

ANALYSIS OF THE COMPOSITION OF BOARD OF DIRECTORS IN THE NIGERIAN CODE OF CORPORATE GOVERNANCE 2018*

Abstract

The composition of board of directors is an important factor in the determination of an effective board that would run the company properly to achieve its strategic objectives based on business best practices. The board being the hallmark of corporate governance has been given priority attention and consideration in the Nigerian Code of Corporate Governance 2018 issued by the Financial Reporting Council of Nigeria by its authority in section 11 (c) of the Financial Reporting Council of Nigeria Act, 2011. The Code seeks to institutionalize the highest standard of corporate governance best practices in Nigerian companies. It is against this backdrop that this article was poised to examine the code's provisions to determine whether its provisions on board structure and composition has pragmatically suggested highest standard of corporate governance best practices. The article adopted the doctrinal method of research by evaluating the code and other relevant literature upon which opinions were formed and conclusions drawn. The research found that the presence of independent non-executive directors in the board is not conclusive evidence that the board shall entrench corporate governance. In addition, the code has omitted to prescribe special qualification for board chairman. It was therefore, recommended that the appointment of independent non-executive directors should be based on proven integrity which could suggest their objectivity. The code should be reviewed to include provision that will prescribe the qualification and quality of the board chairman who will be able to provide credible leadership.

Keywords: corporate governance, board of directors, board structure and composition, executive and non-executive directors.

1. Introduction

The board of directors is the hallmark of corporate governance. The structure and composition of the board constitute important corporate governance issues because the quality and effectiveness of the board depends largely on its configuration. Principle 2¹, underscores the significance of the board that, 'the effective discharge of the responsibilities of the Board and its committees is assured by an appropriate balance of skills and diversity (including experience and gender) without compromising competence, independence and integrity. The issues of board size, quality of individual directors, mix of executive and non-executive directors' diversity and independence are taken into consideration in constituting a board of directors so as to ensure an effective board. It is board leadership that generates the drive on which the growth of individual companies and of the economy as a whole depends. The importance of the board cannot be overemphasized; hence, the need for every company to be headed by an effective board that can purposefully take the company into the future becomes an issue of interest to both investors and regulatory institutions. It is against this backdrop that laws, rules and regulations are made to ensure that board is properly constituted in a manner that would make an effective board. The Financial Reporting Council of Nigeria Code of Corporate Governance 2018 has made far reaching provisions in respect of structure and composition of board of directors and its officers. The Code has stated the underlying principles and recommended practices to guide companies in Nigeria in order to institutionalize the highest standards of corporate governance best practices and entrench corporate values and ethical practices that will enhance integrity of the Nigerian market. It is against this backdrop that this paper undertakes a critical analysis of the Code provisions on composition of the board of directors for the purpose of discovering the realization of the overall objective of effective board envisaged by the Code.

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¹ Principle 2 Nigerian Code of Corporate Governance 2018, Issued by Financial Reporting Council of Nigeria (hereinafter referred to as the FRC Code)

2. Status of the Financial Reporting Council of Nigeria

The Financial Reporting Council of Nigeria is established under section 1 (1) of the Financial Reporting Council of Nigeria Act² as a government regulatory agency with the responsibility for among other things developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statements of public companies in Nigeria and for other related matters.³ The main focus of the Act is the regulation of financial and accounting standards however, under its purview of related matters, the Act brought in the issue of corporate governance. The Act vests the Council with the responsibility to ‘monitor compliance with the reporting requirements specified in the adopted code of corporate governance; monitor and promote education, research and training in fields of accounting, auditing reporting and corporate governance’⁴. In order to perform the above functions as regard corporate governance the objects of the Financial Reporting Council were set to- ‘give guidance on issues relating to financial reporting and corporate governance; ensure good corporate governance practices in the public and private sectors of the Nigerian economy; and harmonize activities of relevant professional and regulatory bodies as relating to corporate governance and financial reporting.’⁵ Based on this statutory authority, the Financial Reporting Council proceeded to issue the Nigerian Code of Corporate Governance 2018 to take effect in January 2020 (herein after referred to as the FRC Code).

