

## **CORPORATE GOVERNANCE AND PRACTICE IN NIGERIA: EXPLORING ITS TRICKY AND PROGNOSSES\***

### **Abstract**

*The major reason why most business tycoons decided to incorporate companies in Nigeria is the desire to make profits as well as the immediate and long term benefits of incorporation guaranteed by the law. To ultimately achieve this purpose, the law also designs the way and manner incorporated companies should be governed. In order to achieve the overall objectives of incorporation, strict adherence to effective corporate governance framework by human organs becomes indispensable. As observed in Nigeria, a number of companies had gone into their early graves as a result of improper handling by the human organs managing their affairs. Hence, this study, which is essentially literature based with particular emphasis on the relevant provisions of the Companies and Allied Matters Act, 1990, investigates reasons for corporate governance and corporate governance failure in Nigeria with its consequent negative effects. The research focuses on the human organs responsible for day-to-day activities of the company. The paper argues that human organs of the company are the architects of corporate governance failure in Nigeria. It recommends strict enforcement paradigm for preserving and sustaining the integrity of the corporate governance in Nigeria.*

**Keywords:** *Corporate Governance, Practice, Tricky, Prognoses and Nigeria.*

### **1. Introduction**

A company once registered in accordance with the provisions of Company and Allied Matters Act, becomes artificial entity. A company by reason of its artificiality must act through the agency of natural persons, notwithstanding the independent of its legal personality.<sup>1</sup> This is because, the responsibility of corporate administration can only be vested on human agents. These human agents include the directors, secretary and other employees<sup>2</sup> of the company. Based on the above, this research examines the basis for effective corporate governance framework vis-à-vis the roles of the human organs of the company in corporate governance. It also appraises instances of corporate governance failure on the part of the human organs of the company as well as the effects of corporate governance failure with a view to suggesting recommendations to combat the menace of corporate governance failure in Nigerian.

### **2. Basis for Effective Corporate Governance Framework**

In corporate law and practice across the globe, effective corporate governance framework is an essential element. In fact, the framework is extremely indispensable for any corporate entity to continue in its normal corporate existence especially in highly competitive corporate environment. The effective framework serves as road maps for corporations to ultimately achieve their economic goals and to positively impact on the economy of the country where they operate. Thus, there is need to appreciate the basis for effective corporate governance framework in corporate law and practice.

To this end, the Organization for Economic Co-operation and Development (OECD) provides the basis for effective corporate governance as summarized below:<sup>3</sup>

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<sup>1</sup> See J. A. Dada, *Principles of Nigeria Company Law*, 2<sup>nd</sup> Edition, (Wusen Publishers, Calabar, 2008), p. 230.

<sup>2</sup> These are the stakeholders (employees) of the company.

<sup>3</sup> See OECD 'Principle of Corporate Governance', (Supra). The basis were endorsed by the OECD ministers in 1999 and had since then become international benchmark for policy makers, investors, corporations and other stakeholders worldwide.

- a. The corporate governance framework should be developed with a view to impacting on the overall economic performance, market integrity and incentives it creates for market participants and the promotion of transparent and efficient market;
- b. The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable;
- c. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served; and
- d. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner and their rulings should be timely, transparent and fully explained.

It is discernible from the above that, for there to be effective corporate governance in corporate law and practice, the above highlighted basis for effective corporate governance framework must be developed, adopted and put into practice in order to bring corporate governance in conformity with international standards.

