

CRITICAL APPRAISAL OF CORPORATE GOVERNANCE CODES AND THEIR MECHANISMS IN NIGERIA*

Abstract

Corporate governance is described by the Organisation for Economic Cooperation and Development (OECD) as 'the structure by which business corporations are directed and governed.' The corporate governance structure spells out the rules and methods for making corporate decisions, as well as the distribution of rights and obligations among different players in the organization, such as the board of directors, managers, shareholders, and other stakeholders. It also provides the structure through which the company's goals are determined, as well as the means of achieving those goals and tracking performance. The purpose of this article is to trace the evolution of Nigerian corporate governance from the Companies and Allied Matters Act (CAMA) 1990 to the Companies and Allied Matters Act (CAMA) 2020. It goes on to look at Nigeria's corporate governance structure and how it has influenced a variety of internal and external economic issues. Directors, secretaries, auditors, and shareholders are all examples of corporate governance processes in this study. It shows that the development of corporate governance codes in Nigeria was influenced by the development of corporate governance codes in other countries, particularly the Cadbury Report of 1992 and the King Report of 1994, in which the Securities and Exchange Commission (SEC) established The Committee on Corporate Governance of Public Companies in Nigeria. The approach adopted in carrying out this research is doctrinal method by consulting text books, journals, articles and internet sources.

Keywords: Companies, Corporate Governance, Codes, Financial Report, Secretary Auditors, Shareholders

1. Introduction

Business governance is usually concerned with the institutions that provide basic orientation and direction to a corporate entity or enterprise¹. This perspective views corporate governance in terms of shareholder protection, managerial control, and economic theory's popular principal-agency concerns.² This is a limited interpretation of the notion. Sullivan,³ a proponent of the broader perspective, argues that issues of institutional, legal, and capacity building, as well as the rule of law, are at the heart of corporate governance, citing the problems that have arisen as a result of the privatization crusade that has swept through developing countries since the 1980s and the transition economies of former communist countries in the 1990s. For those who have never had to comply with any corporate governance regulations before, the application of these governance measures in Nigeria may be difficult.⁴ The importance of corporate governance is not diminished by the foregoing. Sanusi Lamido Sanusi, a former Central Bank Governor, once said: Good (business) governance is...an key step in restoring market trust and attracting stable, long-term foreign investment into the country. Because the business corporation is becoming an increasingly important engine of wealth creation and growth, not only in our economy but around the world, it is critical that our businesses adhere to standards that keep them focused on their goals and hold them accountable to their shareholders and actions.⁵ The purpose of this article is to discuss the concept and nature of corporate governance, as well as to demonstrate that corporate governance is the system by which businesses are directed and controlled. The article also discusses the evolution of corporate governance in Nigeria, as well as the system of corporate governance, corporate governance mechanisms, and the development of corporate governance codes in Nigeria.

2. The Concept and Nature of Corporate Governance

Corporate governance is described by the Organisation for Economic Cooperation and Development (OECD) as 'the structure by which business corporations are directed and governed.' The corporate governance structure spells out the rules and methods for making corporate decisions, as well as the distribution of rights and obligations among different players in the organization, such as the board of directors, managers, shareholders, and other stakeholders. It also provides the structure through which the company's goals are determined, as well as the means of achieving those goals and tracking performance.⁶ Corporate governance lowers transaction costs, capital

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¹ Rwegasira, K. 'Corporate Governance in Emerging Capital Markets: Whither Africa?', *Empirical Research-Based and Theory-Building Papers*. Vol. 8 No. 3 July2000 pp. 258-268.

² A. Oyejide, A. Soyibo, 'Corporate Governance in Nigeria', Paper presented at the Conference on Corporate Governance, Accra, Ghana, 29-30 January, 2001.

³ Sullivan, J. D. 'Corporate Governance: Transparency between Government and Business' Paper Presented to the Mediterranean Development Forum 3, World Bank Meeting Cairo, Egypt.

⁴ 'KPMG, The Nigerian Code of Corporate Governance 2018: Highlights and Implications'. Board Advisory Services-January2019. Available at <<https://home.kpmg/ng/en/home/insights/2019/01/2018-Nigerian-Code-of-Corporate-Governance.html>> accessed 25December 2021.

⁵ 'Corporate Governance in Nigeria'. Available at <<https://nigerianfinder.com/corporate-governance-in-nigeria/>>. accessed 25December 2021

⁶ Organization for Economic Corporation and Development (2004) 'OECD principles of corporate Governance' OECD publication service, Pp. 11-15.

costs, and financial crisis vulnerability. It leads to an increase in shareholder value, the survival of businesses during difficult times, the development of the capital market, and the strengthening of the global economy.⁷ The growing need to separate ownership from control and management of organizations inspired the concept of corporate governance as it relates to managerial performance.⁸ The corporate governance structure defines out the rules and methods for making corporate decisions, as well as the distribution of rights and obligations among various players in the organization, such as board members, shareholders, and stakeholders.⁹ The dual notions of stewardship and agency govern corporate governance in Nigeria.¹⁰ The stewardship idea says that directors are generally trustworthy and hence capable of acting in the best interests of the public and shareholders. The fiduciary relationship they have with the firm, which is made up of the company's shareholders, is the foundation of this notion. On the other hand, agency theory assumes that directors cannot be trusted to operate in the public interest or in the best interests of the shareholders.¹¹