The introductory remarks of the Code purport that it did not abrogate the already existing sectoral codes in Nigeria. It states that ‘the Nigerian Code of Corporate Governance 2018 seeks to institutionalize corporate governance best practices in Nigerian companies’⁶. The Code recognizes the existence of other sectoral codes which address challenges in their respective sectors such as the Telecommunication industry, Banking industry, Capital market, Insurance industry, and Pension industry. It means therefore, that all existing codes of corporate governance in Nigeria apply *paripassu* with the Code issued by the Financial Reporting Council. The Code cannot be said to have harmonized activities relating to corporate governance but rather increased the proliferation of codes of corporate governance in Nigeria. In view of this situation, the Financial Reporting Council can only monitor, regulate and ensure compliance with its own code while the sectoral codes will continue to be administered and enforced by the respective relevant sectoral regulatory bodies. The principles and suggested practices in the FRC Code are the fulcrum of the discussions in this article on specific issues as they relate to the board of directors.

3. Determination of Sufficient Size of the Board

The size of a board is a very important factor for an effective board. Board size has been a corporate governance issue in almost all jurisdictions for a long time. It is expected that a board should neither be too large or too small. It is believed that a board that is too large would be unwieldy. The United Kingdom Combined Code specifically provided that ‘the board should not be as large as to be unwieldy. The board should be of sufficient size that the balance of skills and experience is appropriate for the requirements of business and that changes to the board’s composition can be managed without undue disruption’⁷ on the other hand, a board that will be so small would be hamstrung in the sense that it will find it difficult to constitute relevant board committees of members with requisite knowledge, skills and experiences. The FRC Code of Corporate Governance in attempt to address the issue of board size recommended that ‘the board should be of a sufficient size to effectively undertake and fulfill the Board’s business and oversee, monitor, direct and control the company’s activities and be relative to the scale and complexity of its operations.’⁸ Just as the Combined Code did not define what amounted to sufficient size, the FRC Code likewise fails to state the number of directors that would constitute the requisite board size. This is apparently reasonable because companies are of different sizes and engage in different kinds of businesses. The number of persons that may be sufficient to manage one company

² No. 6, 2011

³ Ibid, Long Title of the Act.

⁴ Ibid, section 8 (1), (g) and (I) (underline supplied for emphasis)

⁵ Ibid, section 11 (b) (c) and (e).

⁶ Introduction, Financial Reporting Council, Nigerian Code of Corporate Governance 2018

⁷ Supporting principle to Main Principles A.3 Combined Code, 2008, United Kingdom

⁸ Recommended Practices, 2.1, FRC Code of Corporate Governance, 2018

may not be the same for another company due to size and business difference. The FRC Code, therefore, endeavors to provide the factors in determining the requisite number of board membership as follows:

- a. Appropriate mix of knowledge, skills and experience, including the business, commercial and industry experience, needed to govern the company;
- b. Appropriate mix of Executive, Non-executive and Independent Non-executive members such that majority of the Board are Non-executive Directors. It is desirable that most of the NEDs are independent.⁹

There is no doubt that all companies cannot be expected to have the same number of members of directors because companies differ in size, business as well as sectoral differences of operation and regulatory requirements. The things to be taken into consideration include appropriate mix of knowledge, skills and experience, mix of executive, Non-executive and independent Non-executive directors, number of qualified members to serve on board committees.¹⁰ It means that the board is expected to consist of members with different knowledge, skills and experience relevant to the business of the company so that every person will be suitable on the board. This is meant to avoid duplicity and redundancy of members of the board. The complexity and business requirement of a company form the basis of having appropriate number of directors while using the factors as criteria. The code assumes that the application of these recommendations would necessarily produce the expected board size.

