

CORPORATE GOVERNANCE IN NIGERIA: A COMPARATIVE APPROACH*

Abstract

Corporate governance is a new international advancement. It has grown to become a point of interest among many researchers, explorers, investors and the government of many countries of the world. It was necessitated by the challenges the corporate sector was facing in time past. Recently, more light is beamed into the corporate sector through corporate governance and various codes to enhance corporate practice all over the world. The role of the corporate sector in the economy of many nations cannot be over emphasized. Thus, the success or failure of the corporate world depends largely on its successful corporate governance. Before now, corporate governance was neglected in Nigeria. But recently, it has become a point of interest. This paper, through the machinery of doctrinal research of some primary and secondary materials, tries to examine the concept of corporate governance in Nigeria as well as to compare the state of corporate governance in Nigeria with another jurisdiction of the world vis-à-vis the United States of America (USA) with a view to ascertaining the strength and weakness of corporate governance practice in Nigeria and this other country, and certain recommendations were made, part of it being that that government should strive towards a good corporate practice if they must succeed in their war against corruption in Nigeria.

Keywords: corporate governance, corruption, company, institution, codes, Sarbanes-Oxley Act

1. Introduction

As a result of corporate failures and various scandals from the corporate sector in Nigeria and other parts of the world, there arose the need to legislate tougher guidelines to ensure adequate compliance, transparency, accountability and disclosure among stakeholders. The world is bedeviled by increased high profile corporate failures.¹ This has ignited the fire of the quest to unravel the causes of this unhappy development in the corporate spheres. No country is completely free from these problems in their corporate sector. The battle for sanity and transparency in the corporate sector became fierce in the last three decades.² Transparency and accountability in corporate governance, Director's ethical conduct in running the affairs of a business and corporate enlighten has become a concern to many countries. Though, through some regulatory frameworks, transparency and uniformity can be achieved. Many still believe that a complex regulatory framework may hamper innovation.³ This paper sets out to discuss the concept of corporate governance in Nigeria in a comparative methodology.

2. Development of Corporate Governance in Nigeria

The definition of Corporate Governance has been attempted by different scholars, theorists and groups. Though, all of these definitions are the different opinions and elucidations of the people, they however, enriches the concept more. The Organisation for Economic Cooperation and Development (OECD) represents the international agreement on the concept. The OECD defines corporate governance as

the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the board, managers, shareholders and other stakeholders and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structures through which the company objectives are set, and the means of attaining those objectives and monitoring performance.⁴

Ajogwu,⁵ defined corporate governance as a structure which spells out the rules and procedures for making decisions on corporate affairs and which provides the structure through which the company objectives are set as well as the

*By **Ogugua V.C. IKPEZE, PhD**, Professor and Dean, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State.

* **Daniel C. ONYEAKA, PhD Candidate**, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State. Tel: 08033617734.

¹ Nwamba O. Chidozie, 'The Principles of Good Corporate Governance and Best Practice Recommendations in Nigeria Listed Companies: Regulations, Commitment Compliance: (A Study of selected listed companies in Nigeria).

² Okolie, J.U. (2012) 'A Comparative Study of Corporate Governance in Federal and State Universities in South-East, Nigeria', Unpublished in Ph.D. Dissertation.

³ Thompson, L.D. (2012) *The Corporate Scandals, Why They Happened and Why They May Not Happen Again*. Chautauqua Institution Lecture Brookings Accessed August 7 2022.

⁴ www.oecd.org, accessed August 7 2022.

⁵ B.J. Inyang, 'Nurturing Corporate Governance System: The Emerging Trends in Nigeria' (2009) 4(2), *Journal of Business Systems, Governance and Ethics*, 1-13.

means of attaining and monitoring the performance of those objectives. It defines the accountability of those charged with the responsibility of steering the company's affairs. Inyang in the same vein defined corporate governance as a 'broad range of policy and practices that stakeholders, executive managers, and board of directors use to manage the operations of corporate organisations towards fulfilling their responsibilities to the investors and other stakeholders in the society.'⁶ All of these definitions are pointers that corporate governance is meant to guarantee the efficient and transparent running of the affairs of a company. It protects the interest of all the stakeholders- the employees, shareholders, as well as achieve corporate social responsibility.⁷ Through 'Corporate governance Codes' best practices are ensured. The Codes, provides a set of norms to regulate the respective roles and composition of the board of directors, shareholders, and auditors. They regulate remuneration, disclosure and dismissal of directors and other management staff.⁸ In Nigeria, through corporate governance, corporations are regulated, controlled and governed. Initially, the Companies Act, 1968 regulated Companies. This was later replaced by the Company and Allied Matters Act (CAMA), 1990. These Acts, both reflects the United Kingdom (UK) design.⁹ According to Marshall, the development of corporate governance in Nigeria could be divided into five stages.¹⁰ These include:

Pre- 1990 Stage – On the attainment of independence, Nigeria revised some UK statutes. The Companies Ordinance of 1922 was thereby repealed and the Companies Act of 1968, which was closely molded after the English Companies Act of 1948 came into existence. The Companies Act was thus the main statute regulating companies in Nigeria.¹¹ This Act contained provisions for the smooth running of companies in the country. It gave roles to directors and employees generally.¹² The Companies Act curtailed the control wielded by the British who controlled the major part of companies in Nigeria by extending their business laws to Nigeria in a bid to protect their own interest in doing business in Nigeria. However, the Companies Act, 1968 could not meet some economic realities in Nigeria. Thus, in 1972, the Federal Government publicized the Nigerian Enterprises Promotion Decree No. 4 of 1972, which was the first indigenouse Decree to promote indigenouse businesses. This Decree was able to restrict foreign ownership of business through three schedules of enterprises, which include enterprises solely kept for Nigerians; enterprises which do not allow aliens to keep more than 40% of shares; and enterprises which aliens cannot hold more than 60% of shares. The Nigerian Enterprise Promotion Decree, No. 7 of 1995 was later repealed and restrictions on foreigners removed. The Decree forbade the nationalization of foreign corporations operating in Nigeria. This was later replaced by the Nigerian Privatisation and Commercialisation Decree No. 25 of 1988. The emphasis of this piece of legislation was to encourage foreign investors and partnerships to up to 40% of privatization.¹³ All of these statutes advertised different approaches to privatization and ownership of companies in the country.