3. The Evolution of Corporate Governance in Nigeria

In Nigeria, the concept of corporate governance is not new, and it is inextricably linked to company law. The Companies and Allied Matters Act (CAMA) 1990, now (CAMA) 2020, which superseded the Companies Act of 1968, is credited with establishing the corporate governance paradigm in Nigeria. Corporate governance has changed dramatically over the centuries. The Companies Ordinance of 1922 was abolished in 1960, when Nigeria gained independence, and replaced by the Companies Act of 1968, which was modeled after the English Companies Act of 1948. The Act became the most important piece of legislation governing businesses in Nigeria.¹² It included extensive regulations relating to the management of businesses, particularly in reference to the functions of the board of directors and members of general meetings.¹³ The Companies Act of 1968, on the other hand, did not take into account Nigeria's economic reality and context. Nigerian Enterprises Promotion Decree was enacted by the Federal Government in 1972.¹⁴ This Decree, however, has been rescinded.¹⁵ As previously stated, the CAMA abolished and replaced the Corporations Act of 1968 as the fundamental law governing companies in Nigeria, and corporate governance as a distinct concept had not yet emerged at the time.¹⁶ However, it includes provisions that are fundamental to Nigerian corporate governance practice, such as required accounting and auditing standards, equity ownership disclosure, minority shareholder rights and equality of members, and oversight management, in which the Corporate Affairs Commission (CAC) and other regulators are expected to regulate the companies' activities.¹⁷ The defining of directors' responsibilities was another key component of CAMA. Apart from the CAMA, the Central Bank of Nigeria (CBN) Act,¹⁸ the Banks and Other Financial Institutions Act (BOFIA),¹⁹ the Banks and Other Financial Institutions Act (BOFIA),²⁰ the National Insurance Commission (NAICOM) Act, the Pension Commission (PENCOM) Act,²¹ the Financial Reporting Council (FRC) Act,²² the Nigerian Deposit Insurance Corporation (NDIC) Act,²³ the Nigerian Communications (NCC) Act,²⁴ and the Investment and Securities Act (ISA)²⁵ were among the legislations that companies were required to comply with. In the preceding, they will be thoroughly discussed. However, soon after CAMA was enacted, global business issues brought the subject of corporate governance to the forefront, prompting various

⁷Dar L. A., Naseem M. A., Rehman R. U. & Niazi, G. S. K., 'Corporate governance and firm performance: A case study of Pakistan Oil and Gas Companies listed in Karachi Stock Exchange' *Global Journal of Management and Business Research*. [2011] 11(8)

⁸ I.G. Adeyuma, S.I. Gloria, 'An Analysis of Corporate Governance Impact on Corporation Management in Nigeria' *International Journal of Innovative Research & Development*, [2019] 8(5) 138.

⁹ A.M. Rufus, 'The Search for an Effective Corporate Governance Model and Management Principles in Nigeria: A Merry-Go Round or an Economic Imperative' *Journal of Business Law and Ethics*, [2014] 2(1) 34.

¹⁰ Kolade C., 'Board Performance Analysis' Distinguished Management Lecture *Weekend Concord Newspaper* (Lagos, November 1998) 6.

¹¹ Ibid

¹² Akintunde Emiola, *Nigerian Company Law* (Ogbomoso: Emiola Publishers, 2007).

¹³ O. Orojo, *Company Law and Practice in Nigeria* (3rd Edition, Mbeyi and Associates Nigeria Ltd., 1992) 13.

¹⁴ No 4 of 1972.

¹⁵ An analysis of corporate governance in Nigeria written By ABUAD LAW REVIEW Posted in ABUAD LAW Reviewtagged Analysis, Corporate Governance, Historical Analysis, Regulatory Mechanisms

¹⁶ B.M. Junaidu, 'Corporate Governance Practices: An Overview of the Evolution of Corporate Governance Codes in Nigeria' [2015] 3(3) *International Journal of Business & Law Research*, 53.

¹⁷ Ibid.

¹⁸ Cap. C4 LFN, 2004; as amended by Act No.7, applicable to banks operating in Nigeria.

¹⁹ Cap. B3 Laws of the Federation of Nigeria (LFN) 2004, applicable to Bank and other financial institutions in Nigeria.

²⁰ Cap 117 LFN 2004, applicable to Insurance Industry in Nigeria.

²¹ No. 4 of 2014 which repealed the Pension Reform Act No. 2, 2004, applicable to Pension Industry in Nigeria.

²² No. 6 2011.

²³ No 16 2006, applicable to Banking Industry in Nigeria.

²⁴ 2003, applicable to Telecommunications Industry in Nigeria.

²⁵ No 29 of 2007.

countries throughout the world to reassess their corporate governance procedures.²⁶ As a result, some countries have issued corporate governance codes of practice to address new challenges that aren't sufficiently and expressly addressed by company law. One of them happened to be Nigeria.²⁷ The early 2000s saw the fall of Enron, Arthur Anderson, and other significant firms in the United States and the United Kingdom, bringing the concept of corporate governance to a wider audience around the world.²⁸ The Bankers' Committee published the Code of Corporate Governance for Nigerian Banks and Other Financial Institutions in August 2003.²⁹ The Bankers' Committee's Subcommittee on Corporate Governance deliberated and compiled the report. When it was first published, the regulation applied to all Nigerian banks and other financial institutions. Despite its extensive nature, the code had little or no impact in the end due to the Security and Exchange Commission's publication of the Code of Best Practices on Corporate Governance in Nigeria in October of 2003. (SEC).³⁰ The SEC's rule, which was the first corporate governance code released by any authority in Nigeria, had a significant impact on the Nigerian business landscape. The SEC, on the other hand, replaced it on April 1, 2011 with the Nigerian Code of Corporate Governance 2011. The CBN issued an obligatory code of corporate governance for all banks licensed in Nigeria (Code of Corporate Governance for Banks in Nigeria Post-Consolidation) in 2006.³¹ In 2008, the National Pension Commission (PENCOM) published its own code, dubbed the 2008 PENCOM Code.³² Following that, in 2009, the National Insurance Commission (NAICOM) released its Code of Corporate Governance for the Insurance Industry.³³ These three industry-specific codes were created to solve difficulties that the SEC Act did not address. The SEC, on the other hand, produced the Code of Corporate Governance for Public Companies in Nigeria in 2011, which replaced the 2003 Act.³⁴ This Code was deemed to be Nigeria's most complete corporate governance code, since it is based on five basic principles: leadership, effectiveness, accountability, remuneration, and shareholder relations.³⁵

The Code of Corporate Governance for Nigerian Banks and Discount Houses, as well as Guidelines for Whistleblowing in the Nigerian Banking Industry, were published in 2014.³⁶ The NCC established the Code of Corporate Governance for the Telecommunications Industry the same year.³⁷ The Nigerian Communications Commission (NCC) code aimed to promote excellent corporate governance standards in the Nigerian telecommunications industry, including regulations based on international best practices. On the 15th of January 2019, the Financial Reporting Council of Nigeria (FRCN) announced the Nigerian Code of Corporate Governance 2018 as a result of its authority under Sections 50 and 51(1) of the Financial Reporting Council of Nigeria Act.³⁸ The code's goal is to embed good corporate governance standards in Nigerian businesses, particularly those that aren't already governed by sectoral regulations. Furthermore, the Code is the first national corporate governance code that applies to all industries. It is worth noting, however, that the FRCN's previous attempt to include a Private Sector Code (PSC) in its National Corporate Governance Code was unsuccessful in court. In the matter of *Eko Hotels Limited v. the Nigerian Financial Reporting Council*,³⁹ The FRCN's power, as stated in its enabling Act, is limited to public interest entities and does not extend to private company regulation, according to Justice O.E. Abang.