### **3. Role of the Board of Directors in Corporate Governance**

The Companies and Allied Matters Act<sup>4</sup> makes certain provisions regulating the powers of the directors<sup>5</sup> in the interest of the company, shareholders and other concerned stakeholders. The reason being that the board of directors constitutes an important organs of the company through which a company acts. Powers of directors are also checkmated by the company's memorandum and article of association as well as other external aids.<sup>6</sup> The powers vested in the directors must be exercised by them as a board because it is only when directors act as a board that they are presumed organs or agents for their company and therefore entitled to exercise the power vested in them by the law or articles.<sup>7</sup>

In the exercise of the powers conferred on them, the board of directors is expected to run a transparent administration of the company. In the same vein, they are required to make full disclosure of all necessary information in the course of managing the affairs of the company.<sup>8</sup> Thus, the issue of disclosure of material facts or information is the hallmark of effective corporate governance and it is not limited to the instances where the board makes secret profits or derives unnecessary benefits during the course of the administration of the company. Every bit of their duties in the management of the company is covered by the principles of disclosure and transparency. Since most of the management powers of the company are vested in the board of directors, it is not gainsaid that they owe onerous responsibility to the company in the exercise of their powers.<sup>9</sup> These responsibilities/duties<sup>10</sup> imposed on the board of directors are geared towards ensuring effective corporate governance. However, in practice, there are instances where the board engages in acts amounting to breach of duties thereby leading to corporate governance failure. These instances shall be discussed in the latter part of this study.

### **4. Role of Corporate Secretary in Corporate Governance**

In recent time, the responsibility for developing and implementing process to promote and sustain corporate governance has largely fallen within the realm of the corporate secretary.<sup>11</sup> This is contrary to the former status of

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<sup>4</sup> Companies and Allied Matters Act, Cap. C20, LFN, 2004 (hereinafter referred to as "CAMA").

<sup>5</sup> See J.A. Dada, *Principles of Nigeria Company Law*, p.236.

<sup>6</sup> These include code of conduct for corporate governance, periodic and revised guidelines by supervisory and regulatory bodies, designed corporate governance framework by related international bodies to mention but a view.

<sup>7</sup> See the case of *Carib Construction Co. Ltd vs. Lynch* CCHCJ/12/73/29 (Unreported) at p. 32.

<sup>8</sup> See J.A. Dada, *Principles of Nigeria Company Law*, p. 242. See also, See sections 280(1) – (3) (a) and (b); and 280 (3) of CAMA

<sup>9</sup> See section 507 of CAMA.

<sup>10</sup> See sections 279, 280, 282, 287 of CAMA. For details of the duties and responsibilities of the board, see generally the 'OECD Principle of Corporate Governance' p. 2.

<sup>11</sup> See 'ICSA Guidance on Corporate Governance Role of the Company Secretary' published by the Institute of Chartered Secretaries and Administrators with International Reference Number: 081020, <<http://www.icsa.org.uk.htm>> accessed on 29<sup>th</sup> June, 2016.

corporate secretary under the early English Companies' statutes which make no provision for the appointment of corporate secretary thereby leaving the appointment of corporate secretary at the discretion of the company.<sup>12</sup> The attitude of Courts then was to regard a secretary as a mere servant of the company whose functions were *prima facie* clerical and ministerial only.<sup>13</sup> The court had once held that: 'A secretary is a mere servant; his position is that he is to do what he is told, and no person can assume that he has any authority to represent anything at all ...'<sup>14</sup> The above position or impression of corporate secretary has radically changed in the recent time following a drastic review by Lord Denning, MR. in *Panorama Developments (Guilford) Ltd v. Fidelis Furnishing Fabrics Ltd*<sup>15</sup> when His Lordship held that corporate secretary is an officer of the company with extensive duties and responsibilities imposed on it as clearly spelt out in statute.<sup>16</sup> It is therefore noteworthy that a corporate secretary plays pivotal role in corporate governance. To this end, Companies and Allied Matters Act (hereinafter referred to as Act) clearly spelt out the duties of corporate secretary to affirm its current status.<sup>17</sup> Thus, a cursory look at the above provisions of the Act regarding the duties/roles<sup>18</sup> of a corporate secretary in corporate governance reveals that the duties provided therein are inexhaustible compared to the challenges of the modern day corporate law practice. In view of the forgoing, a corporate secretary has a great influence in corporate governance of the company. This is embedded in the fact that company secretary is a principal officer of the company with his ostensibly emerging functions and responsibilities in corporate administration<sup>19</sup> geared towards ensuring effective corporate governance.

