CORPORATE GOVERNANCE IN NIGERIA: AN EVALUATION OF THE ROLE OF SHAREHOLDERS AND THE BOARD OF DIRECTORS

Abstract

Corporate governance facilitates the achievement of the company's objectives and ultimately influences economic growth. Corporate failures in prominent companies like Enron and WorldCom which contributed to the financial crisis of 2008, highlighted the need for good corporate governance practices to ensure transparency and accountability in the management of companies. The shareholders and the board of directors play essential roles for effective corporate governance. Shareholders are generally regarded as owners of the company and by virtue of their investment in the company are entitled to profits accruing from the company's business. The shareholders have the power to make certain decisions such as the appointment and removal of the directors of the company which influences the administration of the company. The board of directors is saddled with the responsibility of supervising the managers of the company. The directors are also accountable to the shareholders and must perform their duties in the best interests of the company. This paper examined the role and responsibilities of the board of directors and the shareholders of the company. It discussed the rights of the shareholders and shareholder activism as well as examined board composition, board committees and the relationship of the board with shareholders and other stakeholders in a company.

Keywords: Board of Directors, Corporate Governance, Corporate Governance Code, Nigeria, Shareholders.

Introduction

Corporate governance is 'the system by which businesses are directed and controlled'.[1] It 'involves a set of relationships between a company's management, its board, its shareholders and other stakeholders'.[2] Corporate governance entails 'having companies, owners and regulators become more accountable, efficient and transparent, which in turn builds trust and confidence'.[3] The aim of corporate governance is to enable well organized administration of the company's resources to ensure that the company's objectives are achieved.[4] Effective corporate governance methods foster transparency and accountability which are important for

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[1] Committee on the Financial Aspects of Corporate Governance 'Report of the Committee on the Financial Aspects of Corporate Governance' (1992) <https://www.frc.org.uk/getattachment/9c19ea6f-bcc7-434c-b481-f2e29c1c271a/The-Financial-Aspects-of-Corporate-Governance-(the-Cadbury-Code).pdf > accessed 12 June 2021. This report is widely referred to as the 1992 Cadbury Report.

[2] G20/OECD Principles of Corporate Governance, 'OECD Report to G20 Finance Ministers and Central Bank Governors' (2015) 9 <http://www.oecd.org/daf/ca/Corporate-Governance-Principles-eng.pdf > accessed 10 July 2021.

[3] The World Bank 'Corporate Governance' (2016) < https://www.worldbank.org/en/topic/financialsector/brief/corporate-governance> accessed 10 July 2021.

[4] Financial Reporting Council, The UK Corporate Governance Code (2016) 1 <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-April-2016.pdf> accessed 13 June 2021.

the growth and expansion of a company and result in increased investment.[5] The importance of corporate governance was recognized in the Organisation for Economic Co-operation and Development (OECD) report on the global financial crisis where it was noted that the absence of effective corporate governance procedures contributed to the failure of the various institutions.[6] The relationship between corporate governance and economic growth has been recognized in Nigeria with efforts being made to develop a good corporate governance framework to foster economic growth. Good corporate governance involves the adoption of measures aimed at preventing corporate fraud and ensuring transparency and accountability.

The shareholders and members of the board are important in ensuring that the company is run properly by adhering to and implementing the necessary rules of corporate governance.[7] In *Aerobell (Nig) Limited and others v Fidelity Bank*[8] the court noted that the two main organs by which the company acts are the general meeting and the board of directors. The role of the shareholders in monitoring the company operations is regarded as an essential element of ensuring the powers of the board and the shareholders are balanced.[9] The directors are in charge of supervising the activities of the managers and ensuring that the company is being run in accordance with accepted principles of corporate governance.[10] This paper examines the role of the shareholders and the board of directors in ensuring effective corporate governance in the company and proffers recommendations for the improvement of the role of the shareholders and the board of directors in upholding good corporate governance practices.

Legal and Regulatory Framework for Corporate Governance

The development of corporate governance in Nigeria can be linked to Nigeria's history as a former British colony. After independence and following the repeal of the Companies Ordinance of 1922, the Companies Act of 1968 was enacted to regulate the operation of companies in Nigeria.[11] The Act provided for the role of the board of directors in the administration of the company.[12] The Companies and Allied Matters Act (CAMA) 1990 repealed the Companies Act 1968.[13] The current law regulating corporate organisations in Nigeria is the Companies and Allied Matters Act 2020 (CAMA 2020) which has repealed the CAMA 1990. The provisions of the Act specify the way in which the affairs of a company should be governed.

In 2003, the Code of Corporate Governance for Banks and Other Financial Institutions in Nigeria, which was the first corporate governance code in the country became effective.[14] In the same year, the Code of Best Practices on Corporate Governance (Code of Best Practices

[5] Christine Mallin, *Corporate Governance* (5th edn, OUP 2016) 8-9.

