeria*, (Novena Publishers, 2010), 78.
[3]*Ibid., (*Footnote 3) 12.
[4] R.C. Iwu-Egwuonwu, 'Behavioral Governance, Accounting and Corporate Governance Quality', (2011) 3(1) *Journal of Economics and International Finance*, 1-12.
[5] S.C. Okaro, and G.O. Okafor, 'Creative Accounting, Corporate Governance Watch Dog Institutions and Systems - thecase of Cadbury (Nig.) Plc.', (2014), available at <https://www.ssrn.com/abstract=1946441, accesssed on 4th April, 2023.
[6] Companies and Allied Matters Act, 2020, section 235.
[7]*Ibid*., (Footnote 7), section 237.
[8]*Ibid*., (Footnote 7), section 239.

Corporate governance also state the manner in which meetings are to be summoned and the manner in which decisions are to be taken at the meeting. Arguments have been offered that the most prominent aspect of corporate governance is as regards directors and secretaries. Here, corporate governance provides for who and who is qualified to be appointed or elected as the case maybe as a director or secretary; how long the person's tenure is to last, the duties and responsibilities of the person, etc.[9]

However, notwithstanding the provisions of the principal legislation regarding corporate governance; there have been series of issues which various corporate entities having been hit with, the most significant among which was the collapse of various banks and insurance companies in Nigeria, which caused economic hardships to the investors while it is argued that the persons at the helm of affairs mismanaged the establishments.[10] One would argue what happened to the doctrine of lifting the veil of incorporation to hold the individuals responsible for their acts; but the process of lifting the veil is long legal walk, which may not likely restore the parties to status quo ante. It is on the premise that 'prevention is better than cure' that the series of codes of corporate governance were issued to help as advisory and regulatory frameworks for corporate entities in Nigeria. This article situates the principles of corporate governance and appraises the theoretical and legal frameworks on corporate governance. It further leverages the development of principles of corporate governance on Organisation of Economic Cooperation and Development (OECD). It also prospects a rebirth of corporate governance through ethical framework.

2. **Situating the Principles of Corporate Governance**

The fundamental component towards ensuring positive corporate governance and ethics is to maintain and preserve these key concepts in the organization. It is these key concepts that form the features of basic principles and practices that promote good corporate governance which include but not limited to:[11]

1. The establishment of strategic objectives and a set of corporate values, clear lines of responsibility and accountability;
2. To ensure transparency and avoid dominance of an individual as both chairman and Managing director; and

(c) Installation of a committed and focused Board of Directors which will exercise its oversight functions with a high degree of independence from management and individual shareholders.

---

[9] B.J. Inyang, 'Nurturing Corporate Governance System: The Emerging Trends in Nigeria', (2009) 4(2) *Journal of Business Systems, Governance and Ethics*.

[10] M.Abduiiahi, E. Okpara, & S. Ahunanya, 'Transparency in Corporate Governance: A Comparative Study of Enron, USA and Cadbury Plc, Nigeria', (2010) 5(6), *The Social Sciences*, 471-476.

[11] R.C. Iwu-Egwuonwu (Footnote 5);B.J. Inyamg, (Footnote 10).

Thus, corporate governance refers to the rules, guidelines, and practises that direct how a business is run and governed. It is a system that lays out the guidelines for how the board of directors, management, and shareholders should behave in connection to one another and with other stakeholders outside the company. Any organisation must adhere to the corporate governance principles in order to succeed since they serve to guarantee sustainability, accountability, and transparency. A slew of corporate scandals that have shook the business world in recent years have brought attention to the significance of corporate governance. Examples of companies with ineffective corporate governance include Lehman Brothers, WorldCom, and Enron. These incidents have highlighted the need for businesses to implement solid corporate governance standards that encourage moral conduct, honesty, and responsibility.

Transparency is one of the main tenets of corporate governance. Businesses must be open and honest in both their financial reporting and decision-making. This requires them to provide accurate and timely information to all relevant parties, including as shareholders, workers, clients, and suppliers. Building trust and confidence in the business and its management via transparency is essential for attracting investment and keeping a good reputation.[12]

Accountability is a key component of corporate governance. This implies that management and the board of directors must be held responsible for their deeds and choices. They must make decisions that are in the best interests of the business and its shareholders and must be open about how they arrived at those decisions. Accountability also implies that misconduct has repercussions and that people accountable are made to answer for their deeds.[13]

A dedication to moral conduct is also necessary for effective corporate governance. As a result, businesses are required to maintain a code of ethics and conduct that specifies the standards of behaviour anticipated of all workers, directors, and officers. Guidelines on matters like conflicts of interest, bribery and corruption, and whistle-blowers should be included of the code of ethics. Companies must also make sure that their staff members are taught to uphold the code of ethics and conduct and are aware of it.