4. Analysis of the System of Corporate Governance in Nigeria

Any country's corporate governance structure is influenced by a variety of internal and external influences.⁴⁰ Internal determinants include the economy's and capital market's maturity levels, corporate and business cultures, the legal system, government policies, and active professional and regulatory agencies, to name a few.⁴¹

²⁶ B.M. Junaidu, 'Corporate Governance Practices: An Overview of the Evolution of Corporate Governance Codes in Nigeria'. *Op. Cit.*

²⁷ Ibid

²⁸ Ibid

²⁹ Retrieved from <<https://books.google.com.ng>>. accessed on 8 January 2020.

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Ibid

³⁴ Retrieved from <<https://ethicalboardroom.com/nigerias-national-code-of-corporate-governance/>>. accessed 25th December 2021.

³⁵ O. Olatuyi, *op. cit.*

³⁶ Ibid

³⁷ Ibid: National Communication Commission.

³⁸ Ibid

³⁹ (Unreported: Suit No. FHC/L/CS/1430/2012 delivered on 21/03.2014).

⁴⁰ E.N.M Okike, and Adegbite, E., 'The Code of Corporate Governance in Nigeria: Efficiency Gains or Social Legitimation?', *Corporate Ownership & Control*, 9(3): (2012) 262-275.

⁴¹ Ibid

Because of Nigeria's colonial past, the corporate governance system is essentially 'Anglo-Saxon,' or 'outsider control' (Franks and Meyer, 1994). The following are some of the system's features:⁴²

- The interests of shareholders are fundamental in management's day-to-day activities, and the maximization of shareholder value is their top objective.
- There is a functional capital market, which helps to align management and shareholder interests by allowing investors to purchase and sell shares at prices that reflect their perceived worth.
- A chain of responsibility has been established. The board of directors, in turn, is responsible to the shareholders.
- The rights and obligations of important participants in the corporate governance system are codified in law.

This is not to say that these concepts are used in Nigeria in the same way that they are in nations with more developed capital markets. Nigeria, on the other hand, is eager to attract international investment and has put in place a strong corporate governance regime.⁴³

The Corporate Governance Mechanism in Nigeria

In Nigeria, a number of organisations and individuals are responsible for ensuring effective accountability of public corporations. These are some of them:

The Government

The government plays an important role in corporate governance by enacting numerous regulations that affect the administration and control of businesses in Nigeria, regardless of their size.⁴⁴

The Companies and Allied Matters Act (CAMA) 2020 is the primary legal foundation for corporate governance. The following are some significant elements of the Act that pertain to corporate governance:

Chapter 11 and 12 - Directors and Secretaries of the company

The board of directors provides oversight function over an organization. Section 271 (1) of CAMA⁴⁵ requires that all registered companies have at least two directors. The directors are re-appointed at the annual general meeting of the company (section 273)⁴⁶. Members of the corporation can dismiss a director before his term expires by passing an ordinary resolution. While the Act (section 293(1)) stipulates that the company's annual general meeting determines the directors' salary, this responsibility is currently delegated to remuneration committees, as stated in the Code of Corporate Governance.

Duties of Directors

The primary role of the board of directors is to guarantee that the organization is run in the best interests of its stakeholders. They give the business with entrepreneurial insight and ethical leadership, as well as solutions for the efficient administration of the people, material, and financial resources entrusted to them. 'A director of a company stands in a fiduciary directors relationship with the company and shall observe the highest good faith towards the company in any transaction with it or on its behalf,' according to Section 305(1) of the CAMA.⁴⁷ A director is required to 'act at all times' in the best interests of the company as a whole, in order to preserve its assets, further its business, and promote the purposes for which it was formed, and in the manner that a faithful, diligent, careful, and ordinary skilful director would act in the circumstances, according to section 305(3).⁴⁸

Financial Statements and Audit

The shareholders who appoint directors hold them accountable. The annual report serves as a tool for directors to demonstrate their accountability to shareholders. 'Every firm shall cause accounting records to be kept...,' according to section 374 (1) of CAMA,⁴⁹ and 'the accounting records shall be sufficient to illustrate and explain the company's operations' (2).⁵⁰ The directors are responsible for preparing the company's financial accounts under Section 377. They have a fiduciary responsibility to generate financial statements that reflect the company's financial operations in an honest and fair manner. The financial accounts must be approved by the shareholders at least 21 days before the company's Annual General Meeting (AGM). The board of directors is also expected

⁴² E.N.M. Okike, 'Corporate Governance in Nigeria: The Status Quo', *Accounting, Auditing & Accountability Journal*, 17(5): 2007 705-730.

⁴³ Elewechi Okike and Peace Okougbo **Corporate Governance in Nigeria** <https://www.bing.com/search?q=corporate+governance+in+nigeria&cvid> accessed on 25th December 2021

⁴⁴ Okoke Loc. Cit.

⁴⁵ 2020

⁴⁶ *ibid*

⁴⁷ *ibid*

⁴⁸ *Ibid*

⁴⁹ *ibid*

⁵⁰ *Ibid*

to submit a director's report, which includes information about the company's whole operations as well as any important developments that occurred during the year.

The Financial Reporting Council (FRC)

The Federal Government passed the Financial Reporting Act in response to the heightened focus on good corporate governance and accountability in Nigeria, as well as the necessity for effective systems for formulating and monitoring corporate governance standards and guidelines.⁵¹ The Financial Reporting Council (FRC) was founded as a government parastatal, reporting to the Federal Ministry of Industry, Trade, and Investment. The FRC is responsible for defining and enforcing compliance with codes of corporate governance, in addition to developing and publishing accounting and financial reporting standards to be followed in the production of financial statements by publicly traded firms.