From the above determinants, and other code requirements, the board must consist of a management team headed by a managing director. A team implies more than one person and at least two persons. It means therefore that a board must have minimum of two executive directors. The number of non-executive directors must be more than the executive directors. Consequently, there must be at least three non-executive directors to be more than two executive directors. In view of the recommendation of the FRC Code that most of the non-executive directors should be independent, out of the three non-executive directors, two are expected to be independent directors. In the final analysis two executive directors plus one non-executive director and two independent non-executive directors make the total minimum number of directors to be five. From this analysis, a company that would comply with the FRC Code on composition of the board of directors cannot have less than five directors.

Another perspective is in view of the new Companies and Allied Matters Act 2020 which provides in section 275 (1) that ‘a public company shall have at least three independent directors’. It means that the composition of the board with executive, non-executive and independent directors would necessarily result to the board consisting of not less than six directors. As postulated above that there must be two executive directors, at least one non-executive director in addition to the statutory mandatory three independent directors would altogether amount to six directors.

An important issue that arises for interrogation is where a company apparently appears to have a small board size of two members. The number of two directors is allowed by the Companies and Allied Matters Act which provides that ‘every company, not being a small company shall have at least two directors.’¹¹ The provision says ‘every company’ except where the company is small company. It means that any company can lawfully operate with two directors, even with one director in the case of a small company. It has however, become apparent that a public company cannot operate with the minimum of two directors in view of the mandatory requirement of three independent directors.

The above argument of a company deciding to operate with two directors though statutory may be considered simply academic especially with regard to public companies. Public companies by their size and complexity require a number of directors with diverse experience and knowledge to manage them properly. There are also increasing requirements for good corporate governance in line with international best practices to build public trust and confidence of doing business for public companies to establish necessary board committees with requisite membership qualifications. A company that

⁹ Recommended Practice 2.3(a) (b), Ibid

¹⁰ Recommended Practices 2.3, Ibid

¹¹ Section 271, Companies and Allied Matters Act 2020 (hereinafter referred to as CAMA)

attracts public interest and investment is a company with good corporate governance. The desire for business growth and prosperity endears companies to consider creating those committees and appointing appropriate directors that will fit into those committees. In practice therefore the company ends up having more than two board members.

The reality however, is that the FRC Code leaves absolutely the determination of the size of the board to the company. Just like tax avoidance a company can arrange its affairs to favour it. A company can also structure its organization in a manner that will reduce or increase the number of directors depending on the business exigencies of the company and whose interest the directors wish to advance. This is possible because the board is mandated to assume responsibility for its composition.¹²

4. Composition of Board of Directors

The FRC Code of corporate governance enjoins companies to take into consideration in constituting their board of directors that there should be ‘appropriate mix of Executive, Non-executive and Independent Non-executive Directors.’¹³ It further advises that most of the Non-executive Directors (NEDs) are independent.¹⁴ When the directors perform their duties as a board, their distinction as mentioned above is of no consequence. The same duties provided from sections 308-313¹⁵ apply to all directors. These duties include fiduciary duties of honesty and good faith, duty to avoid conflict of personal interest with official duties, and the duty of care and skill in carrying on responsibilities. In fact, section 308(4) specifically makes it abundantly clear that ‘the same standard of care in relation to the directors’ duties to the company shall be required for both executive and non-executive directors.’ The statutory definition of directors does not recognize the nomenclature between executive and non-executive directors.¹⁶ There is however, no doubt that the different types of directors have their respective and distinct roles to perform in the board of directors. These differentiations of responsibilities are perhaps for the purpose of ensuring and promoting good corporate governance by the checks and balances they provide.

The Position and Role of Executive Directors

Executive directors are responsible for supporting the managing director/chief executive officer in the operations and management of the company.¹⁷ Since there is no clear statutory definition of executive directors, recourse has to be made to the functions of the managing director. The same FRC Code states that the ‘Managing Director/Chief Executive Officer is the head of management delegated by the Board to run the affairs of the company to achieve its strategic objectives for sustainable corporate performance’¹⁸ and that he should be responsible for the day-to-day management of the company.¹⁹ It therefore means that, the managing director/chief executive director with the executive directors constitute the ‘executive management’ that have authority and responsibility for planning, directing and controlling the day-to-day activities of the company’ In practice, these executive directors are employees of the company and in most cases employed under terms of contract of employment.²⁰ They are employed based on the specific knowledge and experience they possess, for example, a director of finance. He is a director by virtue of his position in the company as an executive. Sometime the Articles give the directors or the company power to appoint executives. In practice, the executive is an employee of the company whose status has been raised to that of a director but who continues essentially as such employee.²¹ An executive director of a company devotes his/her whole working time to the company,