Effective risk management is a requirement of corporate governance in addition to these concepts. Risks that businesses confront, such as those related to finances, operations, and reputation, must be recognised and managed. To reduce these risks and guarantee that they are successfully monitored and managed, they must have rules and procedures in place. Finally, sustainability must be a priority for corporate governance. Companies

[12]Companies and Allied Matters Act 2020, section 374.
[13]*Ibid.*, (Footnote 13), section 377.

must thus consider how environmental, social, and governance (ESG) concerns affect their operations. They must create plans that encourage social responsibility, sustainable growth, and a reduction in negative environmental effects. Thus, good corporate governance is necessary for every organisation to succeed. Companies must implement solid corporate governance concepts that support openness, responsibility, moral conduct, efficient risk management, and sustainability. By doing this, businesses may increase stakeholder confidence and trust while ensuring sustainability and long-term success.[14]

Generally, the basic principle of corporate law is that a company is distinct from its owners, thus, corporate governance tends to distinguish between the management and ownership of a company. It is on this line that it is opined that corporate governance are simply "the set of processes, customs, policies, laws and institutions affecting the way an institution is directed, administered or controlled. It deals with the manner in which rights and responsibilities are shared among the various stake holders of a given institution".[15]Corporate governance is concerned with the processes by which corporate entities particularly limited liability companies are governed. It is concerned with the power over the enterprise, the direction, supervision, management and control of enterprise actions and its effects on other parties such as stakeholders, and corporate administrators. The general principles of corporate governance cover issues relating to membership of a company. It has to with how a person can become a member of a company. Corporate governance also covers the rules and regulations of meetings to be held by the company within a given period of time.[16]
Corporate governance also stated the manner in which meetings are to be summoned and the manner in which decisions are to be taken at the meeting. Arguments have been offered that the most prominent aspect of corporate governance is as regards directors and secretaries. Here, corporate governance provides for who and who is qualified to be appointed or elected as the case maybe as a director or secretary; how long the person's tenure is to last, the duties and responsibilities of the person, etc.[17] Corporate governance is concerned with the processes by which corporate entities particularly limited liability companies are governed. It is concerned with the power over the enterprise, the direction, supervision, management and control of enterprise actions and its effects on other parties such as stakeholders, and corporate administrators.[18]

---

[14]A. Hicks & S.H. Goo, *Cases and Materials on Company Law*,(Sixth Edition, Oxford University Press, 2008) 410.
[15] O. Awoyemi. 'Corporate Governance: Financial Crisis and the Nigerian Leadership Melt Down', (2009) 1(2) *Pro Share*, 3.
[16]S.C. Okaro &G.O. Okafor (Footnote 5); M. Abduiiahi, E. Okpara &S. Ahunanya, (Footnote 11).
[17]N.S.C. Ogbuanya (Footnote 2).
[18]B. Clark, 'UK Company Law Reform and Directors Exploitation of Corporate Opportunities' (2006) 17(8) I.C.C.L.R 231-241.

3. Theoretical Framework on Corporate Governance

(i) **Agency and Shareholder's Theory**

This states that the shareholders are the principal of the company while the board and management team are the agent facilitating the affairs of the company. The principal provides fund for the investment while the agent provides management skills to manage the funds in the investment; in the interest of the principal. This theory is of the view that there should be more Non-executive directors. The structure of corporate Governance under the Nigerian corporate law practice is rooted in the Agency theory.The core ideas of agency theory and shareholder theory have greatly influenced the nature of contemporary corporate governance. The connection between the owners and management of a business is at the centre of both of these views. They disagree on their presumptions and suggestions about how to organise this relationship, nevertheless. In this piece, we'll examine the distinctions between shareholder theory and agency theory as well as how they affect corporate governance.[19]

According to agency theory, often known as principal-agent theory, there is a natural tension between a corporation's owners (the principals) and its management (the agents). The activities of managers may not reflect the interests of the owners since it is considered that they are mainly driven by self-interest. Owners must create incentive structures to force managers to operate in their best interests. In order to reduce conflicts and maximise value, agency theory aims to create systems that align the interests of agents and principals. One important technique put forward by agency theory is the employment of executive compensation agreements that link management pay to performance indicators like profitability, stock price, or return on investment. These agreements are created to match managers' interests with those of shareholders, ensuring that managers work in the best interests of shareholders. In order to make sure that management acts in the best interests of the owners, agency theory also calls for more shareholder scrutiny of management.

The shareholder primacy argument, on the other hand, contends that a corporation's main objective should be to maximise shareholder value. According to this idea, the only stakeholders who count are the company's owners, and the managers have a fiduciary obligation to work in those owners' best interests. According to this idea, complicated incentive structures or shareholder control are unnecessary since the interests of shareholders and management are naturally aligned. The focus placed by shareholder theory on maximising shareholder profit has come under fire for encouraging short-term

[19] T. Ashraf, 'Directors Duties with a Particular Focus on the Company's Act 2006' (2012), 54 (2) *International Journal of Law & Management*, 125-140.

thinking and ignoring the needs of other stakeholders, including workers, consumers, and society at large. Critics argue that businesses should focus on long-term, sustainable development rather than short-term profits and take into account how their decisions would affect these stakeholders.