[6] OECD 'The Corporate Governance Lessons from the Financial Crisis' [2009] 2 <https://www.oecd.org/finance/financial-markets/42229620.pdf > accessed 15 July 2021.

[7] Bob Tricker, *Corporate Governance: Principles, Policies and Practice* (3rd edn, OUP 2015) 32.

[8] (2018) LPELR-45338 (CA).

[9] Christian Van der Elst, 'Shareholder Rights and Shareholder Activism: The Role of the General Meeting of Shareholders' [2012] 2 https://ecgi.global/sites/default/files/working_papers/documents/SSRN-id2017691.pdf accessed 20 June 2021.

[10] Jeswald Salacuse, 'Corporate Governance in the New Century' [2004] *Company Lawyer* 69.

[11] Elewechi NM Okike, 'Corporate Governance in Nigeria: The Status Quo' [2007] (15) *Corporate Governance: An International Review* 173.

[12] O Orojo, *Company Law and Practice in Nigeria* (3rd edn, Mbeyi and Associates Nig Ltd 1992) 13.

[13] Boniface Ahunwan, 'Corporate Governance in Nigeria' [2002] (37) (3) *Journal of Business Ethics* 269.

[14] The Code of Corporate Governance for Banks and Other Financial Institutions in Nigeria 2003 < https://www.cbn.gov.ng/out/publications/bsd/2003/corpgov.pdf> accessed 21 June 2021.

2003) was issued by the Securities and Exchange Commission. A number of regulatory agencies subsequently developed industry specific codes of corporate governance to regulate companies operating in their respective sectors. In 2006, the Central Bank of Nigeria issued the Code of Corporate Governance for Banks in Nigeria Post Consolidation. The code came into existence in order to address observed weaknesses and to provide standard guidelines for banks operating in the country following the consolidation exercise.[15] The Code of Corporate Governance for Licensed Pension Operators was issued by Pension Commission (PENCOM) in 2008 for pension fund custodians and administrators.[16] The National Insurance Commission (NAICOM) issued the Code of Good Corporate Governance for the Insurance Industry in 2009 in recognition of the importance of the insurance industry to financial market stability and economic growth.[17] In 2011, the Code of Best Practices 2003 was revised and the Code of Corporate Governance for Public Companies in Nigeria was subsequently issued by the Securities and Exchange Commission (SEC).[18]

The Financial Reporting Council of Nigeria (FRCN) Act was enacted in 2011, the Act provides for the establishment of the Financial Reporting Council which has the power to establish a corporate governance directorate charged with the responsibility of developing both principles and practices of corporate governance.[19] Other corporate governance codes issued by various regulatory bodies in the country include: the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014, issued by Central Bank of Nigeria (CBN) and the Code of Corporate Governance for the Telecommunication Industry 2016 issued by the Nigerian Communications Commission. In line with its mandate the FRCN released the National Code of Corporate Governance in 2016 (the 2016 Code) which contained 3 draft codes of corporate governance for public companies, private companies and not-for-profit entities. However, the 2016 Code was suspended as a result of widespread objections to certain provisions of the private sector and not-for-profit codes.[20] Following the suspension of the 2016 code the Nigerian Code of Corporate Governance 2018 (NCCG 2018) was issued in 2018 by the FRCN in accordance with the provisions of sections 11(c) and 41(c) of the FRCN Act and came into effect on the 15th of January 2019. The code aims to institutionalize corporate governance best practices and promote public awareness of corporate values and ethical practices that will enhance the integrity of the business environment and restore confidence in the Nigerian economy.[21] The NCCG 2018 recommends that companies adopt the 'Apply or Explain' approach in reporting on its implementation of the code. Therefore, companies are to apply the principles contained in the code and explain how the application of the principles has yielded the desired result. The NCCG 2018 is aimed at various companies across industries.

[15] Benjamin James Inyang 'Nurturing Corporate Governance System: The Emerging Trends in Nigeria' [2009] (4) (2) *Journal of Business Systems, Governance and Ethics* 1.

[16] Code of Corporate Governance for Licensed Pension Operators RR/P&R/08/013 <https://www.pencom.gov.ng/wpcontent/uploads/2017/04/Code_of_Corporate_Governance_for_Licensed_Pension_Operators.pdf > accessed 6 June 2021.

[17] Code of Good Corporate Governance for the Insurance Industry in Nigeria 2009 < https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/centre-for-corporate-governance/code-of-good-corporate-governance-for-the-insurance-industry-in-nigeria.pdf> accessed 6 June 2021.

[18] < https://sec.gov.ng/code-of-corporate-governance-for-public-companies_may-12-2014/> accessed 6 June 2021.

[19] ss 23(g) and 49.

[20] Iheanyi Nwachukwu, 'FG Suspends Obazee's Code of Corporate Governance' *BusinessDay* (7 November 2016) < https://businessday.ng/exclusives/article/fg-suspends-obazees-code-of-corporate-governance/> accessed 12 July 2021.

[21] NCCG 2018, iv.