1990-2003 Stage –This stage saw CAMA replace the Companies Act 1968 in 1990. At this time, the concept of corporate governance was unknown. Although, there were provisions which were vital to corporate governance in Nigeria, such as needed accounting and auditing ethics, minority shareholder's rights and equality of members, fair ownership disclosure, management by the Corporate Affairs Commission (CAC) and other rules to regulate the activities of the companies. CAMA was aided by some precise legislations such as the Central Bank of Nigeria (CBN) Act No. 7 of 2007; PENCOM Act No. 4 of 2014; BOFIA Cap B3 Laws of the Federation of Nigeria (LFN) 2004; NDIC Act No. 6 of 2006; FRC Act No. 6 of 2011; NCC Act No. 2003; NAICOM Act Cap 117 LFN 2004; and ISA No. 29 of 2007, etc. CAMA was able to codify the duties of directors.¹⁴ CAMA made it clear that a director stands in a fiduciary rapport to the company and must operate in ought most good faith in any of its dealings with the company or on behalf of the company.¹⁵ He must not allow his interest to conflict with his duties; he must not

⁶ *Ibid.*

⁷ Essien, I.J., 'Re-Affirming the Principles of Corporate Governance in the Nigerian Capital Market: The Role of Securities and Exchange Commission' in Oji, S.I. (ed.), *Philosophical Legacy on Issues in Nigerian Public Law* (Faith Printers International, Zaria, 2008). 239-254.

⁸ Inyang, note 5.

⁹ *Ibid.*

¹⁰ Junaidu B. Marshall, 'Corporate Governance Practices: An Overview of the Evolution of corporate Governance Codes in Nigeria,' *International Journal of Business & Law Research* 3(3):49-65, July-Sept 2015.

¹¹ Akintunde Emiola, *Nigeria Company Law* (Emiola Publishers, Ogbomosho, 2007).

¹² Orojo, O., *Company Law and Practice in Nigeria* (3rd Edition, Mbeyi and Associates Nigeria Limited, 1992) 13.

¹³ Ahunwan, B., 'Corporate Governance in Nigeria' (2002), 37 *Journal of Business Ethics*, 269-286.

¹⁴ CAMA, sections 279, 280, 281, 282 and 283.

¹⁵ CAMA, section 279. Someone who has a fiduciary duty to another must act in a way that will benefit someone else financially. The person who has a fiduciary duty is called the fiduciary while the person to whom the duty is owed is called the principal or the beneficiary.

appropriate the company's property; or make secret profits without accountability.¹⁶ The director shall discharge his duties in an honest manner and in good faith, holding the best interests of the company at heart. He must exercise some degree of care, professionalism, and diligence. Failure to observe these things will amount to negligence and breach of duty.¹⁷ A director of company is in addition a trustee of the company's properties, money and powers. He must act in the best interest of the company and all stakeholders.¹⁸ He has the duty to prepare annual accounts, which includes the auditor's report, director's reports and statement of accounting policies.¹⁹ His duties must highlight transparency, disclosure and accountability, all of which are the values of corporate governance.²⁰ Corporate governance sprung forth soon after the announcement of CAMA. Its emergence globally, was to revive the corporate sector as countries started forming their corporate rules to address emerging issues in corporate practice. Many countries witnessed corporate collapses. The corporate governance Code used by Nigeria emanated from the Code of Corporation for Banks and other financial bodies in Nigeria and issued by the Bankers Committee in 2003.²¹ The happenings in the corporate sector in the 2000s brought to reality the fact that CAMA did not address all the challenges in the corporate sector. Poor corporate governance at the time was considered as one of the key factors in practically every problem in the financial sector. Although, the code was pertinent to banks and other financial institutions in Nigeria at the time it was issued, but it was not popular, perhaps, this was due to the fact that it was issued by a voluntary organization and not a regulator.²² Meanwhile, the code covers issues of corporate governance practices such as responsibility of directors, Chairman and the Chief Executive Officer (CEO). It tries to balance both the executive and non-executive directors and provide a transparent procedure for the appointment of directors, and constitution of the Board of the Company. The code also covered proceedings of the Board of Directors, their remunerations, mode of assessment, adequate financial disclosure, risk management, auditing, board relationship to shareholders. The board must serve the best interest of the shareholders and make proper accounting to them. However, as comprehensive as this code is, SEC brought in the Code of Best Practices on Corporate Governance in Nigeria in 2003.