Despite these objections, the shareholder theory has had a big impact on corporate governance recently. Share buybacks, dividend payments, and mergers and acquisitions are just a few examples of corporate practises that put the interests of shareholders first. Investments in long-term growth, R&D, and employee remuneration have often suffered as a result of these practices. Accordingly, agency theory and shareholder theory provide various viewpoints on the interaction between a corporation's owners and management. While shareholder theory places a higher priority on maximising shareholder profit, agency theory focuses on reducing conflicts of interest between owners and managers. The interests of all stakeholders must be balanced for businesses to achieve sustainable, long-term development, despite the fact that both theories have advantages and disadvantages. The capacity of a company's owners and management to collaborate well and align their interests with a shared objective is ultimately what determines the success of the business.[20]

(ii) **Stakeholders' Theory**:

Stakeholders′ theory opines that it is not only the shareholders and management team that are actors in corporate business or corporation. It stipulates that the stakeholders also impact on the corporation or corporate business of the company. According to the notion of "stakeholders theory," corporations and organisations are obligated to take into account the interests of all parties who may be impacted by their decisions, not just their shareholders or owners. It is a management philosophy that places a strong emphasis on the significance of attending to the concerns of all stakeholders, including both workers and shareholders as well as those of customers, suppliers, the community, and the environment.[21]

Freeman defines stakeholders as′any group or person who can affect or is affected by the achievement of the organisation's objectives,′.[22]According to the conventional understanding of business, a company's main goal is to maximize profits for its owners. Stakeholder theory, on the other hand, refutes this idea by arguing that corporations have a larger obligation to society as a whole. This involves being responsible in terms of the economy, as well as social and environmental issues. Adopting the stakeholder idea has

[20]Companies and Allied Matters Act (CAMA) 2020, section) 87 (1).

[21] A. Schneeman, *The law of corporations and other business organizations;* (6th Ed. Cengage Learning;2012), 88-93.

[22]R.E. Freeman, *Strategic Management: A Stakeholder Approach*, available <https://www.researchgate.net>, accessed on 5th April, 2023.

several advantages. A business may enhance its image and boost customer loyalty by considering the interests of all stakeholders. Long-term, this may result in higher earnings since consumers are more inclined to support businesses they believe to be socially responsible. Stakeholder theory-adopting businesses are also more likely to find and keep skilled individuals. Companies may foster a culture of trust and loyalty that is favourable to long-term success by prioritising the welfare of workers and fostering a healthy work environment. Stakeholder theory-adopting businesses are also more likely to be long-term viable. Companies can make sure they are not harming anybody or the environment and are making the world a better place for future generations by considering the effects of their activities on the community and the environment. Stakeholder theory implementation is not always simple, however. Businesses must be prepared to take on challenging issues that may not always serve the shareholders' short-term financial objectives. It requires a long-term outlook and a dedication to doing what is right, even when it is challenging.

Essentially, stakeholder theory is a significant management concept that emphasises the significance of taking all stakeholders' interests into account when making decisions. It is a more all-encompassing and sustainable method of doing company that may boost earnings, promote client loyalty, and have a beneficial effect on society and the environment. Any business that wishes to succeed and uphold social responsibility should pursue it, even if it could need some challenging choices in the near term. The stakeholders' theory formed the basis of holding the organisation to good ethical practices and corporate social responsibility. These Stakeholders are long term employees who developed specialised skills or value to the corporation, and suppliers, customers, clients and others who deal with the corporation in Form of specialised investment.[23]

(iii) Stewardship Theory:

A corporate governance theory known as stewardship theory places emphasis on the value of the connection between the management of the firm and its shareholders. This view holds that managers should operate as trustworthy stewards of the business, making choices that are in the best long-term interests of shareholders and the business overall. Stewardship theory is the belief that managers should serve as accountable stewards of the firm, caring for the resources of the organisation and making choices that are in the best interests of the shareholders over the long run. This hypothesis makes the assumption that managers will act in the shareholders' best interests and are devoted to the development of the business. The necessity of communication and collaboration between managers and shareholders is emphasised by stewardship theory. According to the argument, managers will operate in the shareholders' best interests because they feel a

[23] A. Schneeman (Footnote 22), 97.

feeling of ownership and responsibility for the success of the business. The significance of openness and accountability in corporate governance is also emphasised by this idea. The company's managers should be open and accurate in their reporting of the business's performance and financial situation, and they should be answerable to the shareholders for their choices and actions.[24]

The agency hypothesis, which contends that managers may act in their own self-interest rather than the interests of the shareholders, contrasts with stewardship theory. According to agency theory, managers may make choices that are in their own best interests rather than those of the shareholders since they have distinct objectives and priorities. Stewardship theory may be used in corporate governance to the company's and its shareholders' advantage in a number of ways. The long-term interests of the shareholders and the firm may be served by managers who behave as faithful stewards of the business, resulting in increased financial success and stability. Stewardship theory may also increase the managers' and shareholders' mutual trust and collaboration, enhancing the governance of the organisation as a whole.