### **5. Role of Stakeholders in Corporate Governance**

Stakeholders are the employees of the company.<sup>20</sup> The role of stakeholders is enormous bearing in mind their interests and invaluable contribution to the long term success of the corporation. This is the reason corporate governance usually recognize the rights of the stakeholders established by law or mutual agreements with a view to encouraging active cooperation between them and the company in creating wealth, jobs and the sustainability of financially sound enterprises.<sup>21</sup> The stakeholders undertake certain activities in corporate governance in order to ensuring economically optimal levels of investment in specific human and physical capital.<sup>22</sup> No wonder the competitiveness and ultimate success of any corporation is the end result of teamwork that embodies contribution from a range of different resources providers.<sup>23</sup> This can be achieved by ensuring maximum cooperation with

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<sup>12</sup> See J. O. Orojo, *Company Law and Practice in Nigeria*, (5<sup>th</sup> Edition, LexisNexis Butterworth Worldwide, 2008) p. 285.

<sup>13</sup> See the case of *Newlands vs. National Employer's Accident Association* (1885) 54 LJ QBD 428.

<sup>14</sup> See *Barnett, Hoares and Co. vs. South London Tramways Co.* (1887) 18 QBD 815 at 817, per Esther J.

<sup>15</sup> 1971 2 QBD 711.

<sup>16</sup> See the supporting position of Professor Gower as quoted in Orojo, *Company Law and Practice in Nigeria*, op cit, Pp. 286-287

<sup>17</sup> The duties of a corporate according to section 298 (1) of CAMA include: Attending the meeting of the company, board of directors and its committees, rendering all necessary secretariat services in respect of the meetings and advising on compliance by the meetings with the applicable rules and regulations; Maintaining the registers and other records required to be maintained by the company under the Act; Rendering proper returns and giving notification to the Commission required under the Act; and Carrying out such administrative and other secretariat duties directed by the directors or the company.

<sup>18</sup> See generally the analysis made by Orojo in his '*Company Law and Practice in Nigeria*', op cit, pp.288-289; see 'The Role of the Corporate Secretary in Governance', published by Clausen and Associates, <<http://www.clausenassociates.com/ARTICLES/PDF>> accessed on 29 July, 2013; see also the 'ICSA Guidance on Corporate Role of the Company Secretary', op cit. this informs the erudite decision of Anigolu, JSC, in the case of *Okeowo v Migliore* (1979) 11 SC, where the legal icon held that 'it may, in fact be impossible to fix all the duties of a secretary by law that apart from certain statutory duties ... the duties of the secretary of a company are not fixed by law'

<sup>19</sup> See Dada, *Principles of Nigerian company Law*, p. 251; see also 'The Role of Corporate Secretary in Governance', p. 3; and the 'ICSA Guidance on Corporate Role of the Company Secretary', p.23

<sup>20</sup> See 'OECD Principles of Corporate Governance', p.5

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

<sup>23</sup> These include investors, employees, creditors and suppliers to the company. Thus, the contribution of the stakeholders constitutes a valuable resource for building competitive and profitable companies because the success or otherwise of the corporations depends on their judicious utilization of the opportunity they have with various stakeholders.

stakeholders, respecting and protecting their right in their corporate transactions.<sup>24</sup> It is therefore suffice to say at this juncture that the role and impact of the stakeholders in corporate governance is highly indispensable. This is because it ensures provision of human and capital development to the company thereby making corporations to be competitive in their corporate businesses and transactions.