2003-2011 Stage – this was the first time a Regulator was providing a corporate governance code. This code applied to all public companies in the country.²³ It demonstrated SEC's supervisory role in both the banking and public sectors. It includes (i.) The *Code of Corporate Governance for Public Companies*, which was made up of a committee of 17 persons led by Atedo Peterside, which was set up to collaborate with the CAC in the year 2000. The committee represented all the sectors of the economy and was empowered to ascertain the various challenges and how they can be improved for a better corporate governance practice in Nigeria. However, not too long thereafter, this code became ridiculous due to quick changes in the corporate world and lots of scandals all over the world. There came the need to arrest these challenges as well as encourage developments in the corporate sector. It behooves on SEC to make amendments to the code to meet up with new realities. But this was not the case as SEC could not amend its code. This encouraged other Regulators like the CBN, etc. to bring out specific codes to address the various *lacunas* in the corporate sector to ameliorate the challenges not considered by SEC in its 2003 code. These specific codes were mainly to address issues peculiar to their sector. (ii.) The *CBN Code of corporate Governance for Banks*

Post Consolidation 2006- The CBN exercised its regulatory role in the banking sector by putting out a mandatory code of corporate governance which applies to all licensed banks in Nigeria. This took place after the 2005 consolidation of banks exercise. The code stated in its introduction the need for its formation, which was due to the financial indignities around the globe following noted failures in the corporate sector in some giant countries like the Europe and USA at the time. This encouraged countries to take their corporate sector more seriously. According to the introductory part of the CBN Code of corporate Governance for Banks Post Consolidation 2006, there is need to maintain good corporate governance, which is by regulating corporations.²⁴ The ultimate goal of corporate governance is to increase shareholder values and their expectations, and the retention of public confidence through good corporate governance.²⁵ As at 2003, only 40% of companies had recognized codes of corporate governance in

¹⁶ CAMA, section 280.

¹⁷ CAMA, section 282.

¹⁸ CAMA, section 283.

¹⁹ CAMA, section 345.

²⁰ Junaidu B. Marshall, section 10.

²¹ Nat., O. 'historical Development of Corporate Governance in Nigeria' (2013), available at <the Corporateprof.com/historical-development-of-corporate-governance-in-nigeria> accessed August 7 2022.

²² *Ibid.*

²³ *Ibid.*

²⁴ CBN Code of corporate Governance for Banks Post Consolidation, 2006, Principle 1.1.

²⁵ *Ibid.*, Principle 1.2.

place to work with.²⁶ In the financial sector, corporate governance was very poor and this resulted in many banks going distressed in Nigeria.²⁷ The CBN tried to identify the major weakness in corporate governance in the Nigerian banking sector and the conceivable challenges of corporate governance for banks post consolidation which include: ineffective integration of entities, interactions among directors, increased risk factors, poor integration and development of information technology systems, inadequate management capacity, accounting systems and records, insider-related lending, resurgence of high level malpractices, inadequate operational and financial controls, rendition of false returns, absence of robust risk management system, audit committee, disposal of surplus assets and transparency, inadequate disclosure of information, etc.²⁸ It was in a bid to address these challenges that the CBN code came in force in 2006. It applies only to banks and financial institutions which are registered in Nigeria. This code tried to capture some main issues like

- (i.) *Board of Directors*- the CBN code provides for the organizational structure of banks especially as related to the executives. It states that the responsibility of the head of the Board, that is the Chairman should be clearly separated from that of the Managing Director/Chief Executive Officer (CEO). This is to encourage unfettered powers in decision making which result if the two positions are occupied by one and the same person.²⁹ A Committee made up of non-executive directors should determine the remuneration of executive directors while the remuneration of non-executive directors should be their sitting allowances, directors' fees, travel allowance and hotel expenses.³⁰ The CBN code states that there should be firm observance of the code of conduct for bank directors, with appropriate penalties to be imposed by regulatory body in the case of default. Such penalties include the removal of erring directors. It further established some sub-committees like the Committee Audit and Credit Committee and Risk Management Committee.³¹ The code further provides for an appraisal committee, which will require the Board of directors to annually appraise the Board's construction and composition, processes, responsibilities and relationships, individual competence and roles in the performance of the Board. This review is to be presented at the Annual General Meeting and a copy sent to the CBN.³²
- (ii.) *Disclosure Requirements*- transparency and disclosure is encouraged by the CBN code. Full disclosure of interest must be made to the CBN where members of the board of directors or service providers are family members. CEOs and financial officers are further required to certify in statutory returns to the CBN that their reports are reviewed does not contain any false statement. And that the financial statements and all financial information in the report duly represent, in all material respect, the financial condition and results of operations of the bank for the period covered by that report.³³ Any falsification to the CBN attracts very stiff sanction of fine and suspension of the CEO for at least six months in the first instance and dismissal and debarring in the second. This is in addition to some disciplinary actions from the professional body. The code also provides for internal auditors and insists that these auditors should be independent, competent and persons of integrity.³⁴ This is besides the external auditors who are not expected to have any kind of relationship with the bank. The CBN code provides the procedure for the appointment of external auditors, their scope and limits, and tenure in office.³⁵
- (iii.) *The Code of Corporate Governance for Licensed Pension Operators 2008* – following positive restructurings in the Pension sector, the private sector was allowed greater participation in the management of funds. PENCOM came up with the Code of Corporate Governance for Licensed Operators in 2008 which set rules to guide the administration of pensions and custody of funds towards good governance. The code streamlined the standard of corporate governance in the pensions sector, to standardize the sector. The code was meant to regulate the policies of the pension companies. It was meant to regulate economic actions and encourage market honesty by creating incentives for pension schemes which can impact meaningfully on stakeholders. Notwithstanding, the well intention of this code, it does not take into account some innovations in corporate governance. The code provides for the

²⁶ From a survey by Securities and Exchange commission (SEC) report in a publication in April 2003.

²⁷ CBN 2006 Code, Part 1, section 1.0 – 1.7.

²⁸ *Ibid.*

²⁹ CBN 2006 Code, section 5.2.1, 5.2.3 provides that no two individuals of same family should hold the office of Chairman and that of CEO or Executive Director of a financial institution at the same time.

³⁰ *Ibid.*, sections 5.3.5, 3.5.7 and 3.5.9.