Shareholders Rights and Responsibilities

Shareholders are generally regarded as owners of the company. By virtue of the provisions of CAMA 2020, a shareholder is deemed to be a member of a company if the shareholder subscribed to the company's memorandum of association at the time of incorporation or subsequently has their name recorded in the company's register of members.[22] As a consequence of their contribution to the capital of a company, shareholders can partake in the company's profits by way of dividends. Shareholders in a company have a beneficial effect on corporate governance.[23] They play a vital role in ensuring that companies engage in effective corporate governance practices. They are entitled to be involved in various corporate governance decisions. The annual general meeting of the company provides an avenue for the shareholders of a company to exercise their rights and ensure that good corporate governance practices are being implemented in the company. The meeting provides shareholders with an opportunity to make decisions which influence the company's administration.[24] The notice of meeting must be sent to all shareholders within 21 days from the date of the meeting.[25] The failure to hold an annual general meeting will entitle a shareholder to apply to the Corporate Affairs Commission to direct the calling of an annual general meeting.[26] The members of the company in a general meeting have the power to act in any matter if the members of the board of directors are disqualified or unable to act because of a deadlock; institute legal proceedings in the name and on behalf of the company; and make recommendations to the board regarding action to be taken by the board.[27] They are entitled to alter the share capital of the company;[28] alter the memorandum and articles of association;[29] and declare dividend on the recommendation of the board.[30]

Under CAMA 2020, shareholders are responsible for the appointment and removal of directors,[31] determination of the remuneration of directors,[32] and ratification or confirmation of actions taken by the board of directors.[33] Additional powers of the shareholders include the power to appoint and replace auditors;[34] appoint representatives to the audit committee of the company;[35] sue for dividends; petition the court for relief from unfairly prejudicial and oppressive actions;[36] inspect the register of members;[37] receive the company's financial statements for the year at least 21 days before the date of the meeting at which they are to be laid;[38] and restrain the company's directors from entering into an illegal or ultra vires transaction or perpetuating a fraud.[39] However, despite the recognition of the importance of shareholders in ensuring effective corporate governance the powers of the shareholders appear

[22] CAMA 2020, s 105(1) (2).
[23] Lucian Arye Bebchuk 'The Case for Increasing Shareholder Power' 2005 *Harvard Law Review* 833.
[24] Emmanuel Adegbite and Kenneth Amaeshi and Olufemi Amao, 'The Politics of Shareholder Activism in Nigeria' [2012] (105) (3) *Journal of Business Ethics* 389.
[25] CAMA 2020, s 241.
[26] CAMA 2020, s 237 (2).
[27] CAMA 2020, s 87 (5).
[28] CAMA 2020, s 125.
[29] CAMA 2020, ss 51 and 53.
[30] CAMA 2020, s 426.
[31] CAMA 2020, ss 273(1) and 288.
[32] CAMA 2020, s 293.
[33] CAMA 2020, s 87 (5).
[34] CAMA 2020, s 401.
[35] CAMA 2020, s 404 (3) (6).
[36] CAMA 2020, s 353 and 354.
[37] CAMA 2020, s 112.
[38] CAMA 2020, ss 387 and 392.
[39] CAMA 2020, s 343.

to be restricted by various provisions of the CAMA 2020, some of these restrictions include the right of the members to attend and vote at company meetings which is restricted to the extent that the articles of association may provide that a member shall not be entitled to attend and vote at the meeting if he has not paid all the sums payable by him in respect of the members shares in the company.[40] Furthermore, only shareholders with not less than one-tenth of the paid up capital of the company can requisition an extra-ordinary general meeting.[41]

With regards to the protection of the rights of shareholders, the NCCG 2018[42] emphasizes that it is the duty of the directors to ensure that the shareholders understand the ownership structure of the company. The directors are also mandated to provide sufficient information to the shareholders to enable them make informed investment decisions. The Code emphasizes the need to treat all shareholders fairly and equitably and to make sure that minority shareholders are protected from abusive actions of the controlling shareholders of a company.

Shareholder Activism

Shareholder activism is referred to as a board/managerial accountability mechanism.[43] A shareholder activist has been described as an investor who endeavours to change situations of concern while not necessarily resulting to change in the firms control.[44] Shareholder activism includes the threat to sell shares, letter writing, meetings with management and the board, asking questions at shareholder meetings and the use of voting rights.[45] It involves the act of monitoring and trying to effect changes in the organizational control structure of firms by shareholders.[46] Expounding on the rationale for shareholder activism, it has been averred that owing to the fact that the shareholders will be affected by the corporate governance practices of the company, they are in the best position to monitor the actions of the members of the board.[47]

The level of shareholder advocacy in the country is quite poor, this has been attributed to the fact that some shareholders 'are perceived as often seeking pecuniary benefits from companies as against ensuring good governance. The associations are also perceived as disruptive rather than disciplined at AGMs'.[48] Although there seems to be a consensus on the value and benefits of increased shareholder activism in Nigeria there is a need to educate more shareholders on the positive effects of sticking to advocacy in the interest of all shareholders and ultimately for the achievement of the company objectives. The apathy of institutional investors to shareholder activism has been attributed to the emphasis placed on profit maximization.[49] These institutional shareholders are usually more concerned with the creation of wealth and rather

[40] CAMA 2020, s 235-240; s 107.