Companies may need to concentrate on creating an environment where trust and responsibility are valued inside the company if they want to apply stewardship theory to corporate governance. This can include increasing the managers' and shareholders' openness and communication, as well as putting in place systems to hold management responsible for their choices and deeds. Companies may also need to provide incentives and prizes that motivate managers to work in the best interests of the organisation rather than just for themselves. As a concept in corporate governance, stewardship theory emphasises the significance of the bond between the company's management and its shareholders. According to this view, managers need to operate as trustworthy stewards of the business, making choices that are in the best long-term interests of shareholders and the enterprise as a whole. Greater financial performance and stability, as well as improved trust and collaboration between management and shareholders, may all result from the incorporation of stewardship theory into corporate governance.[25]

4. Leveraging the Development of Principles of Corporate Governance on Organisation of Economic Cooperation and Development (OECD)

A company's direction and control are governed by a collection of laws, customs, and procedures known as corporate governance. Any organisation's success and sustainability depend on effective corporate governance. The Organisation for Economic Cooperation and Development (OECD) has been at the forefront of a push in recent years to increase

[24]F.M. Barbini and J.D. Thompson 'Organisations in Action, 50th Anniversary,', available <http://amsacta.unibo>, accessed on 5th April, 2023.

[25]*Ibid.*, (Footnote 25), 100.

awareness of the value of corporate governance in the global economy. The OECD is an international organisation that supports economic expansion and development. It was founded in 1961. It has 38 members, including various European countries, the United States, Canada, the United Kingdom, and Japan.The OECD principles of corporate governance are considered as the international standard or benchmark for corporate governance across the globe. An effective principle of corporate governance contribute in aiding stakeholders and policy makers to adequately evaluate and enhance the regulatory, legal and institutional frameworks for corporate governance with the aim of proffering adequate support for sustainable growth, financial stability, economic efficiency and overall organisational performance at any given time.[26] Interestingly, for a corporate governance to be rated as good, such corporate governance must be one that contribute effectively towards building an environment of trust, transparency and accountability necessary for fostering long-term investment, financial stability and business integrity, thereby supporting stronger growth and more inclusive societies.[27]

In accordance to the OECD principles of corporate governance, there are six principles that must be evident in any good corporate governance, to wit:

(i) Good corporate governance must ensure the basis for all effective corporate governance;

(ii) Good corporate governance must make specific provisions for the equitable treatment of shareholders;

(iii) Good corporate governance must provide for the rights of shareholders as well major ownership functions. This particular principle has four dimensions thus:

a. rights of shareholders to benefit from the share in the profits (dividends) of the corporation;

b. rights of shareholders (members) to appoint, remove and replace members of the company's board;

c. Provisions as to the rights of members to convey or transfer shares, and

d. Secure method of ownership registration.

(iv) Good corporate governance must embody disclosure and transparency;

(v) Effective corporate governance should provide for the role of stakeholders in corporate governance framework; and

(vi) Importantly, good corporate governance must enshrine the responsibility of the Board.[28]

---

[26]Organisation of Economic Cooperation and Development, 'OECD-Principles of Corporate Governance', (2022) Available <https://www.oecd.org/corporate/principles-corporate-governance/>, accessed on 24th March, 2023.

[27]Organisation of Economic Cooperation and Development, 'Data and Research on Corporate Governance', (2022) Available <https://www.oecd.org/corporate>, accessed on 24th March, 2023.

[28]*Ibid.,* (Footnote 28).

The OECD's goal is to advance legislation that will raise the standard of living for people on a global scale, both economically and socially. The Organization for Economic Co-operation and Development (OECD) has therefore contributed significantly to the development of corporate governance rules. The term "corporate governance" refers to the collection of rules and procedures that regulate how businesses are managed and run. It is focused on the connection between the board of directors, management, shareholders, and other stakeholders. It is concerned with how businesses are managed and controlled. Following a series of financial scandals and company failures that highlighted the need for more transparency and accountability in the corporate sector, the OECD first became involved in corporate governance in the late 1990s. In response, the OECD established a set of corporate governance principles in 1999. These principles have subsequently evolved into the industry standard for good corporate governance.[29]
The OECD's defined principles of corporate governance provide businesses a framework to act ethically and sustainably. They encompass a broad variety of topics, including as the duties of management, disclosure and transparency, shareholder rights, and board composition. The OECD's focus on the board of directors' function has been one of its major contributions to the creation of corporate governance rules. The guiding principles emphasise the significance of having a diverse and independent board that is accountable to shareholders and in charge of directing the company's risk management and strategy. The principles also stress the need of open channels of communication with shareholders and other stakeholders, as well as between the board and management. The OECD's emphasis on disclosure and openness has been a key contribution to corporate governance. According to the guiding principles, businesses should tell the public and shareholders in a transparent and thorough manner about their strategy, financial performance, and governance framework. The principles also emphasise the need of corporations disclosing their effects on the social and environmental spheres as well as how they handle corporate social responsibility.[30]

The OECD has had a considerable influence on the creation of corporate governance norms. The guidelines have spread around the globe and are now regarded as the gold standard for good corporate governance. Additionally, they have been integrated into numerous industry organisations' and investment groups' codes of conduct and policies. The principles have aided in promoting better accountability and transparency in the corporate sector, which has enhanced investor, shareholder, and public confidence in businesses. Additionally, they have pushed businesses to embrace more long-term and