³¹ *Ibid.*, section 5.3.5; 3.5.7 and 3.5.9.

³² *Ibid.*, sections 5.4.4, 5.4.7, 6.1.2 and 6.1.3.

³³ *Ibid.*, sections 8.1.0 to 8.1.7.

³⁴ *Ibid.*

³⁵ *Ibid.*, sections 8.2.0 to 8.2.6.

number of the non-executive directors, besides the chairman, to be equal to the number of the executive directors for the board to be legally constituted at all times. The board must have an independent director, the chairman and CEO must not have conflicting roles, there should be proper accountability and integrity, there should be a balance in the decision making process. The board is to set objectives to protect the interest of both the company and all stakeholders, and for the good structure and management team.³⁶ This was stressed further by Aguilera and Cuervo-Cazurra, on the board making effective laws against bribery and indiscipline in their company.³⁷ The code directs the board to meet at least every quarterly, and to form committees to expedite its work. These committees are the Investment Strategy Committee, Audit committee, Nominating Committee, and Risk Management Committee. The board is expected to undertake some effective appraisal of the performance of their committees and directors. This evaluation is to be included in its Corporate Governance report to NAICOM. It comprises of how such evaluations were arrived at, issues noted and how these were resolved. This code encourages industrial transparency among the Pension Fund Administrators and Pension Fund Custodians.³⁸ The board is required to inform shareholders on remunerations in its annual report and statement of accounts. They are also expected to include in the annual reports and on their websites their compliance with the code of corporate governance.

- (iv.) The *Code of Good Corporate Governance for the Insurance Industry 2009* – This is a giant innovation by the NAICOM.³⁹ The NAICOM is compulsory for all insurance companies under the supervision of NAICOM. This code tries to rebuild and revive the confidence of stakeholders in the insurance sector. As stated in its preamble, the code tries to restore the latent prospects of the sector for a better economic growth in the country. This code was issued during the global economic collapse which was attributed to the noxious ill practices in the corporate sector especially, by leaders. The code tried to promote sound practice in the insurance sector. It encourages shareholders value, corporate transparency and accountability. The code captured some basic principles of corporate governance, like disclosure, accountability of the board, transparency compliance to rules and regulations, competence, effective exercise of the rights of shareholders.⁴⁰ The code requires accountability of board directors,⁴¹ the chairman of the board must ensure the effective running of the affairs of the company; it requires total separation of the Chairman from the CEO; the board must have not less than 7 members and not more than 15 members on the board; the board shall consist of both the Executives and non-Executive directors and at least one independent director.⁴² The code stated the duties, responsibilities, and conduct of the Board; rights of shareholders, meetings of the board, conflicts of interest, etc.; it empowers the Board to form working Committees, such as Risk Management Committee, Audit and Compliance Committee, Investment committee, financial and general purpose Committee.⁴³ The code provides for external Auditor who is answerable to the Board and such appointments shall be approved by the board;⁴⁴ internal auditing is required;⁴⁵ and an objective assessment of the accounting system for effectiveness required through accountability, disclosure and reporting.⁴⁶

2011-20123 Stage-the SEC 2003 code was replaced by the Code of Corporate Governance in 2011 as a result of some shortcomings. The need for a new code started in 2008 and materialized in 2011. It was first presented to a National Committee led by M. B. Mahmoud. The Committee was asked to review the SEC Code of 2003. They were to identify its weakness and to improve corporate governance by offering a way forward. This committee submitted its report in 2009 along with a revised Code of Corporate Governance to SEC, in turn, it reviewed this draft and made certain amendments after due meetings with other regulatory bodies. The revised draft code was put out to the general public through the website of SEC for the public to make its inputs. The code highlighted some principles, such as; (a) Code of corporate Governance for Public Companies 2011- SEC brought out this code in 2011, which is to apply to

³⁶ *Ibid.*

³⁷ Aguilera, R. V. & Cuervo-Cazurra, A., 'Codes of Good Governance Worldwide, what is the Trigger?' (2004), 25 (3) *Organisation Studies* 415-443.

³⁸ Code of Corporate Governance for Licensed Pension Operators, 2008, section 5.

³⁹ The National Insurance Commission (NAICOM), 2009.

⁴⁰ Preamble to NAICOM Code, 2009.

⁴¹ NAICOM, section 2.

⁴² *Ibid.*, section 5.

⁴³ *Ibid.*, section 6.

⁴⁴ *Ibid.*, section 8.

⁴⁵ *Ibid.*, section 9.

⁴⁶ *Ibid.*

all public companies in the country. It contained the minimum standard of operation for all public companies in Nigeria. It is meant to ensure the highest standards of transparency, good corporate governance, and accountability while promoting innovation and creativity. It provides that the Code should apply to all public companies listed in Nigeria and they should comply with principles and provisions of the code, which is to serve as the minimum standard of their corporate actions.⁴⁷ This code is voluntary and where there is a conflict between it and the provisions of any other code in relation to a business covered by the two codes, the code that makes a harsher provision shall apply.⁴⁸ The Board of Directors- the SEC 2011 code ensures that the Board shall be responsible for the performance and the affairs of the company. It is to ensure that the company is properly managed and to ensure corporate governance in the business.⁴⁹ The Board should not be less than five and should be independent of management to enable it carry out its oversight function in an objective and effective manner.⁵⁰ The Chairman of the Board should be a non-executive director. The duties of the Board were explicitly provided.⁵¹ It provides for shareholders. It requires shareholders to play key roles in good corporate governance.⁵² Companies must be considerate of the interest of their stakeholders like the employees, customers, host communities, and the public.⁵³

2014-to date Stage-due to many challenges in the corporate world, SEC amended its 2011 code to fit the international standards. The code came to the facade in 2014 as

(i.) the *SEC Code of Corporate Governance for Public Companies*. It amended the code from a voluntary code to a mandatory code. The code formed a framework for a good corporate governance practice and tends to define the minimum standards of corporate governance for public companies. It also provides penalties for default.