[41] CAMA 2020, s 239.

[42] NCCG 2018, principle 23.

[43] Emmanuel Adegbite and Kenneth Amaeshi and Olufemi Amao, 'The Politics of Shareholder Activism in Nigeria' [2012] (105) (3) *Journal of Business Ethics* 389.

[44] Stuart L Gillan and Laura T Starks, 'A Survey of Shareholder Activism: Motivation and Empirical Evidence' [1998] <http://dx.doi.org/10.2139/ssrn.663523> accessed 19 July 2021.

[45] Marco Becht and others, 'Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes UK Focus Fund' [2009] (22) (8) *The Review of Financial Studies* 3093.

[46] Michael P Smith, 'Shareholder Activism by Institutional Investors: Evidence from CalPERS' [1996] (51) (1) *Journal of Finance* 227.

[47] Fabian Ajogwu, 'Shareholder Activism: Any Added Value to Governance?' <https://fabianajogwu.com/articles-2/> accessed 11 July 2021.

[48] Helen Oji, 'How Shareholders' Activism Ensures Accountability, Protects Listed Firms' *The Guardian* (6 May 2019) <https://guardian.ng/business-services/how-shareholders-activism-ensures-accountability-protects-listed-firms/> accessed 11 July 2021.

[49] C Uche and E Adegbite and M Jones, 'Institutional Shareholder Activism in Nigeria' [2016] (16) (4) *Corporate Governance* 680.

than engage in any form of activism with the aim of transforming the structure or corporate practices of the company they liquidate their assets in the company.[50] Direct participation of institutional shareholders in the company's affairs has the potential to ensure that the company is managed in accordance with prescribed corporate governance methods.[51] Principle 22 of the NCCG 2018 recommends that institutional investors should be encouraged by the board of directors to play a part in positively influencing the standard of corporate governance in the company.

The Role of the Board of Directors

Corporate governance deals with the measures put in place by the board for the effective running of the company.[52] Directors are persons duly appointed by the company to direct and manage the business of the company.[53] They are essential for effective corporate governance. The duties of directors are provided in CAMA 2020 some of which are: the directors are in a fiduciary relationship with the company;[54] directors must always act in the best interest of the company;[55] the directors should ensure that exercise of their powers are for a specified purpose and not a collateral purpose;[56] the directors duties should not conflict with their personal interests;[57] the discharge of their duties must be done honestly and in good faith with all degree of skill and care which a reasonable and prudent director would exercise in similar circumstances.[58] Companies are required to keep accounting records which show and explain the transactions of the company.[59] The directors are mandated to prepare a directors' report 'containing a fair view of the development of the business of the company'.[60] Additionally, they are required to prepare yearly financial statements of the company[61] which must be laid before the shareholders in the general meeting.[62] This promotes corporate transparency and serves as a way to ensure that the directors remain accountable to the shareholders.

'Charged with hiring, evaluating, compensating and ongoing monitoring of the management, the board of directors is the shareholder's primary mechanism for oversight of managers'.[63] This is because the directors are in charge of supervising the activities of the managers and ensuring that the company is being run in accordance with accepted principles of corporate governance.[64] They formulate plans with the managers on how the business of the company is to be carried out, oversee the activities of the said managers and relay accurate information to the shareholders and other concerned parties on matters concerning the affairs of the company.[65] Therefore the directors have a responsibility to be accountable for the affairs

[50] C Uche and E Adegbite and M Jones, 'Institutional Shareholder Activism in Nigeria' [2016] (16) (4) *Corporate Governance* 680.

[51] Christine Mallin, *Corporate Governance* (5th edn, OUP 2016) 111.

[52] Jeswald Salacuse, 'Corporate Governance in the New Century' [2004] *Company Lawyer* 69,78.

[53] CAMA 2020, s 269 (1).

[54] CAMA 2020, s 305 (1) (2).

[55] CAMA 2020, s 305 (3) (4).

[56] CAMA 2020, s 305 (5).

[57] CAMA 2020, s 306.

[58] CAMA 2020, s 308.

[59] CAMA 2020, s 374.

[60] CAMA 2020, s 385.

[61] CAMA 2020, s 377.

[62] CAMA 2020, s 388.

[63] Tod Perry and Anil Shivdasani, 'Do Boards Affect Performance? Evidence from Corporate Restructuring' [2005] (78) (4) *Journal of Business* 1403.

[64] Jeswald Salacuse, 'Corporate Governance in the New Century' [2004] *Company Lawyer* 69.