The Council's principal objectives, according to section 11 of the FRC Act, are to:

- a) a) Safeguard the interests of investors and other stakeholders
- b) b) Provide professional, institutional, and regulatory authorities in Nigeria with advice on financial reporting and corporate governance issues.
- c) Ensure effective corporate governance standards in the Nigerian economy's public and private sectors.
- d) Ensure the accuracy and dependability of financial reporting and corporate disclosures in accordance with current laws and regulations;
- e) Ensure that the activities of relevant professional and regulatory organisations in the areas of corporate governance and financial reporting are coordinated.

Additional objects include

- f) Educating auditors and other professionals involved in the financial reporting process to the highest possible standards.
- g) Improving financial reporting's trustworthiness and
- h) h) Improving the quality of accounting and auditing services, as well as actuarial, valuation, and corporate governance practices.

The following are the operating arms of the FRC:

- Directorate of Accounting Standards – Private Sector
- Directorate of Accounting Standards – Public Sector
- Directorate of Auditing Practice Standards
- Directorate of Actuarial Standards
- Directorate of Valuation Standards
- Directorate of Inspection and Monitoring
- Directorate of Corporate Governance

The FRC ensures high-quality financial reporting and effective supervision of firms, external auditors, and other professionals whose work has an impact on financial reporting integrity and corporate governance of entities through these distinct arms. Since its inception, the FRC has released and revised corporate governance codes for publicly traded firms (which will be discussed later), the most recent of which is the exposure draft on the Nigerian Code of Corporate Governance 2018. Conformity with accounting and auditing standards, as well as compliance with the code of corporate governance, has been continuously monitored by the inspection and monitoring unit.

The Corporate Affairs Commission (CAC)

The Companies and Allied Matters Act (CAMA) 2020 (section 1) established the Corporate Affairs Commission (CAC) as an independent authority to oversee the regulation and supervision of company formation, incorporation, registration, management, and winding up. The Companies Registry was replaced by the CAC after it was determined to be woefully inadequate in carrying out its duties. It was a department of the Federal Ministry of Commerce and Tourism that was in charge of registering and administering the Companies Act of 1968, which has since been repealed. Within 42 days of the annual general meeting, all corporations must submit audited financial accounts to the CAC. Small businesses can provide the CAC revised financial statements and balance sheets. The CAC's Registrar of Corporations keeps track of whether companies and their officers are complying with the Act's obligations, and imposes penalties for non-compliance, which are dated. The CAC is also tasked with 'arranging or conducting an investigation into the operations of any corporation if the interests of the shareholders and the public so demand' in section 8 (c). Through its Wide Area Network System, the Commission may offer information on any corporation on demand. The public's access to information boosts corporate confidence and protects consumers, creditors, and shareholders individually.⁵²

⁵¹ No.6, 2011

⁵² CAMA 2020

The Securities and Exchange Commission (SEC)

The Securities and Exchange Commission (SEC) is the Nigerian government agency in charge of capital market regulation and development. It was founded by Decree No.71 of 1979, which took effect on April 1, 1978, and it superseded the Capital Issues Commission. When it comes to corporations that are publicly traded, the SEC plays a significant role in corporate governance.⁵³ The Investments and Securities Decree No.45 of 1999 was enacted after a series of examinations of the country's capital market and financial system (later referred to as the investment and Securities Act of 1999). This Act was enacted in order to make Nigeria's business climate more appealing to foreign investors.⁵⁴ The Investments and Securities Act of 2007 has, on the other hand, repealed the Investments and Securities Act of 1999. The Investment and Securities Act of 2007 took effect on June 25, 2007, and established the Securities and Exchange Commission as the Nigerian Capital Market's apex regulatory body. It gives the SEC the authority to regulate the market in order to assure investor protection, maintain a fair, efficient, and transparent market, and decrease systemic risk. The Act establishes a series of new market infrastructures and a broad regulatory framework for investment and securities industry in Nigeria, particularly in the areas of mergers and acquisitions, takeovers, and collective investment schemes, where additional requirements have been included. The SEC was created largely to protect investors from stockbrokers and other intermediaries who engage in fraudulent or unethical conduct.⁵⁵ Under the Investment and Securities Act of 2007 and the Securities and Exchange Commission Rules and Regulations of 1999, it governs securities market players. The Commission's responsibilities include, among other things, keeping and maintaining separate registries of foreign direct investment and portfolio investments in Nigeria, as well as promoting investor education and securities industry intermediary training. To ensure a stable and efficient securities market in Nigeria, the SEC is committed to promoting strong regulatory standards. As a result, it maintains a Department of Enforcement and Compliance that is in charge of the Commission's enforcement program. The Commission's website contains evidence of enforcement, and defaulters are sometimes taken before the Administrative Proceedings Committee (APC), a quasi-judicial court with sole civil jurisdiction. The Investment and Securities Tribunal hears appeals from the APC's rulings (IST). When criminal behavior is implicated, enforcement action can take several forms, including fines, bans, suspensions, or even referring the case to the Nigerian Police Force, the Economic and Financial Crimes Commission (EFCC), or the Attorney-General of the Federation.

The Nigerian Stock Exchange (NSE)

The Nigerian Stock Exchange (NSE) is a limited-by-guarantee business that is governed by the Investments and Securities Acts of 2007. The Nigerian Stock Exchange Act of 1961 established the NSE, which is self-regulating and plays a critical role in capital mobilization. The regulations of the Stock Exchange set forth the requirements for trading and admission of securities on the Exchange's floor. Despite the fact that Nigeria has a functioning stock exchange, it cannot be considered a stock exchange-based financial system because it does not play a substantial role in the mobilization of funds.⁵⁶ For new issues, only a few businesses employ it. Despite the fact that Nigeria has over 600,000 companies registered, there are now only about 300 listed on the NSE. The stock market is a primary source of equity and other financing, as well as a market for corporate control, in a conventional Stock Exchange-based financial system. The NSE's management, on the other hand, intends to make it the ultimate Stock Exchange for advocating Africa's financial markets' development. For the benefit of listed firms, the continuing development of the Nigerian capital market, and the sustainable development of the economy, the NSE consistently encourages and supports listed companies to create worldwide best practices in corporate governance. In addition, the NSE is dedicated to adhering to the highest international standards and is a member of a number of international and regional organizations that support the development and integration of global best practices throughout its operations. The NSE is a member of IOSCO, the World Federation of Exchanges (WFE), the Sustainable Stock Exchanges (SSE) Initiative, the SIIA's Financial Information Services Division (FISD), and the Inter-market Surveillance Group (ISG). It is also a member of the African Securities Exchanges Association, which it founded (ASEA).