¹² Recommended Practice 2.2 FRC Code, op.cit

¹³ Ibid 2.3 (b)

¹⁴ Ibid

¹⁵ CAMA, 2020

¹⁶ *Longe v First bank of Nigeria Plc* (2010)6 NWLR Pt. 1189, 42

¹⁷ Principle 5, FRC Code, op.cit

¹⁸ Principle 4, Ibid.

¹⁹ Recommended Practices, 4.4.1, Ibid.

²⁰ Recommended Practice 5.6 FRC Code

²¹ J. O. Orojo, *Company Law and Practice in Nigeria* (Mbeyi & Associates Co Nig. Ltd 1992),p.247

often as an employee of the company, and has a significant personal interest in the company as a source of income.²² Once he ceases to be in that position in the company, his directorship automatically abates.

The place of non-executive directors

On the other hand, non-executive directors do not engage in the day-to-day running of the company.²³ He does not devote his/her whole working time to the company and receives a relatively small director's fee or allowances.²⁴ Their duty is majorly to supervise the management team and scrutinize executive directors' activities and information to ensure proper running of the company. A modern non-executive director is expected to monitor the actions of the executives and of course, a company may reasonably at least look unto non-executive directors for independence of judgment and supervision of the executive management.²⁵ The FRC Code requires them to bring to bear their knowledge, experience and independent judgment on issues of strategy and performance on the Board.²⁶ It is against this backdrop that the choice and appointment of non-executive directors is expected to be based on their wide experience, knowledge and personal qualities.²⁷

The requirement and significance of independence non-executive directors

There is also requirement for independent non-executive directors to constitute the membership of modern board of directors. The FRC Code recommends for 'appropriate mix of Executive, Non-executive and Independent Non-executive Directors. It is advisable that most of the NEDs are independent'.²⁸ The Nigerian new Companies and Allied Matters Act 2020 has made it mandatory for public companies to have at least three independent directors²⁹, and makes a point of duty for any person who nominates candidates for the board who would comprise a majority of the members of the board to nominate at least three persons who would be independent directors³⁰ An Independent non-executive director is one who is 'independent in character and judgment and accordingly be free from such relationships or circumstances with the company, its management, or substantial shareholders as may, or appear to, impair his ability to make independent judgment'.³¹ The criteria, albeit not exhaustive are enumerated in FRC Code which include not being, a material shareholder in the company, a representative of a controlling shareholder, a close family member of any of the company's major stakeholders. He should not be a person who has material business relationship with the company and does not render any professional, consultancy or other advisory services to the company. An independent non-executive director because of his independence is expected to be responsible for bringing a high degree of objectivity to the Board for sustaining stakeholder trust and confidence,³² and 'represent a strong independent voice on the Board.'³³ His independence gives him the audacity to speak out, inside and outside the board room, in the face of management misdeeds in order to protect the interest of shareholders.

Good corporate governance demands that independent non-executive directors constitute more of the membership of board of directors. The essence was to make their independent and objective view to prevail in board decision making. Other directors like executive directors (management team) are not independent because their management report of activities they have carried out is brought to the board for scrutiny and evaluation. Accordingly, they have interest in ensuring that their report is approved. While non-executive directors who are not independent may be a person who is a major shareholder,

²² D French; S Mayson; C Ryan (2011) *French and Ryan on Company Law*, (28th Edition, Oxford University Press, London)

²³ Recommended Practice 6.3 op.cit

²⁴ D French; S Mayson; C Ryan. (2011), op.cit

²⁵ *Re Continental Assurance Company of London Plc* (2001) BPIR, 733; *AWA Ltd v. Daniels* (1995) 37 NSWLR, p.438 and *Equitable Life Assurance Society v. Bowley and Others* (2003) EWHC, 2263.