[29]Corporate Finance Institute, 'Corporate Governance Programme', available at <https://corporatefinanceinstitute.com>, accessed on 20th March, 2023.
[30]Organisation for Economic Cooperation and Development, *Oecd Grunds? Tze Der Corporate Governance*, available at <google.com/search?, accessed on 20th March, 2023.

sustainable business practices, emphasising the significance of social and environmental concerns in addition to financial success. Thus, the OECD has contributed significantly to the evolution of corporate governance concepts throughout time. Its guiding principles provide businesses a framework for conducting ethical and sustainable business practices, placing a strong emphasis on stakeholder participation, responsibility, and transparency. A more responsible and sustainable global economy is being developed as a result of the principles' widespread adoption and contribution to the promotion of greater trust and confidence in the business sector.[31]

5. Rebirth of Corporate Governance in Nigeria through Ethical Framework

The international legal framework for corporate governance include: the Organisation for Economic Cooperation and Development (OECD) Principles of Corporate Governance 2004; UK Combined Code on Corporate Governance 2007 & 2018; EU Combined Code on Corporate Governance 2011; USA Sabanes Oxley Act 2002; UN Global Compact Business Human Rights 2011; and CACG- Corporate Governance in the Commonwealth.On the other part, the domestic legal framework on corporate governance are the Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in the Nigerian Banking Industry 2014 (issued by the CBN); Code of Corporate Governance for Public Companies in Nigeria 2011 [issued by the Securities and Exchange Commission (SEC)];and Nigerian Code of Corporate Governance 2018. This article shall focus on the Nigerian Code of Corporate Governance 2018 as the principal legal framework as well as the Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in Nigeria Banking Industry 2014.

5.1 Nigerian Code of Corporate Governance 2018

The Nigerian Code of Corporate Governance was created in 2018 to enhance corporate governance practises in Nigeria. In order to ensure that businesses run in an ethical, open, and efficient manner, corporate governance refers to the structures and procedures used to guide and regulate businesses. The Financial Reporting Council of Nigeria (FRCN) created the Nigerian Code of Corporate Governance 2018, which is applicable to all public and private businesses as well as not-for-profit organisations in Nigeria. Transparency, accountability, responsibility, justice, and social duty serve as the cornerstones of the code.

The 2018 NCCG has made a big difference in Nigeria's corporate governance practises. The NCCG 2018 has improved the function of boards of directors in Nigerian corporations. The law requires that boards have the appropriate independence, diversity, and expertise to properly manage the organisation. As a result, there is now a stronger

[31]F. Jesover, 'The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries,' available at <https://www.oecd.org>, accessed on 8th April, 2023.

emphasis on the efficiency and responsibility of the board and a better fit between board actions and shareholder interests. Corporate governance demands appropriate streamlining of the composition and responsibilities of the board of directors.[32] Thus, the composition of the board of directors should not be less than five members of the Board at any given time, consisting of Managing director and other executive officers.[33] The Article 3 provides for the office for the chairman. Perhaps, the purpose for this provision was to place the duty of decision making on more persons instead of restricting such fundamental responsibility on fewer persons. Furthermore on the composition of the board of a company, the leadership of the board is to be headed by a chairman.[34] Under the Code, a board of a company comprises mixture of executive and non-executive directors and at least one independent director who serves as a non-executive director.[35] The condition is that such independent director serving as a non-executive director should not hold more than 0.1% of the company's capital. Also, such person serving in the capacity of an independent director must not hold a substantial shareholding of the company and shall not be directly or indirectly involved in daily business, employment, and professional relationship of the company.[36]

In terms of remuneration, executive directors shall not be involved in their remuneration, which shall be tied to long term performance and that should be disclosed in the company's annual report.[37] The non-executive directors are entitled to sitting allowances or director's fee. Executive directors are not entitled to such.[38]

In order to avert a situation where a single person is vested with dual powers that are enormous without any form of checks and balances, it is provided that a single individual should not allowed to serve as a CEO of a company while at the same time serving as the chairman of the same company.[39]

The code prohibits double directorship, hence, any director who is also a serving director of another board as of appointment shall disclose such directorship and the board shall consider the possibility of his performance and possible conflict of interest before recommending him. Such serving director is to notify his own board of any subsequent appointment as a director. However, article 6 (1) (d) bars multiple directorship in

[32] Nigerian Code of Corporate Governance 2018, article 2.
[33]*Ibid*., (Footnote 33), article 4.
[34]*Ibid*., (Footnote 33), article 5.
[35] Nigerian Code of Corporate Governance 2018, article 5.
[36]*Ibid*., (Footnote 36), article 7.
[37]*Ibid*., (Footnote 36), article 5.
[38]*Ibid*., (Footnote 36), article 6.
[39]*Ibid*., (Footnote 36), article 5(A).