The Society for Corporate Governance (SCG)

The Society for Corporate Governance in Nigeria is a non-profit organization dedicated to promoting corporate governance norms in Nigeria and other emerging markets. The organization's mission is to promote corporate governance principles both locally and globally. They are in charge of conducting seminars, trainings, and workshops with the goal of offering corporate governance education. They do corporate governance research, which has resulted in publications such as the Bi-annual Journal of Corporate Governance. The following programs are offered by the Society for Corporate Governance:

- Being an Effective Member of an Audit Committee

⁵³ Decree No.71 of 1979

⁵⁴ Ibid

⁵⁵ Orji, N.A. (2000) 'The Legal Environment for the Capital Market', Paper presented at the Workshop on Legislating for the Capital Market in a Democratic Environment, held at Nicon Hilton Hotel, Abuja, 12 October 2000.

⁵⁶ Demirag, I.S. 'Short Termism, Financial Systems, and Corporate Governance: A Theoretical Framework'. In Demirag, I.S. (ed.) *Corporate Governance, Accountability, and Pressures for Reform: An International Study*. JAI press Inc. (1998)

- Strategic Corporate Social Responsibility
- Company Secretaries and Board Effectiveness
- Board Enhancement Programmes
- Board Evaluation
- Leading an Effective Board
- Annual Conference on Corporate Governance
- Board Strategy Session

The Institute for Corporate Governance in Nigeria (ICGN)

The Institute of Corporate Governance in Nigeria (ICGN) is a professional organization founded by a group of specialists from various professions with the goal of promoting excellent corporate governance practices and business ethical standards in Nigeria, Africa, and around the world. The Institute was founded under the Federal Republic of Nigeria's Companies and Allied Matters Act, CAP 59 of 1990, with the approval of the Federal Ministry of Justice, Federal Ministry of Education, and the Corporate Affairs Commission. They conduct corporate governance research, organize corporate governance trainings, seminars, and workshops, and issue corporate governance certificates. The institute offers two certifications: Certified Corporate Governance Professional and Governance Risk Management and Compliance Professional. *Corporate Standards: An International Journal of Corporate Governance Research*, as well as discussion papers and newsletters, are all published by the Institute.

Auditors

Regardless of the corporate governance framework in place, auditors play a vital role in corporate governance. It is frequently a legal obligation for them to lend credibility to management-prepared financial statements. Section 404 (1) of the CAMA 2020 in Nigeria requires auditors to 'provide a report... on the accounts examined by them...' and express their opinion on 1) whether the company whose accounts are being examined has kept proper books of account. 2) if the auditor's accounts present a truthful and fair picture of the firm's financial situation; and 3) whether the company has met the statutory and other disclosure obligations set forth in CAMA 2020. However, the most important legal requirement is that the profit and loss account and balance sheet present a true and fair picture of the company's results and state of affairs. As a result, the audit function is part of the process for boosting confidence in corporate annual reports by conducting an independent inspection of the company's books and records. Due to the onerous professional, legal, and social responsibilities of statutory auditors, they must have the necessary training and experience, and they are also ethically compelled to conduct their audits in line with established processes and standards.⁵⁷

Audit Committees

While it is true that Nigeria absorbed the laws and corporate practices of the United Kingdom as a former colony, a reform of the Companies Act in 1990 gave Nigeria the opportunity to integrate into law corporate governance standards that were tailored to the country's needs. The requirement of Section 359(3) of CAMA 1990, now Section 404 of CAMA 2020, that public company auditors provide a report to an audit committee, which must be created by all public firms, was one of these unusual measures. The audit committee is responsible for reviewing the auditors' report and making any suggestions to the annual general meeting that it deems appropriate. This requirement existed prior to the establishment of the Cadbury Committee in 1991. In response to the Treadway Report on False Financial Reporting in 1987, the Securities and Exchange Commission (SEC) mandated that all SEC-regulated corporations establish an audit committee as part of the listing requirement beginning in 1988.⁵⁸ In recent years, there has been a surge in interest in the usage of audit committees, and it is now widely acknowledged as good business practice in many countries, with the primary goal of improving corporate governance. Effective audit committees give shareholders confidence that the auditors acting on their behalf are qualified to do so and will protect their interests. The Cadbury Report of 1992 in the United Kingdom suggested that all publicly traded firms form audit committees. However, prior to this proposal, research showed that in 1991, 53% of the UK's top 250 publicly traded corporations had functional audit committees. However, following the Cadbury Committee's suggestion, the ratio had climbed to 85% of the larger and 83 percent of the smaller public businesses.⁵⁹ The audit committee must be made up of an equal number of directors and shareholders' representatives, according to Section 359(4) of the CAMA 1990. (Subject to a maximum of six members). The statute gave statutory recognition to the body of Nigerian shareholders through the provisions of this section. The provisions of CAMA 1990, now 2020, concerning having an audit committee, all of whose members should be financially competent, are reiterated in paragraph 6.4 of the draft Code of Corporate Governance. The audit

⁵⁷Ibid

⁵⁸Elewechi Okike and Peace Okougbo 'Corporate Governance in Nigeria' <https://www.bing.com/search?q=corporate+governance+in+nigeria&cvid> accessed on 25th December 2021.

⁵⁹Collier, P. A. (1992), *Audit Committees in Large UK Companies*. London: Research Board of the Institute of Chartered Accountants in England and Wales.; Collier, P.A (1996) The Rise of the Audit Committee in UK Quoted Companies: A Curious Phenomenon, *Accounting, Business and Financial History*, 6: 121-140

committee is expected to have a majority of independent non-executive directors. The Chairman should be chosen from among the committee's members, and the group should meet at least once a quarter.⁶⁰ The statutory audit committee's tasks are outlined in section 404 (7) of CAMA 2020 and paragraph 6.4.6 of the Code of Corporate Governance 2018.