²⁶ Principle 6 FRC Code, op.cit

²⁷ Recommended Practice 6.1, *ibid*.

²⁸ Recommended Practice 2.3 (b) *Ibid*.

²⁹ Section 275 (1) CAMA 2020

³⁰ Section 275 (2) *ibid*

³¹ Recommended Practice 7.2 FRC Code; Section 275 (3) CAMA 2020

³² Principle 7 FRC Code, *Ibid*.

³³ Recommended Practice 7.1, *Ibid*

has material business relationship with the company or a close family of a major stakeholder in the company. These relationships make him to seek to canvass his personal interest in the company in the course of board deliberations. These interests of directors in the board affect the overall interest of shareholders of the company hence the need to have someone on the board that is not entangled by such strings of interest to look at things in a holistic perspective and balance interests of all stakeholders of the company. It is widely accepted that the presence of independent non-executive directors in the boardroom improves the quality of corporate governance.³⁴ However, it has been argued that ‘the mere fact that boards have independent directors does not guarantee that the directors will function independently’.³⁵ Some studies were said to have revealed that ‘there is no solid evidence suggesting that independent directors improve corporate governance’.³⁶ The fact whether an independent director will act independently depends on individual character of integrity. If a director is truly independent but lacks the ability to challenge other directors, his independence would be of no effect.

Another dimension of the argument is that since an independent director does not have financial stake in the company which he stands to lose should the company collapses; he may not be quite vehement and selfless in pursuing the cause of the company. However, non-executive directors who have material interest in the company like major shareholders and those who have business and financial link with the company would ordinarily do everything possible to keep the company viable in order to sustain their interests. They would not like the company to fail because of their stake in the company which they will not want to lose.

The positions and roles of board chairman and managing director

In recent time with the introduction of codes of corporate governance in many countries including Nigeria, the positions of chairman and managing director have been separated to be held by two separate persons such that no person can combine the two positions.³⁷ The provision of the CAMA is however, directed at public companies by stating that ‘the chairman of a public company shall not act as the chief executive officer of such company’. The implication is that companies other than public companies have the liberty to combine the positions of chairman and chief executive officer to be held by one person. Even though the FRC Code does not refer to any type of company, the fact that codes of corporate governance are mainly concerned with regulating public companies, it could be inferred that the requirement of separate persons to hold the positions of chairman and chief executive officer is primarily directed at public companies. This practice has already been entrenched in Nigerian companies. The reason was to avoid a situation of too much power being concentrated in one person that will make him domineering and overbearing in decision making with little checks and balances. The positions of chairman and managing director are very significant to entrenching good corporate governance and effective board performance. The two positions are mandated by the Companies and Allied Matters Act (CAMA)³⁸ and underscored by the FRC Code of Corporate Governance.³⁹

The chairman of the board of directors

The directors are responsible for electing the chairman of the board who shall hold office for a specified period of time.⁴⁰ Once appointed he presides over not only board meetings, but also general meetings of the company.⁴¹ He occupies a very significant position of power and authority. The crux of the statutory duties and powers of the chairman in the CAMA are concerned essentially with ensuring smooth and effective conduct of meetings.⁴² Though the CAMA has failed to specify the type of director that should be appointed as chairman, the FRC Code has clearly recommended that the chairman of the

³⁴ D C Singh, ‘Corporate Governance and Independent Directors: An Analysis’ (2012) 6 of 12 <<http://www.thefreelibrary.com>> Accessed on 14/4/2013

³⁵ Ibid, 7 of 12

³⁶ D C Clark ‘Three Concepts of the Independent Directors’ (2007) 4 of 40 <<http://scholarship.law.gwu.edu/cgi>> Accessed on 14/4/2013

³⁷ Recommended Practice 2.7 FRC Code, op.cit; Section 265 (6) CAMA 2020

³⁸ 2020

³⁹ Principles 3 and 4, FRC Code, op.cit.