[65] Committee on the Financial Aspects of Corporate Governance 'Report of the Committee on the Financial Aspects of Corporate Governance' (1992) para 2.5 <https://www.frc.org.uk/getattachment/9c19ea6f-bcc7-

of the company. The board of directors has a 'governance responsibility' to make certain that the company's 'corporate strategy, risk assessment and ethical profile are in place and appropriate'.[66]

The board is central to corporate governance and has a duty to ensure that management acts in the best interest of shareholders and other stakeholders while sustaining the prosperity of the company.[67] The code provides that an effective board is 'responsible for providing entrepreneurial and strategic leadership as well as promoting ethical culture and responsible corporate citizenship'.[68] It has been opined that the board of directors plays a strategic role by using their skills and expertise to enhance strategic problem solving and decision making in order to direct and support management to achieve the company's objectives.[69] The responsibilities of the board of directors as set out in the NCCG 2018 include: ensuring that the board and its committees act in the best interest of the company at all times; being accountable to the company as well as identifying and managing the relationship with shareholders and other stakeholders; overseeing the company's communication and information dissemination policy; and ensuring the integrity of annual reports and accounts and all material information provided to regulators and other stakeholders.

Corporate failures can be attributed to a lack of honesty and morals which manifests itself in a disregard for the consequences of fraudulent actions of the relevant corporate officers.[70] There is a need to cultivate the right principles in companies for effective corporate governance.[71] It has been noted that even though the enforcement of corporate governance structures cannot eradicate all instances of mismanagement resulting from poor corporate governance, the adoption of the appropriate principles by most companies will greatly reduce the instances of corporate failure.[72]

Board Composition

Every company in Nigeria must have a minimum of two directors.[73] Principle 2 of the NCCG 2018 recommends that the board should be of a 'sufficient size to effectively undertake and fulfil its business; to oversee, monitor, direct and control the Company's activities and be relative to the scale and complexity of its operations'. In deciding on board composition, the Code suggests that certain factors should be considered, some of these factors include: appropriate mix of knowledge, skills and experience, including the business, commercial and industry experience needed to govern the company; and appropriate mix of executive, non-

434c-b481-f2e29c1c271a/The-Financial-Aspects-of-Corporate-Governance-(the-Cadbury-Code).pdf > accessed 12 June 2021; Bob Tricker, *Corporate Governance: Principles, Policies and Practice* (3rd edn, OUP 2015) 45-46.

66 Bob Tricker, *Corporate Governance: Principles, Policies and Practice* (3rd edn, OUP 2015) 45-46.

67 NCCG 2018, Principle 1.

68 NCCG 2018, Principle 1.

69 Amy J Hillman and Thomas Dalziel 'Board of Directors and Firm Performance: Integrating Agency and Resource Dependence Perspectives' [2003] (28) (3) *Academy of Management Review* 383.

70 Christine Mallin, *Corporate Governance* (5th edn, OUP 2016) 404.

71 ibid.

72 Lady Justice Arden DBE, 'UK Corporate Governance after Enron' (2003) 3 *JCLS* 270.

73 CAMA 2020, s 271.

executive and independent non-executive members such that majority of the board are non-executive directors.[74]

In addition to their role as directors of the company, the executive directors are involved in managing the daily affairs of the company while the non-executive directors are on the board to keep the actions of the executive directors in check and ensure the observance of standard corporate governance principles.[75] The non-executive directors are selected on the basis of their wide experience, knowledge and personal qualities which they are expected to use for the benefit of the company.[76] The contributions of non-executive directors to effective corporate governance cannot be over-emphasized. There is a consensus on the need for 'transparency, disclosure and the important contribution that independent non-executive directors can make'.[77] Non-executive independent directors 'bring a high degree of objectivity to the Board for sustaining stakeholder trust and confidence'.[78] They are involved in evaluating the performance of the board and finding solutions to potential conflicts of interest.[79]

The NCCG 2018 recommends that majority of the non-executive directors should be independent.[80] Section 275 (1) of CAMA 2020 provides that public companies should have at least three independent directors on the board. The code defines an independent director as a non-executive director who does not have a shareholding in the company the value of which is material to the holder such that it will impair his independence or in excess of 0.01% of the paid up capital of the company; is not a representative of a shareholder that has the ability to control or significantly influence management among other criteria.[81]The independent non-executive director is expected to be independent in character and judgement and free from any relationship with the company, its management or shareholders which will affect his/her ability to function impartially.[82] Non-executive directors and independent directors are regarded as the 'trustees of the shareholders', they act as a check on the activities of the company's management in order to protect the interests of the shareholders.[83] It has been noted that a downside to the increased participation of independent directors who have no technical knowledge of the business of the company is the delegation of too much power to the executive directors who in addition to managing the company are also tasked with developing its policies.[84] It may be said that a consequence of this is that the company is deprived of a fresh perspective on how its business operations can be further developed. A pertinent issue concerning the independence of the non-executive directors is the ability to maintain their

[74] NCCG 2018, recommended practice 2.3.

[75] Bob Tricker, *Corporate Governance: Principles, Policies and Practice* (3rd edn, OUP 2015) 47 and 49.