(ii.) *Code of Corporate Governance for Banks and Discounts Houses in Nigeria and Guide lines for Whistle Blowing in the Nigerian Banking Industry 2014-* as the world economic crisis deepened in 2008, it uncovered many weaknesses in running the affairs of companies internationally. In Nigeria, it was observed that the rules were laughable and that there was urgent need for addressing the issue. In the financial sector, many malpractices were uncovered showing the failure of the corporate governance machineries in place. This led to the dismissals of CEOs of some commercial banks, with their board of directors in 2009. These were replaced by CBN- appointed CEOs and directors.⁵⁴ This power of the CBN Governor is provided under the BOFIA.⁵⁵ With these codes in place, not much was achieved in the corporate sector. This led to a review that brought about the CBN 2006 code of corporate governance as advancement towards the international best practices. This code removed ambiguities and strengthened corporate governance practices. It also provides that the CBN in collaboration with the NDIC will conduct a risk assessment of all Deposit Money Banks before end of December, 2014. They are to provide information on the banks' risk assets quality, and the adequacy of loans.

(iii.) *Code of Corporate Governance for Telecommunication Industry 2014*-The NCC code seeks to adopt the good corporate governance practices in the Nigerian Telecommunications Industry, which provisions are founded on the international best practices. The code adopts much of the CAMA, Nigeria Communications Act, etc. it is subject to the requirements of CAMA as regards the responsibilities of directors and officers of the company. It applies to all telecommunication companies licensed by the NCC.⁵⁶ The code provides for a Board of Directors to be appointed by the shareholders who should be responsible for the management of the company. The Board should comprise of ethically sound persons.⁵⁷ It empowers the board of directors to establish appropriate committees to assist in governance roles and responsibilities to increase its efficiency. In order to maintain checks and balances, the positions of the Chairman of the Board and the CEO should be separate and occupied by two separate persons.⁵⁸ The interests of shareholders must be protected.⁵⁹ There must be transparency and a risk-based approach to internal audit.⁶⁰ The Board must present balanced and transparent prospects to external stakeholders.

⁴⁷ SEC Code 2011, section 1.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, section 2.

⁵⁰ *Ibid.*, section 3-5.

⁵¹ *Ibid.*, section 3.

⁵² *Ibid.*, sections 21-27.

⁵³ *Ibid.*, section 12, 13 and 15.

⁵⁴ BOFIA, section 33 and 35.

⁵⁵ *Ibid.*

⁵⁶ NCC Code 2014, section 1.

⁵⁷ *Ibid.*, section 2.

⁵⁸ *Ibid.*, section 8.

⁵⁹ *Ibid.*, section 10.

(iv.) *Draft National Code of Corporate Governance 2015*- in an increased effort towards the international best practices, the Nigerian Federal Government enacted the FRC Act 2011.⁶¹ This Act provides for the smooth administration of companies in Nigeria. It provides an express jurisdiction over corporate governance issues in the country. It saddled the FRCN with the obligation to establish a Directorate of Corporate Governance in Nigeria.⁶² It was the first time a regulator is particularly empowered to regulate corporate governance. It stated the functions and objectives of the Directorate.⁶³ They are to develop the principles of corporate governance; promote public awareness about corporate governance; promote the highest standards of corporate governance; act as the national coordinating body responsible for all matters pertaining to corporate; promote sound financial reporting and accountability based on true and fair financial statements duly audited by competent independence Auditors; audit committees of public interest entities keep review the scope of the audit and costs effectiveness, the independence and objectivity of the auditors; and encourage sound systems of internal control to safeguard stakeholders' investment and assets of public interest entities. The Directorate is further encumbered with the responsibility to organize and promote workshops, seminars and training in corporate governance matters; issue strategies for periodic assessment of the code, establish links with regional and international institutions engaged in promoting corporate governance. It provides for the responsibilities of the Board.⁶⁴ The Board must be a minimum of eight made up of Executives, Non-Executives and Independent Non Executives. Cross membership of two or more company boards is not allowed, especially where it will lead to a conflict of interest, breach of confidentiality and diversion of corporate opportunity among the companies.⁶⁵ The draft code intends to regulate both private and public companies as well as nonprofit making organisations and public interest entities. Although, these are welcome notions, however, caution should be exercised.

3. Corporate Governance Practices in Nigeria

Corporate governance is the 'system of rules, practices and process by which a company is directed and controlled. Corporate governance essentially involves balancing the interests of company's stakeholders including the management, customers, financiers, suppliers, government, and the community. Corporate governance provides the framework for attaining a company's objectives. Corporate is of a global importance. It is very important for promoting economic development and social progress.⁶⁶ It is the apparatus of global growth and employment in the public and private sectors. Therefore, it is very important to an efficient and accountable corporation. The corporate governance processes are the various relationships through which corporations are directed and controlled. The owners and managers of a corporate organization can make or mar the economic values through choices made regarding ownership. Corporate governance has been a subject of debate among professionals. It connotes a separation between ownership and control to ensure sustainability and enlargement.⁶⁷ The original concern of a company was to make profit for shareholders. Slowly, this opinion changed. It became certain that there are other stakeholders in a company other than the shareholders. Gradually, the concept of corporate governance began to adopt the idea of managing the corporation with special focus on the interrelationship between internal groups and outside interests.⁶⁸

Corporate governance is related to the Nigerian Company Law which is regulated by the Companies and Allied Matters Act (CAMA1990) which came after the Companies Act, 1968. Due to its colonial influence, Nigeria took after the British in its legal structure.⁶⁹ The 1968 Companies Act was modelled after the Companies Act of 1948 of the United Kingdom. It consists of some intricate provisions regarding the running of companies. Although, its limited in its provisions and was later repealed and replaced by CAMA, 1990, as amended. CAMA is the main statutory law to regulate companies in Nigeria. As at 1990 when CAMA was publicized, corporate governance was

⁶⁰ *Ibid.*, section 11.