- (a) determine whether the company's accounting and reporting policies are compliant with legal requirements and accepted ethical principles;
- (b) assess the audit requirements' scope and planning;
- (c) examine the findings on management issues in conjunction with the external auditor's findings, as well as departmental responses;
- (d) monitor the effectiveness of the company's accounting and internal control systems;
- (e) provide recommendations to the Board on the appointment, termination, and compensation of the company's external auditors; and
- (f) delegate authority to the internal auditor to conduct inquiries into any corporate activity that may be of interest or concern to the committee.

The Code of Corporate Governance 2018⁶¹ imposes additional responsibilities on the audit committee, which are to:

- 6.4.7.1 Oversee management's actions to ensure the integrity of the Company's financial statements, compliance with all applicable legal and regulatory requirements, and to evaluate the external auditors' qualifications and independence, as well as the internal audit function and the external auditors' performance.
- 6.4.7.2 Ensure the formation of an internal audit function that gives assurance on the effectiveness of internal controls, as well as exercising oversight over it...
- 6.4.7.3 Ensure that the Company develops a thorough internal control framework, obtains appropriate (internal and/or external) assurance, and reports on the design and effectiveness of the Company's internal controls over financial reporting systems yearly in the audited financial report.
- 6.4.7.4 Oversee the process of identifying fraud risks across the organization and ensuring that effective fraud prevention, detection, and reporting methods are in place.
- 6.4.7.5 Before recommending the interim or annual audited financial statements, as well as major financial reporting findings and recommendations to the Board for their consideration and necessary action, discuss them with management and external auditors.
- 6.4.7.6 Maintain financial and non-financial reporting oversight
- 6.4.7.7 Examine and guarantee that sufficient whistle-blowing policies and procedures are in place, as well as that the summary of issues reported through the whistle-blowing process is brought to the committee's attention.
- 6.4.7.8 Examine any audit scope restrictions or serious issues discovered, as well as management's reactions, with the external auditors.
- 6.4.7.9 Develop a policy outlining the types of non-audit services that external auditors are permitted to conduct, as well as the scope and conditions under which they are permitted to perform them.
- 6.4.7.10 Review the external auditors' independence in accordance with the policy referred to in 6.4.7.8 prior to their appointment to conduct non-audit services to guarantee that there is no real or apparent conflict of interest, or other legal or ethical restriction when external auditors supply allowed non-audit services.
- 6.4.7.11 Maintain auditor independence by establishing explicit hiring policies for current or past external auditors.
- 6.4.7.12 Assist in the creation of a Related Party Transactions policy and ensure that management follows it. Any related party transaction involving the Company should be considered by the Committee.
- 6.4.8 A conversation with the head of the internal audit department and the external auditors should be included on the committee's agenda at least once a year, without organisation develops, to promote an exchange of views and issues that may not be suitable for open conversation.

While audit committees may not be a cure for all corporate misdeeds, their presence is intended to improve audit quality, increase auditor independence, strengthen the financial reporting process, and reduce the risk of misleading financial reporting.⁶² The Federal Government's anti-corruption activities, as well as the backing of other authorities such as the NSE, SEC, ICAN, and ANAN, are likely to boost audit committee effectiveness.

Shareholders' Associations

Many foreigners sold their shares and many Nigerians bought shares from companies listed on the NSE during the 1972 indigenisation exercise.⁶³ As a result, the stock market's number of indigenous shareholders increased.

⁶⁰Elewechi Okike and Peace Okougbo 'Corporate Governance in Nigeria' <https://www.bing.com/search?q=corporate+governance+in+nigeria&cid> accessed on 25th December 2021

⁶¹ (Para.6.4.7)

⁶² Okike *Op. Cit*

⁶³ Nigerian Stock Exchange

As the number of shareholders grew, so did the number of activists who attended annual general meetings in order to stir up trouble. When they were dissatisfied with the performance of the companies in which they owned stock, this shareholder group frequently challenged corporate boards. They quickly formed formidable coalitions.⁶⁴ The audit committee must be made up of an equal number of directors and shareholders' representatives, according to Section 359(4) of the CAMA of 1990. (subject to a maximum of six members).⁶⁵ The adoption of this section of the Act contributed to the development of shareholder associations and the notoriety of shareholder activism in Nigeria, in addition to providing statutory recognition to shareholder associations in Nigeria.⁶⁶

There's no doubt that the formation of shareholder associations was encouraged by the need to coordinate a large number of small, passive, and dispersed shareholders; however, the intended activism has been hijacked by individuals seeking personal gain, which is true to the country's broader political culture. In order to achieve this, multiple senior executives of shareholders associations harass company management with threats of AGM disruptions and negative media advertising, forming 'terrorist' gangs that corporate executives now fear... If shareholders' organisations use their constitutional privileges to challenge managerial and board abuses, they pose a serious danger to the current quo of traditionally unchecked corporate malfeasance and governance failure.

Given that one of the causes for the rise of shareholder groups is the desire to serve on the audit committees of their investee businesses, one of the Code's key recommendations is that executive members of shareholder organisations be barred from serving on audit committees. Nigeria has a history of adopting codes and establishing laws that are tailored to the country's socio-political and cultural issues. It is described as 'a code... designed to ensure that association members uphold high ethical standards and contribute positively to ensuring that the affairs of public companies are run in an ethical and transparent manner, as well as in compliance with the Code of Corporate Governance for public companies.' While the United Kingdom has a Code aimed at shareholders, the concentration is different in this situation. The UK Stewardship Code was established in 2010 to 'increase the quality of involvement between investors and corporations to help boost long-term risk-adjusted returns to shareholders.' It was amended in 2012 and most recently in 2018. It's aimed at asset managers with voting rights on UK companies' shares. The goal is to get institutional investors that manage other people's money to participate in corporate governance for the benefit of their beneficiaries.