[76] NCCG 2018, recommended practice 6.1.

[77] Christine A Mallin, *Corporate Governance* (5th edn OUP 2016) 24.

[78] NCCG 2018, Principle 7.

[79] Committee on the Financial Aspects of Corporate Governance 'Report of the Committee on the Financial Aspects of Corporate Governance' (1992) paras 4.4- 4.6 <https://www.frc.org.uk/getattachment/9c19ea6f-bcc7-434c-b481-f2e29c1c271a/The-Financial-Aspects-of-Corporate-Governance-(the-Cadbury-Code).pdf > accessed 12 June 2021.

[80] NCCG 2018, recommended practice 2.3.

[81] NCCG 2018, recommended practice 7.2.

[82] NCCG 2018, recommended practice 7.1; See also Quoc Trung Tran 'Ownership Structure and Demand for Independent Directors: Evidence from an Emerging Market' [2020] (22) (2) *Journal of Economics and Development* 335.

[83] Society for Corporate Governance Nigeria, 'The Roles of Independent Directors in Promoting Best Corporate Governance Practices' [2020] https://corpgovnigeria.org/wp-content/uploads/2020/03/ROLES-OF-INDEPENDENT-DIRECTORS.pdf accessed 25 July 2021.

[84] Bob Tricker, *Corporate Governance: Principles, Policies and Practice* (3rd edn, OUP 2015) 49.

objectivity and distance on becoming part of the board. This is because relationships and friendships may be forged among the directors and it may be argued that the ability to be truly independent and closely monitor the activities of the executives may be compromised.

Corporate board diversity in terms of gender, race and ethnicity have been advocated for on the ground that such diversity will enable the board carry out its duties effectively.[85] The NCCG 2018 highlights the need for companies to pay attention to gender balance on the board. Principle 2 recommends that:

> The Board should promote diversity in its membership across a variety of attributes relevant for promoting better decision-making and effective governance. These attributes include field of knowledge, skills and experience as well as age, culture and gender. The Board should have a policy to govern this process and establish measurable objectives for achieving diversity in gender and other areas.

Gender diversity of the board members is an area which has been in focus in recent times. A gender diverse board can improve the monitoring of executive behaviour.[86] Additionally, it has been postulated that a greater number of women on the board will result in closer scrutiny of the handling of conflicts of interest.[87] In an effort to make governance more inclusive countries such as Norway, India and Germany have introduced quotas to increase female participation on the boards of quoted companies. [88] The results of a study carried out in 2018 show that 17.5% of the directors of deposit money banks in Nigeria are female while their male counterparts have 82.5% representation on the board.[89] The low number of female directors on the board of companies has been attributed to the patriarchal system in the society and family obligations traditionally imposed on women.[90]

Role of the Chairman and Chief Executive Officer

The chief executive officer (CEO) oversees the administration of the company while the chairman of the company heads the board.[91] The chairman of the board plays a vital role in ensuring good corporate governance. The NCCG 2018 provides that the chairman of the board should be a non-executive director who is not involved in the daily operations of the company.[92] Under the CAMA 2020 the chairman of a public company is prohibited from

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[85] Jared Landaw, 'Maximizing the Benefits of Board Diversity: Lessons Learned From Activist Investing' [14 July 2020] https://corpgov.law.harvard.edu/2020/07/14/maximizing-the-benefits-of-board-diversity-lessons-learned-from-activist-investing/ accessed 20 July 2021.

[86] Renee B Adams and Daniel Ferreira 'A Theory of Friendly Boards' [2007] (62) (1) *Journal of Finance* 217.

[87] David Brown and Debra L Brown and Vanessa Anastasopoulos, 'Women on boards. Not just the right thing… but the bright thing' Conference Board of Canada Report (May 2002).

[88] OECD, 'OECD Corporate Governance Factbook 2021' [2021] < https://www.oecd.org/corporate/corporate-governance-factbook.htm> accessed 30 July 2021.

[89] Ogboi Charles and Aderimiki Victor Opemipo and Enilolobo Oluwafemi Sunday, 'Corporate Board Diversity and Performance of Deposit Money Banks in Nigeria' [2018] (8) (1) *International Journal of Humanities and Social Science* 112.

[90] International Finance Corporation, 'Women on Boards in Nigeria' [2019] < https://www.ifc.org/wps/wcm/connect/7f01fe3c-21e2-4653-98f6-b82e0f8833cb/Women_on_Boards_in_Nigeria.pdf?MOD=AJPERES&CVID=mLyez0p > accessed 14 June 2021.

[91] Christine A Mallin, *Corporate Governance* (5th edn OUP 2016) 183; See also NCCG 2018, principle 3.