companies of similar industries or objects of business, to avoid conflict of interest.[40] For instance, a person who is serving as a director of Access Bank Plc. cannot at the same time serve as a director in Zenith Bank Plc. In addition, not more than two members of the same family should sit as board members of a public company at the same time.[41] Thus, if Mr A, Mr B and Mr C, are members of the same family, one or at most, two of them can serve as board members of a public company at a given time. Taking cognizance of various regimes of family, the issue that calls for clarification whether the family being referred to, is the nuclear size family or the extended family size. This research study is suggesting that it is ideal to appreciate the implications and purposes of the prohibition; and perhaps interpret the family as referring to any relationship by affinity or consanguinity. However, the complex issue would be the issue of the degree of consanguinity and affinity that should be limited.The code provides in article 12.1 that board meeting should hold at least once in every quarter (three months).[42] This implies that there should be a minimum of four board meeting in every 12 months. The provision does not end with the minimum numbers of meetings that should be held annually for the board of directors, it is further provided that each eligible director is required to attend at least 2/3 of all board meetings held over a period of time usually a year. Such minimum attendance is to be applied as criteria for the re-nomination of any director.[43] This provision was made to avoid a situation where a person who has been ineffective in the discharge of duties is re-nominated as a director by a company.

Corporate reporting now has more openness. Companies must now provide additional information in their financial filings, such as ownership structure, board makeup, and CEO salaries, according the legislation. The corruption has decreased as a result of the greater openness, and investors now have more faith in Nigerian businesses.

Averting the risk of secret meetings and meetings held in places that cannot be accessed by the board members or shareholders, article 23 provides that venue of meetings should be one that is reasonably accessible to persons eligible to attend the meetings.[44] Under the Article 21.1[45], the notice of meeting should be given to all eligible persons qualified to attend the meeting within the minimum period of 21 days before the meeting.[46]

The NCCG 2018 has made firm leaders more accountable. Executives must disclose their compensation packages and the performance standards that determine their incentives

---

[40]*Ibid.*, (Footnote 36).
[41]Code of Corporate Governance for Public Companies, 2011,article 7.1.
[42]*Ibid.*, (Footnote 42).
[43]*Ibid.*, (Footnote 42), article 12.1.
[44] Nigerian Code of Corporate Governance 2018, article 21.3.
[45]*Ibid.*, (Footnote 45).
[46]*Ibid.,* (Footnote 45).

under the code. Additionally, it calls on CEOs to have a code of ethics that outlines the expectations for their conduct. These actions have assisted in lowering the possibility of executive wrongdoing and raising the general ethical standards of Nigerian businesses. Every public company is mandated to set up an audit committee in line with section 401 (3) & (4) CAMA. It is not enough to set an Audit committee, it is required that at least one member of the audit committee established by the company is financially literate with sufficient knowledge of accounting standards, ethics or skilled in financial management.[47] Aside the audit committees, there are other committees which a company by virtue of corporate governance is expected to establish, to wit: Remuneration committee; Nominations and Governance committee; and Audit committee.[48]

Nonetheless, the NCCG 2018 has brought corporate social responsibility (CSR) to the forefront of Nigerian businesses. Companies must include CSR into their company plan and report on their CSR efforts, according to the law. As a result, there is now a higher understanding of how business actions affect the social and environmental landscape, as well as a stronger commitment to finding sustainable solutions to these problems.The world business council for sustainable development defines corporate social responsibility as the continuing commitment by businesses to behave ethically and contribute to the economic development while improving the quality of the work force. It is important that charity be separated from corporate social responsibility.[49] The discourse on corporate social responsibility is based on the opinion that corporate governance is at the ‘heart’ of corporate social responsibility. Corporate social responsibility in Nigeria has been demonstrated in myriad of instances:

(i) Contributions to Economic, Social and Environmental progress with a view of achieving sustainable development of affected community.
(ii) Respect to Human rights and dignity.
(iii) Developing and applying self-regulatory practices.
(iv) Support and uphold good governance principles and practice.
(v) Abstain from any improper local political activities.[50]

Thus, Nigeria's corporate governance practises have been significantly impacted by the 2018 Nigerian Code of Corporate Governance. It has heightened the importance of corporate social responsibility, expanded the function of boards of directors, improved corporate reporting transparency, and boosted CEO accountability. Investor trust in the Nigerian economy has increased as a result of these developments, which have also

[47] Code of Corporate Governance for Public Companies, 2011, article 30.1 - 30.2.
[48] Nigerian Code of Corporate Governance 2018, article 11.
[49] S.P. Robbins, & A.J. Timothy,*Organizational behaviour* (17th Edition, Harlow, UK: Pearson Education, 2017), 234-257.
[50]*Ibid*, (Footnote 50) 254-255.

helped to raise the general ethical standards of Nigerian businesses. To make sure that the code's tenets are strictly followed and enforced in all facets of the Nigerian economy, more effort has to be done.