## 6. Role of Shareholders and their Key Ownership Functions

Shareholders are members of the company having varying degree of interests in the company. Section 79 of the Act defines members of a company and the process of becoming to include the first subscribers to the company's memorandum at the time of its registration and thereafter.<sup>25</sup> Therefore, a member of a company is a person who has a constituent proprietary interest in the company and whose name is on the register of members of the company. It is observed that the terms 'members' and 'shareholders' in corporate law and practice enjoy synonymous usage.<sup>26</sup> Notwithstanding the choice of term employed, what is important is that be it 'shareholders or 'members', their names must be entered in the register of members of the company.<sup>27</sup> It is discernible from section 81 of the Act that the powers of the shareholders reside in the company's general meetings where they have the opportunity to ventilate their minds by exclusive deliberation on any resolution and subsequent confirmation of same by votes. Other rights of the shareholders include the right to receive dividends<sup>28</sup> in appropriate cases, the right to seek redress against oppressive and unfair treatment, and the right to make various applications to Court<sup>29</sup> or the Commission.<sup>30</sup> It is worth mentioning that the shareholders play significant role in corporate governance having regards to their watch-dog-function in respect of the duties of the directors directing the affairs of the company. The Act provides that a company<sup>31</sup> may remove a director before the expiration of his period by ordinary resolution notwithstanding anything in its articles or in any agreement between it and him.<sup>32</sup> The responsibility to enforce the directors' duties lies in the company but this is often bedeviled with certain challenges.<sup>33</sup> The challenges may extremely make removal of a director difficult. However, in extreme situation, the Act empowers the shareholders to petition for winding up of the company on the ground that it is just and equitable to do so;<sup>34</sup> seeking for relief on the ground that the affairs of the company are being conducted in an illegal and oppressive manner;<sup>35</sup> instituting a misfeasance proceedings in winding up where there has been misapplication of funds by the directors;<sup>36</sup> and

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<sup>24</sup> See 'OECD Principles of Corporate Governance', p.5

<sup>25</sup> See sections 79 (1), (2), and (3) of the Companies and Allied Matters Acts. See generally the case of *Re Dahiru Wada* (2000) FLWR (Pt. 18) 214; and *Dada, Principles of Nigerian Company Law*, pp. 212-218.

<sup>26</sup> See the case of *Ponmile v Sparks Electrics (Nig) Ltd* (1986) NWLR (Pt. 689) 46; and *Oilfield Supply Centre Ltd v Johnson* (No. 2) (1999) 5 NWLR (Pt. 602) 326 at 333.

<sup>27</sup> See *Spark Electrics v SB Ponmile* (1986) 2 NWLR (Pt.23) 516 at 522, where per Nnameka Agu, JCA (as he then was) held that, in modern company law, there is actually no difference, in practice at least, between being a member and being a shareholder of a company under section 76 of Companies and Allied Matters Act, 1968 which is in *pari materia* with section 79 of the Companies and Allied Matters Act, 1990.

<sup>28</sup> This is a pro rata payment of money by a company to its shareholders, usually made periodically (e.g. quarterly or annually) depending on the financial viability of the company taking into account the business of the company for the period due.

<sup>29</sup> See Section generally, section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) which clothes the Federal High Court of Nigeria the exclusive jurisdiction to hear and determine such cases.

<sup>30</sup> i.e. the corporate Affairs Commission saddled with the responsibility of overseeing the affairs of companies duly registered with her in accordance with the relevant provisions of the CAMA.

<sup>31</sup> This symbolizes the members or shareholders of the company at the general meeting.

<sup>32</sup> See section 262(1) of CAMA.

<sup>33</sup> This is a situation in which the directors of the company have larger percentage in the shareholding of the company. This, by implication, gives them edge over other shareholders to dominate and influence decision making at the company's general meeting at the expense of the minority shareholders.

<sup>34</sup> See section 408 of CAMA.

<sup>35</sup> See section 311 of CAMA.

<sup>36</sup> See section 507 AND 481 of CAMA; an application in this circumstance, may be made to a court of competent jurisdiction to compel any defaulting or erring director(s) to account and repay.

applying to the Commission for appointment of an inspector to conduct investigation in to the affairs of the company.<sup>37</sup>

Thus, it is safe to assert at this juncture that the shareholders play very important roles and key ownership function in corporate governance. To this end, shareholders' roles are designed to serve as checks and balances against the excesses of the board of directors. These roles supposedly keep the directors on their toes with a view to ensure effective corporate governance.