[92] NCCG 2018, recommended practice 3.2.

concurrently occupying the position of CEO of the same company.[93] The code also recommends that the CEO/managing director (MD) or an executive director should not also be the chairman of the same company.[94] The express provision for the separation of the role of the chairman and CEO in public companies in CAMA is a vital factor in ensuring good corporate governance and facilitates corporate accountability. This is to prevent the person who holds the joint position from taking advantage of his office to carry out acts which are detrimental to the development of the company. Unscrupulous leadership of the banks in Nigeria was one of the contributing factors which led to the failure of banks in 2009. In *Access Bank Plc v Erastus Akingbola and others*[95] the managing director of a bank in a bid to make profits initiated a scheme whereby the bank bought its own shares. The court held that the actions of the director were instrumental in the failure of the bank. There was an absence of appropriate measures of control and monitoring systems which resulted in massive corporate fraud. In 2010, the former chief executive officer and managing director of Oceanic Bank Plc, Mrs. Cecilia Ibru was prosecuted for money laundering and manipulation of credit facilities.[96] This distinction of roles is especially vital to avoid or reduce instances where the CEOs of companies use their status to control the boards to prevent dissent and accumulate some of company's funds for themselves, in addition to earning fees which have no relation to the financial position of the company.

The NCCG 2018 also provides that if in very 'exceptional circumstances' the board resolves that a former MD/CEO or executive director should become chairman, a cool-off period of three years should be adopted.[97] The importance of the separation of the roles of the chairman and CEO in order to strengthen governance and oversight was highlighted in the 1992 Cadbury report in the UK.[98] This has influenced corporate governance practices in various jurisdictions like the United States, Nigeria and the United Kingdom. It has been posited that in instances where the chairman of the board is also the CEO of the company, the responsibility of the board to hold management accountable may be impeded.[99] The separation of the role of CEO and Chairman of the board has been recommended on the ground that allowing one individual occupy both positions 'deteriorates the fiduciary oversight power of the board'.[100] When different individuals occupy the positions of CEO and board chairman managements' activities are better monitored and therefore the interests of the shareholders are safeguarded.[101] In contrast, proponents of the CEO-Chairman duality argue that it results in clear leadership which forestalls uncertainty with respect to responsibility for the company's operations.[102]

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[93] CAMA 2020, s 265(6).
[94] NCCG 2018, recommended practice 3.3.
[95] [2012] EWHC 2148.
[96] *Federal Republic of Nigeria v Mrs Cecilia Ibru* [Unreported] Charge No. FHC/L/297C/2009.
[97] NCCG 2018, recommended practice 3.3.
[98] See Committee on the Financial Aspects of Corporate Governance 'Report of the Committee on the Financial Aspects of Corporate Governance' (1992) <https://www.frc.org.uk/getattachment/9c19ea6f-bcc7-434c-b481-f2e29c1c271a/The-Financial-Aspects-of-Corporate-Governance-(the-Cadbury-Code).pdf > accessed 12 June 2021.
[99] ASX Corporate Governance Council Australian Securities Exchange, 'Corporate Governance Principles and Recommendations' [February 2019] < https://www.asx.com.au/documents/regulation/cgc-principles-and-recommendations-fourth-edn.pdf > accessed 24 July 2021.
[100] Pankaj M Madhani, 'Diverse Roles of Corporate Board: A Review of Various Corporate Governance Theories' [2017] (16) (2) *IUP Journal of Corporate Governance* 7.
[101] Pankaj M Madhani, 'Diverse Roles of Corporate Board: A Review of Various Corporate Governance Theories' [2017] (16) (2) *IUP Journal of Corporate Governance* 7.
[102] Winfried Ruigrok and Simon I Peck and Hansueli Keller, 'Board Characteristics and Involvement in Strategic Decision Making: Evidence from Swiss Companies' [2006] 43 (5) *Journal of Management Studies* 1201.

Board Committees

Principle 11 of the NCCG 2018 provides that in order to ensure efficiency and effectiveness in carrying out their duties, the board may delegate some of its responsibilities to well-structured committees, without abandoning the said responsibilities. The code recommends that the 'terms of reference and membership of board committees should be contained in the board-approved committee charter which should be reviewed periodically'.[103] Company boards are required to constitute a nomination and governance committee, remuneration committee, audit committee and risk management committee.[104] The NCCG 2018 requires each committee to consist of at least three members. All board committees with the exception of the committee responsible for risk management are required to consist of non-executive directors and independent non-executive directors, with most of the committee members being independent non-executive directors.[105] The committee responsible for risk management should consist of executive directors and non-executive directors with most of the members being non-executive directors.[106] Risk management of the company has also been identified as a vital aspect of corporate governance.[107] The OECD principles provide that the board should be able to effectively assess risks which may arise and based on such assessment decide the way to avoid and in relevant circumstances minimize the impact of the said risks.[108]

The committee responsible for nomination and governance is responsible for setting out the criteria for appointment and re-appointment to the board and board committees, developing the process and overseeing the annual performance evaluation of the board and board committees as well as ensuring the availability of a succession plan and policy.[109] The board committee responsible for audit is required to ascertain the integrity of the company's financial statement, establish and oversee the internal audit function and assess the independence of the external auditors.[110] It has been noted that the inclusion of expert independent audit committee members contributes positively to the company's performance.[111]