5. Development of Corporate Governance Codes in Nigeria

The demand for good corporate governance has gained new traction in the international business world, including in Nigeria. The Securities and Exchange Commission (SEC) of Nigeria established The Committee on Corporate Governance of Public Companies after being influenced by the establishment of corporate governance rules in other countries, particularly the Cadbury Report of 1992 and the King Report of 1994.⁶⁷ To examine Nigeria's corporate governance practices and, as a result, to recommend a Code of Best Practices for public companies registered in Nigeria to follow in the exercise of power over the enterprise's direction, the supervision of executive actions, and the transparency and accountability of these companies' governance within the regulatory framework and market.⁶⁸ After a thorough assessment of existing practices in Nigeria and other countries, the Committee of 17 members,⁶⁹ led by Mr Atedo Peterside, delivered its Report in April 2001, in which it made suggestions. Their proposals were based on worldwide best practices and centered on the management and boards of public firms' transparency and accountability.⁷⁰ In October 2003, the SEC produced the Code of Best Practices on Corporate Governance in Nigeria (SEC Code) in response to their suggestions.

Securities and Exchange Commission Code October 2003

This was Nigeria's first corporate governance code, and it applied to all publicly traded companies in the country. The function of the board of directors and management, as well as shareholder rights and privileges and the audit committee, were all highlighted in the Code. The Code had a significant impact on corporate governance in Nigeria, but it was slow to adjust to the changing economic context, which necessitated its evaluation and

⁶⁴ Okike, E.N.M., "Corporate Audit Report and the Structure of the Market for Audit Services to Listed Companies in Nigeria: A Longitudinal Study". A Research Report submitted to the Research Committee of the Institute of Chartered Accountants of Nigeria (ICAN). 1995

⁶⁵ It is noted that section 404 (3) CAMA 2020 stated that; the Audit committee referred to in subsection 2 shall consist of five members comprising of three members and two non-executive directors, the members of the audit c are not entitled to remuneration, and are subject to election annually

⁶⁶ Adegbite, E. 'The Determinants of Good Corporate Governance: The case of Nigeria,' being a Thesis submitted in fulfillment of the requirements for the Degree of PhD in Management, Faculty of Management, Cass Business School, London. 2010

⁶⁷ Elewechi Okike and Peace Okougbo *Loc. Cit.*

⁶⁸ *Ibid*

⁶⁹ Members of the Committee were drawn from the public and private sectors, including representatives from the Nigerian Stock Exchange, the SEC and the Corporate Affairs Commission.

⁷⁰ Okike, *Loc Cit.*

updating. The 2003 SEC Code's stagnation and inadequacy forced regulators in individual industry sectors to develop industry-specific corporate governance codes in response to the evolving business environment in their respective industries.

Central Bank of Nigeria Code of Corporate Governance for Banks in Nigeria Post-Consolidation 2006

The Nigerian Central Bank (CBN) was the first regulator to address the SEC Code's flaws. The CBN published the Post-Consolidation Code of Corporate Governance for Nigerian Banks in 2006. (CBN Code). For all banks operating in Nigeria, adherence to the rules of this Code was required. The necessity to address the observed shortcomings in bank corporate governance as well as the governance difficulties that would develop post-consolidation necessitated the issuance of the CBN Code, which was rendered necessary by the consolidation of banks in Nigeria in 2005. Furthermore, the SEC 2003 Code failed to address several of the financial industry's unique issues. The CBN Code was created to increase the accountability of bank CEOs. Noncompliance was punishable, with erring CEOs facing jail time. It also underlined the significance of internal auditors and adequate risk management methods. Following suit were other industry-specific codes.⁷¹

National Pension Commission (PENCOM) Code of Corporate Governance Practices for the Insurance Industry in Nigeria 2008

The National Pension Commission (PENCOM) published the Code of Corporate Governance for Licensed Pension Operators in 2008 to provide guidance to pension fund administrators (PFAs) and custodians (PFCs) on appropriate corporate governance practices. The Code offers principles based on best practices to assist PFAs and PFCs in establishing the structures and processes needed to achieve effective governance. It is designed to promote overall economic performance and market integrity by providing incentives for the pension scheme to have a beneficial impact on the stakeholders who are directly affected by the pension reform and gain their trust.⁷² The Code also encourages all operators to carry out the scheme in a transparent and efficient manner. The goal is to promote self-regulation among operators by establishing a shared value system. The Code is founded on internationally recognized principles of good corporate governance, and its requirements are in line with the terms of the Pension Reform Act 2004, as well as the Commission's rules, regulations, and guidelines, and are considered transparent and enforceable.

The Code of Good Corporate Governance for the Insurance Industry in Nigeria 2009

The importance of the insurance business in protecting the national economy cannot be overstated, necessitating the creation of an effective and efficient regulatory structure to oversee the industry's operations. Under the provisions of the Insurance Act 1961, such supervision was implemented on a small basis in Nigeria. As the business evolved and became more complex, the National Insurance Commission was established to provide a more comprehensive regulatory framework (NAICOM). In 2009, NAICOM established the Code of Good Corporate Governance for the Insurance Business in Nigeria as part of its attempts to guarantee that the industry was keeping up with global economic developments and that it was operating efficiently and effectively. A robust code of corporate governance, according to NAICOM, will be a key ingredient in unlocking the industry's hidden potential for maximum economic benefit.

The Code of Corporate Governance in Nigeria 2011

Independent directors, crucial board committees, directors' appointment, tenure, salary, and evaluation, the independence of external auditors, whistle-blowing processes, sustainability challenges, and general disclosure and transparency issues were not adequately addressed in the 2003 SEC Code (Ofo, 2013). On April 1, 2011, the Securities and Exchange Commission of Nigeria (SEC) amended the SEC 2003 Code and issued a new Code of Corporate Governance. Leadership, board structure effectiveness, accountability, remuneration, and shareholder interactions were among the five primary themes addressed by the Code. The Financial Reporting Council (FRC) of Nigeria Act was passed shortly after the SEC Code of Corporate Governance was put into effect in 2011.⁷³

The Code of Corporate Governance for the Telecommunication Industry 2016

A number of different corporate governance rules have been issued in response to increasing corporate governance concerns in their respective sectors. The Nigerian Communications Commission released the Code of Corporate Governance for the Telecommunication Industry in 2016. (NCC). The NCC Code of 2014 was replaced by this.⁷⁴ In addition, the CBN Code of Corporate Governance for Nigerian Banks and Discount Houses of 2014 has replaced the CBN Code of 2006. The Financial Reporting Council was given the task of establishing a Directorate of Corporate Governance to oversee all corporate governance matters in the country. This directorate attempted to integrate industrial sector rules and established the National Code of Corporate Governance (NCCG), which was to take effect on October 17, 2016, in an effort to alleviate the diversity of overlapping legislations. This