## **7. Tricky of Corporate Governance by Human Organs**

This part of the study examines some of the instances of corporate governance failure occasioned by the human organs of the company.

### **Board of Directors**

The board of directors is expected to be above board in corporate governance by strictly adhering to various corporate governance codes designed in line with international best practices. But often times, board of directors jettisoned their integrity because of egocentric interest by occasioning corporate governance failure. The instances of corporate governance failure on the part of the board of directors of a company are enormous. One of such instances is a situation where the board of directors or any of its members diverts monies duly received on behalf of the company to another purpose other than the purpose for which the monies were received with intend to defraud.<sup>38</sup> This act is apparently breach of trust on the part of the board and often leads to corporate governance failure. When monies received are diverted to other purpose different from which they were received, it will no doubt debar the progress of the company. By the very nature of the company vis-à-vis the duties imposed on the board of directors by the Act and any other relevant Act(s), board of directors are expected to transparently govern the affairs of the company by making full disclosure of every bit of their activities in the course of the administration of the company. But however in practice, the board behaves otherwise.<sup>39</sup> Thus, this non-disclosure and lack of transparency in the management of a company inevitably leads to corporate governance failure. The board of directors in the course of their duties, for obvious reason of corruption, unconsciously contravenes certain mandatory provisions of the Act. One of such contravened provisions is the imposition placed on the board not to ever transact business on behalf of the company with less than two directors.<sup>40</sup> Thus, the board of directors in certain situation transacts business on behalf of the company with less than two directors. This contravention is fundamental and constitutes instance of corporate governance failure because according to Act, no valid business can be transacted on behalf of the company with less than two directors and this contravention has serious implication on the company.<sup>41</sup> It is not uncommon to see the board of directors conducting the affairs of the company in a fraudulent and improper manner, because this has been usual occurrence for decades ago.<sup>42</sup> This, indeed, is an instance of corporate governance failure that seriously threatens the corporate existence of the company. The reason being that conduct of the affairs of the company in a fraudulent and improper manner by its board of directors is a valid ground for petitioning for the winding up of the company.

### **Corporate Secretary, Stakeholders and Shareholders**

It is beyond debate that a corporate secretary is an important part of the company. It has a great influence in corporate governance having regards to the fact that he is a principal officer of the company with his ostensible functions and responsibilities in corporate administration<sup>43</sup> geared towards ensuring effective corporate governance.

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<sup>37</sup> See section 314 and 315 of CAMA; in this situation, the Commission may direct the appointment of an inspector to carry out comprehensive investigation in to the affair of the company.

<sup>38</sup> See Section 290 of CAMA.

<sup>39</sup> This is apparent in a situation when a company consists of holdings and subsidiaries. In the course of preparing a financial statement to reflect the true financial state of the company, the board often covers their shit by failing to comply with the statutory provision of the preparation of a group financial statement with view to conceal fraudulent dealing inherent in the state of affairs and the profit and loss of the company over the financial year in question. See generally, See section 336 of CAMA.

<sup>40</sup> See section 246 of CAMA.

<sup>41</sup> Section 246 (2) of CAMA.

<sup>42</sup> See the cases of *Gilford Motors Co. Ltd. vs. Horne* (1933) Ch. 935; *Jones vs. Lipman* (1962) 1 WLR 832; and *Re Bugle Press Ltd* (1961) Ch. 270.

<sup>43</sup> See Dada J.A., 'Principles of Nigerian Company Law', p.251; see also 'The Role of Corporate Secretary in Governance', p. 4; and 'ICSA Guidance on Corporate Role of the Company Secretary', p. 25

Though, a corporate secretary appears not to be a major player in corporate governance failure like the board of directors. However, a corporate secretary often time contributes to corporate governance failure where:<sup>44</sup>

- a. He transacts business on behalf of the company, as a principal officer of the company, with the company's customers with intent to defraud them;
- b. He fraudulently deals with the company's investors in his corporate administration;
- c. He fails to ensure compliance with corporate codes and other relevant Acts;
- d. He fails to work with the officers and directors of the company effectively thereby resulting into error in regulatory reporting which amounts to offences under various Acts.