⁴⁰ Section 289 (4) CAMA, op.cit

⁴¹ Section 265 (1) Ibid.

⁴² Section 265 (3) Ibid.

board should be a non-executive director.⁴³ The Code has provided enormous responsibilities of the chairman. Principle 3⁴⁴ provides in general that ‘the chairman is responsible for providing overall leadership of the company and the Board, and eliciting the constructive participation of all Directors to facilitate effective direction of the Board’. The Code requires the chairman to ‘also provide guidance to the managing director/Chief Executive Officer.’⁴⁵ With these onerous responsibilities, the chairman must need to be well experienced with ardent qualities that are coterminous or more than that of the managing director/Chief executive. Neither the CAMA nor the FRC Code have prescribed for the qualification of a person to be appointed chairman of the board. But since the Code has stated that the chairman should be a non-executive director, the expected caliber of a person as non-executive director shall apply. The Code provides that ‘NEDs should be chosen on the basis of their wide experience, knowledge and personal qualities...’⁴⁶

Consequently, the chairman being a non-executive director should possess experience, knowledge and personal qualities. The non-executive directors on the board cannot possess these qualities equally and there is no directive or indication anywhere that the person with wider experience and knowledge should be the one to be appointed among the non-executive directors. The board of directors therefore has unfettered discretion to appoint any of its members as chairman. This creates room for appointment of any non-executive director as chairman of the board without necessarily being the most experienced and knowledgeable among them. This allows for a less qualified director to be appointed as chairman of the board.

Managing director /chief executive officer

One other position in the board of directors is the managing director commonly known in modern parlance as Chief Executive Officer (CEO). Both the CAMA and the FRC Code of Corporate Governance recommend the appointment of managing director. Section 88(b)⁴⁷ provides that ‘unless otherwise provided in this Act or in the Articles, the board of directors may from time to time, appoint one or more of its members to the office of managing director and may delegate all or any of its powers to such managing director’. A person must be a member of the board before he is appointed as managing director. He is first of all a director and is expected to know his duties and functions; perhaps, it may be the reason why the CAMA deems it unnecessary to state the responsibilities of the managing director because extent of his power is determined by the instrument of his appointment. The FRC Code has however, supplied useful information on the specific responsibility of the managing director. It provides that ‘the Managing Director/Chief Executive Officer is the head of management delegated by the Board to run the affairs of the company to achieve its strategic objectives for sustainable corporate performance’.⁴⁸ The fact that the managing director is the head of the management team it presupposes that he must be an executive director because it is executive directors that carry out the day to day management of the company. The FRC further adumbrates that ‘the functions and responsibilities of the MD/CEO should include: day to day management of the company.’⁴⁹ He provides leadership to the management team of the company which comprises of the executive directors and senior managers. He is responsible for ‘proper implementation and achievement of the company’s strategic imperatives to ensure the sustainable development and growth of the company’.⁵⁰ He is also to ensure ‘prudent management of the company’s financial and other resources.’⁵¹

Though the CAMA has not provided the quality of the person who should be appointed as managing director, the FRC Code has considered it important for good corporate governance that a managing director should possess some qualities that would enhance the performance of his responsibilities. It

⁴³ Recommended Practice 3.2, FRC Code, op.cit.

⁴⁴ FRC Code of Corporate Governance, Ibid.

⁴⁵ Recommended Practice, 3.1, Ibid.

⁴⁶ Recommended Practice 6.1, Ibid

⁴⁷ CAMA, op.cit.

⁴⁸ Principle 4 FRC Code of Corporate Governance, op.cit.

⁴⁹ Recommended Practices 4.4.1, 3.2 FRC Code, Ibid.