Importantly, the shareholders right and privileges, including minority protection should be protected. Accordingly, article 22 provides for the measures that must be put in place towards the protection of the interests, rights and privileges of the shareholders as well as implementation of minority protection.[51]

5.2 Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in Nigeria Banking Industry 2014

The Code of Corporate Governance for Banks and Discount Houses in Nigeria, together with Guidelines for Whistleblowing, were released by the Central Bank of Nigeria (CBN) in 2014. These steps were taken to encourage openness, responsibility, and ethical corporate behaviour in the banking sector. The guidelines and requirements that banks and discount houses must adhere to in order to guarantee good corporate governance are set out in the Code of Corporate Governance for Banks and Discount Houses. The code outlines standards for things like risk management, internal controls, board composition and independence, and disclosures. The code's demand that banks and discount houses set up separate risk management units is one of its main clauses. As a result, risks are successfully recognized, evaluated, and managed, and the board is kept up to date on any significant concerns. The rule also stipulates that members of the boards of directors of banks and discount institutions must have the knowledge, experience, and qualifications required to effectively oversee the operations of the organisation. Among other things, this entails making sure the board has an appropriate ratio of executive and non-executive directors, as well as an adequate number of independent directors to provide impartial supervision.

This code made provision for the establishment of whistle blowing policy at the banks to be made known to employers, employees and other Stakeholders, of which shall contain mechanisms for confidentiality that would encourage parties to report unethical activities to the appropriate authorities of bank and/or CBN. On the part, the Whistleblowing Guidelines provide workers a structure for reporting suspected unlawful, dishonest, or fraudulent conduct within their organisations. The rules are intended to shield informants from reprisals and to promote reporting of misconduct, which may eventually aid in the prevention of financial crimes. Employees are urged to report suspected wrongdoing to a designated whistleblowing officer inside the business, who is in charge of receiving and looking into accusations of misconduct, in accordance with the policies. The rules also

[51]*Ibid*, (Footnote 50).

provide anonymity and retribution protection for those who come forward with information.

The rule and principles' improved openness and responsibility of banks and discount houses has been one of its main advantages. Institutions are better equipped to detect and manage risks when there are clear rules for governance and reporting. This may assist to avert financial crises and safeguard the interests of investors and depositors. The whistleblower standards have also been crucial in revealing instances of fraud and wrongdoing in the financial sector. The policies have assisted in revealing instances of insider trading, money laundering, and other financial crimes that would not have been discovered otherwise by encouraging staff to disclose misconduct. These actions have had a substantial effect on Nigeria's financial sector. The code and principles have aided in strengthening the financial industry and regaining public confidence in the banking system by encouraging excellent corporate governance practises and whistleblowing.[52]

Thus, the CBN's 2014 introduction of the Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistleblowing had a big influence on the Nigerian banking sector. By encouraging whistleblowers and promoting sound corporate governance procedures, these actions have helped to deter financial crimes and safeguard investors' and depositors' interests. Article 2.2 mandates the external auditors of banks to ensure that an annual reportage is made to the CBN with respect to the extent to which the bank has complied with the code.[53] There is also a mandate on banks to make returns to CBN per quarter with respect to the status of their compliance with the code.[54]Besides, there is an imposition on the Board of a bank an obligation to ensure strict adherence to the code.[55] The article shall proceed to appraise the specific provisions of the code.

The number of directors for a bank should be between 5 and 20 members.[56] Art. 2.2.3 provides for the appointment of non-executive directors for banks. In particular, a bank should have a minimum of 2 non-executive directors who are to serve as independent directors while Discount Houses should have a minimum of one executive director as an Independent director.[57] To avoid the risks of leadership politicking which may be disastrous to the financial and economic stability of banks, all banks are mandated to

[52] Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in Nigeria Banking Industry 2014, article 5.3.1-2.
[53]*Ibid*., (Footnote 53).
[54]*Ibid*., (Footnote 53), article 8.1.2.
[55]*Ibid*., (Footnote 53), article 2.1.9.
[56] Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in Nigeria Banking Industry 2014, article 2.2.4.
[57]*Ibid*., (Footnote 57), article 2.2.4.

have a pre-existing succession plan for the position of MD/CEO and other ED/top management staff.[58]

It is prohibited under the code for one person to occupy the position of Board Chairman and MD/CEO at the same time. Also, the position of executive vice chairman is nullified and scrapped.[59] Accordingly, unlike other companies where a maximum of two members of a family can coexist as board members, two members of an extended family shall not serve in the board of a bank or any company where the bank is a holding or subsidiary company at the same time at the capacity of chairman, MD/CEO, or executive director.[60] However there is an exemption where the position is that of a non-executive director. Thus, if the position is that of a non-executive director, there can two members of the same extended family and not more than two members serving in the board of the bank as non-executive directors at any given time.[61] The chairman of the Board in a bank shall not be a member of any of the committees of the board. Also, the head of the Board committees must be a non-executive director.[62]

In terms of leadership and board composition, corporate governance frowns at 'sit-tight syndrome' where the MD/CEO or directors serve longer than usual. By such limitation in the tenure of office, it is easier and probable for subsequent officers to detect any mal-administration and mal-management in the company. Accordingly, non-executive directors are to serve for only three tenures of a maximum four years each. This implies that non-executive directors are to serve for a maximum period of 12 years spread across three tenures.[63] It is possible for a director to serve for only one term of four years and not be reappointed. On the other hand, executive directors like MD/CEO are to serve a maximum of two tenures of 5 years per tenure (ten years).[64] Note that it is also possible for an executive director not to be reappointed after serving for the first five years.