The board has duty to conduct annual evaluations of its committees' performance.[112] In order to ensure accountability to the board and by extension foster good corporate governance practices the board must ensure that its evaluates the performance of its committees periodically to make certain that they are effective. Therefore, despite the delegation of its responsibilities to the various committees the board is still in charge of the affairs of the company. 'The specialized expertise of board committees is critical to the boards' ability to reach effective decisions and fulfil its fiduciary duties'.[113] The importance of board committees

[103] NCCG 2018, recommended practice 11.1.3.
[104] NCCG 2018, recommended practice 11.1.6.
[105] NCCG 2018, recommended practice 11.2, 11.3 and 11.4.
[106] NCCG 2018, recommended practice 11.5.
[107] G20/OECD Principles of Corporate Governance, 'OECD Report to G20 Finance Ministers and Central Bank Governors' (2015) principle VI(d), 53 <http://www.oecd.org/daf/ca/Corporate-Governance-Principles-eng.pdf > accessed 10 July 2021.
[108] ibid.
[109] NCCG 2018, recommended practice 11.2.
[110] NCCG 2018, recommended practice 11.4.
[111] Kam C Chan and Joanne Li, 'Audit Committee and Firm Value: Evidence on Outside Top Executives as expert Independent Directors' [2008] (16) (1) *Corporate Governance: An International Review* 16.
[112] NCCG 2018, principle 14.
[113] Kalin D Kolev and others, 'Board Committees in Corporate Governance: A Cross-Disciplinary Review and Agenda for the Future' [2019] (56) (6) *Journal of Management Studies* 1138.

cannot be overstated, owing to the limited number of members, frequent meetings and the utilization of the skills of the different members, board committees are able to carry out tasks with greater efficiency and expediency.[114] Additionally, it has been posited that board committees are more closely scrutinized by the various stakeholders which results in a more efficient execution of their duties.[115]

Relationship of the Board with Shareholders

Principle 1 of the NCCG 2018 provides that 'as a link between stakeholders and the company, the board is to exercise oversight and control to ensure that management acts in the best interest of the shareholders and other stakeholders while sustaining the prosperity of the company'. Therefore, the board is responsible for promoting the prosperity of the company and ensuring that affairs of the company are carried out in consideration of the interest of the shareholders and other relevant stakeholders. Similarly, section 305(3) of the CAMA 2020 mandates directors to 'have regard to the impact of the company's operation on the environment in the community where it carries on business operation'. The provisions of section 305(3) CAMA 2020 and principle 1 of the NCCG 2018 provide for the enlightened shareholder value by charging the directors with the duty to ensure that the company's management acts in the interest of shareholders and other stakeholders. This promotes the notion that the company is not solely in existence to make profit with an inability to have consideration for the effects of its activities.

Corporate communication is a vital tool for ensuring the participation of stakeholders. Constant communication between management and shareholders allows the managers of the company to 'monitor public opinion, and collect and analyze relevant information which forms inputs into the decision-making process of an organization'.[116] The NCCG 2018[117] emphasises the need for regular communication with the shareholders in order to balance their interests and expectations with the objectives of the company. In order to ensure shareholder engagement, the board is required to create a policy to engender regular communication and the policy should be hosted on the company's website.

Conclusion

Ethical practices and oversight of company operations are essential for good corporate governance. Good corporate governance contributes to the growth of the company and the achievement of its objectives. The adoption of corporate governance practices will minimize instances of fraud and negligence in a company and promote transparency and accountability. Shareholders of a company must play an increased role in corporate governance by attending company meetings, exercising their rights and engaging in shareholder activism not for selfish pecuniary interest but for the achievement of the company's objectives and viable economic growth. Institutional shareholders should monitor the activities of the directors and review the company's financial information in order to ensure that the company is engaging in good

[114] Idalene F Kesner 'Directors' Characteristics and Committee Membership: An Investigation of Type, Occupation, Tenure and Gender'. [1988] (31) (1) *Academy of Management Journal* 66.

[115] Kevin D Chen and Andy Wu, 'The Structure of Board Committees' [2016] <https://www.hbs.edu/ris/Publication%20Files/17-032_22ea9e7a-4f26-4645-af3d-042f2b4e058c.pdf > accessed 17 July 2021.

[116] Lai Oso and Bello Semiu, 'The Concept and Practice of Corporate Governance in Nigeria: The Need for Public Relations and Effective Corporate Communication' [2012] (3) (1) *Journal of Communication* 1.

[117] NCCG 2018, principle 22.

corporate governance practices. The board of directors has a duty to monitor the activities of management and make decisions to ensure the company's objectives are achieved. The board is accountable to the shareholders and must ensure that the company's interests are always protected. It is recommended that regular updates should be made to the corporate governance framework in Nigeria in order to be in line with global best practices.

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