⁶¹ FRC Act 2011, section 10.

⁶² FRCN Act 2011, section 23(g).

⁶³ Draft Code, 2015, section 50 and 51.

⁶⁴ *Ibid.*, section 4.

⁶⁵ *Ibid.*, section 5 and 6.

⁶⁶ Mission Statement of the Global Corporate Forum < <https://berkeleycenter.georgetown.edu/programs/global-corporate-governance-forum>>, accessed on 21/7/2023.

⁶⁷ Plessis, J.J, Mc Convill, J & Bagarii, M. (2005). *Principles of Contemporary Corporate Governance*, New York, Cambridge University Press.

⁶⁸ James Ugochukwu Okolie, Corporate Governance and Audit Committee in Nigeria, *Journal of Policy and Development Studies* Vol. 9 No.1 November, 2014, accessed at www.arabianjbm.com/JPDS_index.php

⁶⁹ Inyang, B.J., 'Nurturing Corporate Governance System: The Emerging Trends in Nigeria' (2009) 4(2), *Journal of Business Systems, Governance and Ethics*, 1-13.

not yet a separate concept.⁷⁰ It was after the promulgation of CAMA that the corporate challenges of the world facilitated the idea of corporate governance to the fore, as a result of which different countries of the world began to revisit their corporate governance practices. Many countries issued corporate governance codes to address emerging issues in their corporate sector, for instance, the folding of Enron and some foremost companies in the United States and the United Kingdom in early 2000s. These failures encouraged the forming of corporate governance codes all over the world. Nigeria had her fair share of these challenges. It formed the corporate governance code for banks and other financial houses.⁷¹ This was a response to the financial crunches in Nigeria before the year 2000 and which created an awareness that the rudimentary company law did not take into account the various challenges in the corporate sector as at that time, due to poor corporate governance. The code was not popular, probably, because it was issued by a voluntary organization and not a regulator.⁷² There were widespread failures in the late 1990s and early 2000s, which had their root in fraudulent management decisions and in some cases, outright cover-ups of illegal activities. All of these added were responsible for the failures of some of these institutions. There were gross misconducts by the former managing directors of Union Bank of Nigeria Plc., the Intercontinental Bank of Nigeria Plc., and Oceanic Bank of Nigeria Plc. There were serious breaches of corporate governance codes by the Directors General of the Nigerian Stock Exchange (NSE) and the Nigerian Securities and Exchange Commission (SEC).⁷³ The story was no better in the Commercial sector. In the 1990s, the Lever Brothers Plc., led by Late Chief Rufus Giwa and Cadbury Nigeria Plc., led by Mr. Bunmi Oni experienced some gross abuses of corporate governance. These gross abuses were publicised but in the case of Lever Brothers, while the outcome of investigations and penalties were not made public till date, but that of Cadbury Nigeria Plc; only the fines were made known. And the Securities and Exchange Commission (SEC) was reported that the company was to pay some fines for several breaches of corporate governance codes.⁷⁴

The challenges of corporate governance in Nigeria are such that are peculiar to the Nigerian situation. These include corruption and poor attitude to compliance. Corruption is responsible for the many collapses and failures of many corporations in Nigeria. In 2014, the NDIC, reported that fraud was on the increase.⁷⁵ Nigeria ranked 142, 147, 121, 130, 134, 143, 139 and 144 in 2006, 2007, 2008, 2009, 2010 and 2012 in the corruption rating, respectively.⁷⁶ This questions the integrity of the country. The volume of fraud in the country and among the corporate sector is very high and daunting. This has numerous effects on companies and leads to corporate failures. Such failures affect all stakeholders-shareholders, employees and directors both in the public and private sectors. Though, there are effective codes for good corporate governance in Nigeria, the compliance and enforcement culture is very poor.⁷⁷ This has led to many distresses in the financial sector.⁷⁸

4. Corporate Governance in the United States of America (USA)

Corporate governance has been a subject of consideration in the United States of America (USA). The issue has been extensively debated on over the years. This is as seen from many write ups on the subject matter. The US economy invariably influences the economy of many other countries and so has its corporate governance influenced the corporate governance in other states of the world. USA is a pioneer in the securities market. It is a pioneer in the application of corporate governance. The debate on corporate governance in the US started in the early 1932s with the publication 'The Modern Corporation and Private Property'⁷⁹ the country has suffered high corporate failures over the years. The enactment of the Sarbanas-Oxley Act, 2002, came in a bid to checking corporation failures from tax accounting and poor corporate governance practices. The Cadbury report on corporate governance in the UK in 1992 succeeded to create much awareness on corporate governance in the USA. This was followed by the financial crisis of

⁷⁰ As at this time, the concept of corporate governance is not totally new.

⁷¹ Nat, O., 'Historical Development of Corporate Governance in Nigeria' (2013), accessed on 21/7/23.

⁷² *Ibid.*

⁷³ Sanusi, J.O. (2003), 'Embracing Good Corporate Governance Practices in Nigeria,' A Keynote address at the 19th Annual Bank Directors seminar organized by the Financial Institute Training Centre, June 19, Abuja.