The stakeholders,<sup>45</sup> just like the corporate secretary, are also not major players when it comes to corporate governance failure. Their involvement or otherwise depends on the nature of authorization given to them by the governing members<sup>46</sup> of the company. This therefore comes to play where the employee of a company is duly authorized<sup>47</sup> to act on behalf of the company to transact its business with a specified customer of the company and in doing so, fraudulently transact the business with a view to defraud the company's customer in the circumstance. This is an instance of corporate governance failure because if the fraudulent act of the employee results into the company's inability to pay the customer as required by the Act, it entitles the customer (being the creditor of the company) to petition<sup>48</sup> for the winding up of the company. The shareholders, being the owners of the company, reserve certain rights and exercise ownership function with respect to the affairs of the company. In the exercise of their ownership functions, they often serve as architect of corporate governance failure. This is discernible in a situation where they use the company as an agent to defraud third parties.<sup>49</sup> Another related instance is where the shareholders participated in the approval of an apparently fraudulent or unlawful business to be transacted on behalf of the company with intent to defraud the company's creditor.<sup>50</sup>

## 8. Upshot of Corporate Governance Tricky

Corporate governance failure is a phenomenal any corporation never wished to experience. This is owing to a number of negative effects it inevitably has on the company, the human organs and the country at large.

### Company

In the event of corporate governance failure, the company is the first entity to suffer the negative effect. The business of the company is adversely affected. The reason being that corporate governance failure exposes the company to a very harsh and highly threatening situation.<sup>51</sup> This is because the businesses of a company generally thrive in a conducive corporate setting. Corporate governance failure is anathema to the growth and general wellbeing of a company. In certain situation, incidence of corporate governance failure leads to massive laying off of the major perpetrators of the corporate crimes thereby leading to a corporate general restructuring in which situation, the company becomes a new born that is just regaining its footing especially in the modern day highly competitive corporate environment. The fundamental effect of corporate governance failure on a company is serious threat of extinction from corporate world. Depending on the nature of the occasioned corporate governance failure, a last resort of winding up of the company may become the only option in case it becomes apparent that the company can no longer offset its overburdened debts.<sup>52</sup> The remaining assets of the company become the saving grace for the company's creditors to recoup their investments and credits from the company. Inevitable litigations<sup>53</sup>

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<sup>44</sup> See 'OECD Principles of Corporate Governance', p. 5

<sup>45</sup> Otherwise, in this context, known as the employees of the company.

<sup>46</sup> These are the members of the board of directors primarily saddled with the responsibly to direct and manage the affairs of the company.

<sup>47</sup> Generally, the powers vested in the directors must be exercised by them as a board and no individual or in group can bind the company except where the power of the board has been duly delegated to an employee as provided by CAMA or the articles since the board has no inherent powers to delegate any of its powers of decision to one or more of its members or to other persons. See generally, Orojo J.O., *Company Law and Practice in Nigeria*, p. 258.

<sup>48</sup> This is a separate procedure (sui generis) of commencement of winding up proceedings against a company at the Federal High Court. The procedure is regulated by Companies Winding-Up Rules, 2001.

<sup>49</sup> Orojo, *Company Law and Practice in Nigeria*, p. 91.

<sup>50</sup> See the case of *PFS Ltd v Jefia* (1998) 3NWLR 602 at 614.

<sup>51</sup> This is because, if care is not taken, it may lead to exit root of the company from the corporate world.

<sup>52</sup> Under the relevant provisions of the Companies and Allied Matters Act, failure of an incorporated company to pay its debt(s) within certain period of time gives the company's creditor a right to petition for the winding up of the company at the Federal High Court, being the only court with jurisdiction over such matters. See section 409(a)-(c) of CAMA.