⁷¹ Elewechi Okike and Peace Okougbo *Loc. Cit*

⁷² *Ibid*

⁷³ Elewechi Okike and Peace Okougbo *Loc. Cit*

⁷⁴ *Ibid*.

national code was more comprehensive than the previous ones in that it covered not only public institutions but also private and non-profit organizations. The Federal Government, however, postponed this National Code of Corporate Governance on October 28, 2016, in response to strong resistance from numerous stakeholders.⁷⁵ Given that the FRC's mandate includes devising a process for the periodic examination of the Council's codes and guidelines, a fifteen-member committee appointed by the FRC's board of directors recommended the Nigerian Code of Corporate Governance (NCCG) 2018 on January 18, 2018. Companies must begin financial reporting and using the new code in their financial reports in the fiscal year that ends on or before January 1, 2020. Early adoption, on the other hand, is encouraged. All public companies, private companies that are holding companies of public companies, concessioned and/or privatized companies, and regulated private companies that file returns with any regulatory authority other than the Federal Inland Revenue Service and the Corporate Affairs Commission are covered by this new Code. The FRC, in collaboration with the NSE and other regulatory organizations and groups, will oversee compliance.⁷⁶ The section of the code dealing with non-profit organizations is still in effect.

Nigerian Code of Corporate Governance (NCCG) 2018

According to the FRC, the purpose of NCCG 2018 is to institutionalize the highest standards of corporate governance best practices in Nigerian companies, particularly those lacking industrial sector rules or regulations. The Code is also intended to raise public knowledge of important corporate values and ethical practices that would improve market integrity and restore public faith in the Nigerian economy.⁷⁷ The necessity for flexibility and scalability was taken into account when deciding that a 'principles-based' approach is preferable to a 'rules-based' approach, given that the Code is addressed at enterprises of all sizes and within various industrial sectors. Furthermore, rather than the 'comply and explain' strategy used in the UK, the Code is implemented using the 'Apply and Explain' premise. Companies must follow the principles outlined in the Code and explain how they have done so. The decision to use this method was motivated by experiences in other nations, particularly Mauritius and South Africa, two other Commonwealth countries that have followed the 'Apply and Explain' idea.⁷⁸

The Philosophy of the Code

The Code philosophy is explained as follows: *Apply principles*: These are the core principles of good governance that all businesses should seek to follow. *Explain Principles*: Companies must offer explanations for any recommended practices that have been implemented, as well as how these or any other practices have resulted in the intended outcomes. The NCCG is divided into seven parts and 28 principles, each of which describes how the Code should be applied in practice. The following are some of them:

- A) *Board of Directors*. This section comprises 16 principles governing what is expected of a company's Board of Directors, as well as the makeup and structure of the Board, as well as the roles and responsibilities of executive and non-executive Board members, as well as the Company Secretary. It also outlines methods for ensuring the Board's smooth and successful operation, such as induction and training programs for members.
- B) *Assurance*. This section contains four concepts that emphasize the need of having a strong risk management framework and effective internal control systems, including the role of internal and external auditors in ensuring the accuracy of management's prepared financial statements.
- C) *Relationship with shareholders*. This section's three principles emphasize the necessity of effective governance through maintaining a positive connection with shareholders. The annual meetings give shareholders the chance to learn more about the firm, its governance, and its performance, as well as exercise their ownership rights. Discussions with shareholders on a regular basis help to balance their needs with the company's goals. Minority shareholders' interests must be safeguarded, and all shareholders should be treated fairly.
- D) *Business Conduct with Ethics*. This section of the Code outlines principles to guarantee that businesses conduct themselves in the most ethical manner possible, not just to enhance and maintain their reputation, but also to increase investor trust. It also mandates that businesses have systems in place to address conflicts of interest, corruption, and insider trading.
- E) *Sustainability*. This crucial notion underlines the importance of firms being socially responsible and decent corporate citizens while also contributing to economic success.
- F) *Transparency*. When a corporation maintains open lines of communication with important stakeholders and is honest about its operations, it allows them to make well-informed decisions. Good corporate governance is also aided by full and complete disclosure of significant matters to investors and stakeholders. Companies must be transparent about their operations to shareholders and other key stakeholders, according to the Code.⁷⁹

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ ibid

Companies must strive to add value to their shareholders by implementing strategies and policies that will help them achieve their goals. They must commit to effective administration of all human, material, and financial resources, as well as appoint effective boards of directors comprised of persons with high technical expertise and integrity. They must maintain communication with important stakeholders and engage with their shareholders. These proper structures will communicate to the market that these businesses are well-managed, which may appeal to potential investors.⁸⁰ Although the NCCG 2018 is optional, adhering to the principles outlined in the Code, such as a dedication to good governance practices, improves openness, trust, and integrity, provides an atmosphere that successfully controls risks, minimizes losses, and makes a business operation viable.⁸¹

6. Conclusion

The frameworks through which a corporate entity or enterprise derives its basic orientation and direction in Nigeria are covered by corporate governance regulations and mechanisms. This viewpoint views corporate governance in terms of shareholder protection, managerial control, and economic theory's popular principal-agency concerns.⁸² The corporate governance structure lays out how the corporation's rights and obligations are distributed among its various stakeholders. It has the advantage of lowering transaction costs, capital costs, and financial crisis vulnerability in a company. The tale of stewardship that regulates corporate governance indicates that directors are generally trustworthy and hence capable of acting in the public and shareholder's best interests. In Nigeria, corporate governance has evolved from the Companies and Allied Matters Act of 1990 to the Companies and Allied Matters Act of 2020. Nigeria has also implemented other legislation that businesses and organizations must follow. Internal and external influences can be examined in the corporate governance system. The status of the economy's maturity, the capital market, and regulatory organizations are among the internal factors. However, achieving maximal compliance with corporate governance in Nigeria has proven difficult, posing a risk to stakeholders.

⁸⁰ Ibid

⁸¹ Ibid

⁸² A. Oyejide, A. Soyibo, 'Corporate Governance in Nigeria', Paper presented at the Conference on Corporate Governance, Accra, Ghana, 29-30 January, 2001.