⁷⁴ Ahmad, M.K. (2008), 'Corporate Governance in the Pension Industry,' A paper presented at the Adebayo Akerele Distinguished lecture series at the Faculty of Management Science, University of Benin, May 25, Benin City.

⁷⁵ Nigeria Deposit Insurance Corporation, Report 2014.

⁷⁶ CPI Global (2013).

⁷⁷ Oyejide, T.A. & Soyibo, A. (2001). Corporate governance in Nigeria. Is a paper presented at the Conference on Corporate Governance, Accra, Ghana.

⁷⁸ Ahmad, M.K., *supra*, note 74.

⁷⁹ Berle and Means, 'The modern Corporation and Private Property, (1932, Macmillan).

2008 and 2009.⁸⁰ There has been an upsurge of corporate scandals in the US in the early part of the century involving many great companies like the Enron, WorldCom, Tyco, etc. This kindled the interest of both the government and law makers on corporate governance. This led to the enactment of the Sarbanes-Oxley Act of 2002. Followed by the US Securities and Exchange Commission (SEC), the New York Stock Exchange (NYSE) and the National Association of Securities Dealers Automated Quotations, popularly called the NASDAQ Stock Market. These form the legal framework for corporate governance in the US. Though, the full impact of these instruments has not been felt in the business sector as they have not been able to change the basic structure of corporate governance in the US. The daily affairs of companies have remained in the hands of the management with the board of directors to appoint shareholders. Although, the main aim of these instruments had been to establish transparency and accountability among the company executives and non-executives. It was to maintain consistency, good auditing, disclosure, availability of information, appointment of Committees, compensation, etc. Under the new standards, the board and committees are required to be independent in the discharge of their duties. Some incidences of poor corporate governance in the US include the Pacific Gas and Electric Company scandal of 2001; the World Com (telecomm) of 2001; Enron (Energy Company) of 2001; Arthur Andersen (Accounting) of 2002; Adelphia Communications Corporation (Cable TV) of 2002; and REFCO (Brokering) of 2005. In all of these, the companies entered into bankruptcy or various other challenges due to corruption, mismanagements, non-disclosure, excessive power on a particular person or group, etc. the enactment of the Sarbanes-Oxley Act in 2002 was to check these challenges and encourage good governance practice in both public and private sectors. Yet the US continued to face challenges in their corporate governance mainly on account of administrative, technical gaps and fraud. It is either corporate managers inflate financial results by overstating costs or by diverting corporate funds to their private use or both. They continue to loot the company dry until such a business goes distressed.⁸¹ The outburst of corporate accounting scandals and related financial abnormalities in the last few years, as well as the widespread corporate misconducts in the American corporate sector, raised vital questions on the effectiveness of corporate governance in the US. There was also cooperative failure of various corporate governance machineries to prevent or notify shareholders and depositors of imminent glitches. However, despite these so-called flaws, the US corporate governance system has not performed badly both on an outright basis and in relation to other countries. This is because there can be no perfect system anywhere. All that had happened in the past, only helped to shape up the corporate sector for an improved corporate governance system. They seem to have learnt from their past errors and are stronger in their corporate sector. There has been some calm for over a decade now.

5. Comparative Analysis of Corporate Governance in Nigeria and the United States of America

Some critical areas of the corporate activities of both countries will help to effectively compare their strengths and weaknesses. For effective comparative, their respective corporate governance structures which both have put in place to encourage reforms, discourage corruption and ownership structure of companies will need to be examined and compared. It must be known that corporate governance works differently in both countries for some fundamental reasons. While the US is stronger in terms of economic strength and stability, Nigeria is still a developing nation with very unstable economy, fighting insecurity and corruption in all sectors despite its huge population and large market, rich natural and human resources such as a fertile land, crude oil, labour and expertise. Corporations are legal persons in law and operate in a particular jurisdiction. The legal personality of a corporation is backed by statute. Thus, such an entity holds all the rights of a real person. The modern corporation has a characteristic of perpetuity. The statutory backing may be for general purpose legislation or for specific corporation and statute. In addition to these statutes, and relevant jurisdictions, corporations are subject to common law in some countries, and various laws and regulations which affects business practices. In most jurisdictions, corporations also have a constitution that provides the specific rules that govern the corporations and authorize its decisions. This constitution is referred to as its corporate charter or Memorandum and Articles of Association.

The Nigeria legal framework is derived from British Common Law and other similar commercial codes. Apart from its main statute (MAMA) which regulates corporate organization in the country, there are many other corporate governance codes in force, which applies generally or specifically. For example, the Corporate Governance code which applies as the Code of Best Practices on Corporate Governance in Nigeria, 2003, issued by the SEC; the Code of Corporate Governance for Banks in Nigeria Post-Consolidation, 2006, issued by the CBN; and the code of Corporate Governance for Insurance Industry in Nigeria 2009, issued by the National Insurance Commission (NAICOM). All of these show that Nigeria has a multiplicity of corporate governance codes.⁸² Nigeria also has

⁸⁰ Steven, N. Kaplan, 'Executive Compensation and Corporate Governance in the U.S: Perceptions, Facts and Challenges, Chicago Booth Paper No. 12-42, Fama-Miller Centre for Research in Finance, Chicago, July 2012.

⁸¹ Franklin R. Edwards; 'U.S. Corporate Governance: What Went Wrong and Can It Be Fixed', Being a paper prepared for B.I.S. and Federal Reserve Bank of Chicago Conference, 'Market Discipline: The Evidence across countries and Industries,' Chicago, Oct. 30-Nov. 1, 2003.