Furthermore, on the tenure of auditors in banks, the code provides that auditors are to serve for a cumulative period of 10 years.[65] In cases where an auditor who has served for the maximum period of 10 years is to be re-nominated, a 'cooling-off' period of 10 years would be given before such reappointment. Where the services of an external auditor or external auditing firm are used, it should not be for more than a period of 10 years,

---

[58]*Ibid*., (Footnote 57), article 2.1.6.
[59] Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in Nigeria Banking Industry 2014, article 2.3.1.
[60]*Ibid*., (Footnote 60), article 2.3.1,2,3.
[61]*Ibid*., (Footnote 60).
[62]*Ibid*., (Footnote 60), article 2.5.
[63] Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in Nigeria Banking Industry 2014, article 2.4.3.
[64]*Ibid*., (Footnote 64).
[65]*Ibid*., (Footnote 64) article 5.2.12.

though reappointment may be done after a waiting a period of 7 years.[66] In addition, the remuneration policy for board members including non-executive, executive directors and auditors is provided in article 2.7.[67]

On equity holding, the Code provides that direct or indirect equity holding for government in banks shall be limited to 10%.[68] In any case where there is any acquisition of 5% equity or above by any investor, such acquisition shall be subject to CBN's approval. Peradventure the acquisition was done through capital markets, the bank whose equity was acquired is mandated to apply for a 'no objections' letter from CBN upon such acquisition.[69]In order to ensure compliance with the principle of disclosure, the Code provides for disclosure, transparency and whistle blowing.[70] Generally, a whistle blower is recognised as any person who reports any form of unethical dealings or behaviour or dishonesty to the appropriate authority.[71]

Aside the specific codes of corporate governance that have been discussed above, there are other codes of corporate governance that can be categorised as Sector-regulated Codes of Corporate Governance. They are categorised as Sector-regulated Codes of Corporate Governance because the provisions of each of the codes are specifically applicable to companies that fall under the same industry or sector. For instance, the code of corporate governance issued by the CBN applies mainly to Banking institutions. Other examples of the sector-regulated codes of corporate governance include the Code of Corporate Governance for Insurance Industry in Nigeria 2009 [issued by the National Insurance Commission (NAICOM)]; Code of Corporate Governance for Pension Operators 2008 [issued by the National Pension Commission (PENCOM)]; and Code of Corporate Governance for Telecommunications 2014 [issued by Nigerian Communication Commission (NCC)].

5. **Conclusion**

Reviving corporate governance in Nigeria via ethical frameworks is an essential first step towards creating a long-lasting and prosperous business climate. Nigerian firms are being held responsible for their acts and are forced to abide by stringent codes of conduct. This

---

[66] Nigeria Code of Corporate Governance 2018, article 20.

[67] Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in Nigeria Banking Industry 2014.

[68] Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in Nigeria Banking Industry 2014, article 3.2.2.

[69]*Ibid*., (Footnote 69), article3.2.1.

[70] Code of Corporate Governance for Banks and Discount Houses and Guidelines for Whistle Blowing in Nigeria Banking Industry 2014, article 5.0.

[71] B. Ogungbamila. 'Whistleblowing and Anti-Corruption Crusade: Evidence from Nigeria', (2014) 10(4) *Canadian Soc. Sci*. 145-146.

has enhanced corporate accountability, boosted investor trust, and improved transparency. In course this discourse, it was however found that there are issues that are to be considered as fundamental in so far as corporate governance is concerned. The discourse and entirety of corporate governance centre on issues regarding wholly or partially the officers of the company (directors and secretary), membership, shareholding, meetings, and resolutions. The concepts of openness, honesty, transparency, independence, accountability, responsibility, fairness, ethical values and reputation must be entrenched in the governance regime. For any corporate organisation that wishes to promote good and effective corporate governance, every corporate entity implement corporate governance principles in order to minimize risk of financial mishaps. Corporate governance also cover issues on financial statements, audit and annual returns. Another fundamental aspect of corporate governance is its provisions on majority rule, minority protection and corporate investigations where the need arises. Besides, the article found that there are yet, difficulties in implementing the ethical framework. These areas have not been adequately addressed by the extant codes of corporate governance in Nigeria.

Nigeria is committed to fostering a business-friendly climate that fosters growth, development and good governance, as seen by the government's commitment to upholding new legislation. A culture of honesty and responsibility has also been fostered by the ethical framework, and this will eventually improve the economy as a whole. However, in order to enhance transparency and avoid dominance of an individual as both chairman and managing director, the offices must not be occupied by the same individual. Moreover, corporate managements should take all necessary measures to ensure that only committed and focused individuals are appointed into the board as directors to exercise oversight functions with a high degree of independence from management and individual shareholders. It is important to ensure that a proactive and committed management team is put in place at all times.

The establishment of strategic objectives and a set of corporate values, clear lines of responsibility and accountability capable of projecting the organisation towards a periodic milestone should be the watchword in enthroning good good corporate governance.The revival of corporate governance in Nigeria *via* ethical frameworks is a good development, even though there is still more work to be done in this area. Nigeria can continue to draw in international investment and develop a sustainable economy that serves all of its population by strengthening and implementing the codes of corporate governance framework.