⁵⁰ Ibid 4.4.2, ibid

⁵¹ Ibid 4.4.3, ibid

states that ‘the MD/CEO should have a broad understanding of the company’s business. He should demonstrate entrepreneurial skills, credibility and integrity and have the confidence of the Board and management’.⁵² The FRC Code is not only concerned about the knowledge and work experience of the managing director but his character as well because of his influential role as the leader of management team. The fact that directors generally are regarded as trustees of the company’s moneys, properties and their powers they are required to exercise their powers honestly in the interest of the company and all the shareholders.⁵³ In view of these responsibilities, the managing director must exemplify the character of honesty and integrity. He is expected to be a person that will act in an ethical way in business and relationship with the company. The determination of whether a person has the expected qualities of skill and integrity lies with the board of directors as the appointing authority. The ascertainment of entrepreneurial skills may not be very difficult to determine in consideration of the professional qualifications and tract record of the work experience of the director. However, the quality of integrity is a character or moral connotation, which is very difficult to ascertain as a result of the dynamics of human nature; the tendency to act differently in different circumstances.

The CAMA has made attempt at providing the basis for disqualifying and restraining fraudulent persons from being appointed as directors generally. Section 280 (1) in particular states that:

Where-

- a) a person is convicted by a High Court of any offence in connection with the promotion, formation or management of a company, or
- b) in the course of winding up a company it appears that a person -
 - (i) has been guilty of any offence for which he is liable (whether he has been convicted or not) under section 668-670 of this Act, or
 - (ii) has been guilty of any offence involving fraud,

the court shall make an order that that person shall not be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of a company for a specified period not exceeding 10 years.

The above provision is apparently concerned with fraud or malfeasance not only in relation to company matters but any offence involving fraud. This includes fraudulent acts of persons in the public/civil service and political appointments. It therefore presupposes that any dishonesty or fraud outside company matters shall be considered as fraudulent for the purpose of appointment as director. This is to say that a person who has been convicted by a High Court for fraud or been found guilty of fraud while in office as a public or civil servant, shall be considered fraudulent for the purpose of disqualifying him for appointment as director, since the CAMA says any offence involving fraud. This has closed the leeway for persons of moral turpitude to be appointed as directors of companies in Nigeria. Since integrity is a character issue a person who is morally corrupt outside company matters is an indication that he might behave in his depraved nature anywhere he has opportunity and company administration may not be an exception.

5. Conclusion

The provisions of the Principles and recommended Practices in the Financial Reporting Council Code of Corporate Governance 2018, is one of the steps to enhance and entrench good corporate governance practices in Nigerian companies. The Code has made recommendations for composition of company board of directors which would result to establishing appropriate and standard board of directors that can perform its functions efficiently. It is believed that an efficient board of directors is more likely to fulfill the goals and strategic objectives of the company. Among the specific areas of concern for the FRC Code of Corporate Governance are the issues of board size which it provides that the board should be of sufficient size to effectively undertake its function and responsibilities. Another critical issue is the composition of the membership of the board. The code recommends for appropriate mix of executive, non-executive and independent non-executive directors on the board with the positions of

⁵² Ibid 4.2, *ibid*

⁵³ Section 309 (1) CAMA *op.cit.*

board chairman and managing director clearly and distinctly separated. Their respective responsibilities are meant to provide complementary roles and necessary checks and balances to ensure proper management of the company. From the entire discourse, it was found that in view of the requirements for composition of company board of directors, the minimum number of directors on the board especially of public companies cannot be less than five members. It is also found that the presence of independent non-executive directors in the board is not conclusive evidence that the board shall entrench corporate governance. Finally, both the FRC Code and the CAMA have omitted to provide for special qualification of the board chairman which will enable him to provide guidance to the managing director who is usually a specialist in the business of the company in addition to the general qualities of non-executive directors. In view of the above findings it is accordingly recommended that for avoidance of doubt there should be provision in the FRC Code that the minimum number of directors a board should consist must be five members in order to comprise of the requisite mix of executive, non-executive and independent non-executive directors. Also, that the appointment of independent non-executive directors of the board should be based on proven probity that will give assurance that they will promote corporate governance. Finally, there should be provision in the FRC Code that prescribes the qualification and quality of the board chairman who will be able to provide credible leadership and guidance to the managing director. The chairman should have experience and knowledge in the business of the company that is coterminous to that of the managing director.