⁸² SEC (2011) Code of Best Practices on Corporate Governance issued by Securities Exchange Commission in 2011.

multiple corporate governance regulatory bodies like SEC, CBN, CAC, the Nigerian Deposit Insurance Corporation (NDIC). The bodies are staffed with executives who collaborate with companies' executives to undermine the shareholders' interests; the appointment of Board members lacks merit and professionalism as these are picked from non-experienced military retirees and civil servants without the prerequisite expertise in finance and banking operations. Nigeria ought to be properly guided in this regard to engage relevant persons from a socio-political, economic, and cultural environment and to apply effective laws and commitment on the part of government to enforce compliance of corporate governance policy.⁸³ The US enacted the Foreign Corrupt Practices Act (FCPA) in 1977, illegalising bribery of any kind among government officers, with substantive penalties levied on companies and executives for default.⁸⁴

The Nigerian judicial system is made up of several levels, in the order Magistrate Court, Commercial Court, High Court, Court of Appeal, and the Supreme Court.⁸⁵ Companies are supervised by various bodies.⁸⁶ All of these bodies are established to improve the legal and corporate governance system in the country. Also, Nigeria has operated a culture of political support where the ruling political elite do not pay attention to public accountability. Corruption is institutionalised as they all carry on as if they are above the law.⁸⁷ Appointment to the Board is by appointing their associates. Since, appointments are made by relationship and not competence and accountability, these encourages corruption. Corruption is simply defined as the abuse of public power for private gain.⁸⁸ The Federal Government in Nigeria has at various times taken various steps to improve the investment climate and corporate governance, which encourages foreign investment. However, government efforts have not yielded much fruits towards curbing corruption. It is believed that global efforts towards good corporate governance will help to reduce corruption in all the sectors. The same treatment that awaits bribe takers should be extended to bribe givers.⁸⁹ There should be no sacred cows. A good corporate governance will break the vicious cycle of bribery and corruption in Nigeria and reduce political influence on corporations.

Nigeria has good market strength besides its human and natural wealth. It is the 6th major oil producer in the OPEC. It has many solid minerals including precious stones, bitumen, coal, and gypsum. There are many industries and establishments. Yet, the country is backward and economically dwarfed due to corruption. Besides corruption, is insecurity which discourages investors and further demean the economic potentials of the country.⁹⁰ According to Ekpo, some factors reinforce economic growth and Foreign Direct Investment (FDI) in Nigeria. These include the over dependence on oil, national deficit and accumulated foreign debts due to extravagance and flamboyance, poor implementation of economic policies, corruption, insecurity, unstable regulatory and institutional environments.⁹¹ So far, government efforts have not yielded much good due to poor implementation. Unlike the US, corporate governance is relatively new in Nigeria and only came into the lime light after many corporate failures.⁹² In the US, the Sarbanes-Oxley Act 2002 is a reminder of the importance of financial integrity and professionalism. The Act packaged so much to promote the business world. And every stakeholder including the government and the general public are jointly observing the Act for their overall good.

⁸³ Bakare, M.O. (2011) Corporate Governance Practices as a reflection of the socio-political Environment, *International Journal of Critical Accounting* Vol. 2 No. 3 pg. 133-170.

⁸⁴ DOJ Website-Foreign Corrupt Practices Act Guidance- May 2013.

⁸⁵ The Supreme Court being the apex or highest Court in the land.

⁸⁶ For example, the registration of private companies is done by Corporate Affairs Commission under the Companies and Allied Matters (CAMA) 1990, Cap C20, LFN, 2004.section 7; Securities and Exchange Commission. The banking sector and other financial institutions are regulated by the Central Bank of Nigeria (CBN), Financial Reporting Council (FRC) and the Economic and Financial Crime Commission (EFCC) which re in charge of prosecution of fraudulent and corrupt practices.

⁸⁷ Amaechi, K.M., Adi, B.C., Ogbeche, C. & Amao, O.O. (2006) Corporate social responsibility in Nigeria. Western minority or indigenous influences? *Journal of Corporate Citizenship* Vol. 24 No. 3 pg. 83-99.

⁸⁸ Fagbadebo, O. (2007) corruption, governance and political instability in Nigeria. *African Journal of Political Science and International Relation* Vol. 1 No. 2 pg. 28-37.

⁸⁹ Treisman, Daniel. 2000. The Causes of Corruption: A Cross-National Study. *Journal of Public Economics* 76:399-457.

⁹⁰ Ekpo, A.H. and Umoh, O.J. (2012) An overview of the Nigeria economic growth and development. *Daily Newspaper* 4/7/2012.

⁹¹ *Ibid.*

⁹² Aganga Olusegun (2011) 'Corporate Governance in Nigeria, Stock Watch in Association with Lead Capital' being a paper published by the *Guardian Newspaper* of March 21, 2011.

6. Conclusion/Recommendation

Nigeria has a similar structure with the US as both are using a unitary board structure. The US structure is captured in its Sarbanes-Oxley Act while the structure of the board is as provided by the Codes. Nigeria is a developing country while the US is a developed world power. As observed, corruption is predominant among developing nations than in developed nations and Nigeria being a developing nation has its fair share of corruption antecedents and not much success has been recorded in the fight against corruption by successive governments largely due to the fact that all the governments gained power through corruption. Corruption is the highest obstacle facing successful corporate governance in Nigeria. Also, institutional shareholder is stronger in the US than in Nigeria. US has a stronger institutional framework for corporate governance practices than Nigeria. Going forward, the following recommendations are made for effective corporate governance in Nigeria: - Nigeria must lay a solid foundation for management and oversight; the Board must be structured to add greater value; rights of shareholders must be paramount; all risk factors must be recognized and managed properly; and remuneration must be fair. Above all, the country must strive to win the fight against corruption and check insecurity. With these adequately handled, Nigeria will be moving towards effective world best practices on corporate governance.