<sup>53</sup> These are unwarranted court cases instituted by various creditors of the company who have fallen victim of the corporate governance failure in the hands of the human organs of the company.

are another effect of corporate governance failure which impacts negatively on the company. It is capable of disrupting the smooth running of the company and brings about unforeseeable and non-beneficial expenditures on the company because litigation has cost implication. Bad image and impression of the company in the sight of the general public is another effect of corporate governance failure.<sup>54</sup> It is no doubt that corporate governance failure sends bad signal to the general public about the company. Where a company that experienced corporate governance failure narrowly escapes extinction, its continued existence becomes difficult because most of its earlier customers will think before transacting with it. This becomes worse off when the incidence of the corporate governance failure of the company was made public. In sum, the company would have lost the trust and confidence reposed on it by its earlier customers and other corporate counterparts. A vivid example of this was the case of Skye Bank Directors excused by the Central Bank of Nigeria sometime in June 2016. Investigation at the disposal of these researchers revealed that some customers of the Bank hurriedly withdrew their savings. Some customers withdrew in apparent bids of not being trapped in the tricky as was the case in 2005 when some banks lost their certificate because of 25 Million consolidation imbroglios.

### **Human Organs**

The human organs of a company as discussed earlier in this study include the board of directors, the corporate secretary, the stakeholders (company's employees) and the shareholders. This study has equally shown that these human organs of the company play different roles, in certain circumstances, leading to corporate governance failure. Although, the board of directors has been singled out as the major perpetrators of corporate governance failure owing to the nature of duties/responsibilities imposed on them as well as wide discretion and privileges they enjoy in corporate governance.<sup>55</sup> However, these human organs of the company swim in the same ocean having regards to the effect of corporate governance failure on them. Invariably, the negative effects of corporate governance failure are common to them depending on their involvement in the event of corporate governance failure.<sup>56</sup> It will be recalled as discussed earlier that the human organs of the company do hide under the corporate veil to perpetrate dastardly acts amounting to corporate governance failure. Thus, on the occasion of corporate governance failure, the first point of call is the lifting of the veil of incorporation with a view to search for the human organs of the company who are perpetrating the atrocities behind the veil. It follows therefore that the main purpose of lifting the corporate veil is to make the individual organs of the company who actually are responsible for the corporate governance failure to face personal liability.<sup>57</sup> Thus, corporate governance failure is an exception to the age long doctrine of corporate personality because incidence of corporate governance failure inevitably leads to the doctrine of lifting the veil.

The aftermath of lifting of corporate veil sometimes leads to criminal prosecution in the court of competent jurisdiction.<sup>58</sup> It must therefore be emphasized that when corporate governance failure has been occasioned; it is not all the individual members of the human organs of the company that bear the consequence of personal liability and the subsequent criminal prosecution. It is only the human organs of the company whose acts or omissions (with clear intention to defraud) lead to the consequent corporate governance failure that is, as matter of fact, held liable. It must also be appreciated that the consequence of corporate governance failure on the human organs of the company, in certain situation, appears inevitable regardless of whether or not they actually participated in the acts leading to corporate governance failure. This comes into reality even in the situation where some human organs of the company had been cleared for not being involved in corporate governance failure; the consequence of losing

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<sup>54</sup> Incorporation of company is majorly for transaction of business mainly for profit purposes. In Nigeria today, there are numerous companies competing amongst themselves for the limited available markets. It is therefore a great deal of time for a particular corporate entity to stand out amongst others. Thus, the bad signal sent to the general public as a result of corporate governance failure negatively affect the company's reputation, integrity and good will deservedly through hard work and sacrifice.

<sup>55</sup> See the case of *Carib Construction Co. Ltd v Lynch* CCHCJ/12/73/29 (Unreported) at p. 32

<sup>56</sup> This is often achieved by lifting the veil of incorporation of the company to see clearly which of the human organs of the company actually perpetrated the act(s) leading to the corporate governance failure.

<sup>57</sup> See generally, sections 93, 246(3), 290, 506(1), 316 of CAMA. See also the case of *Adeniyi v State* (1992) 4 NWLR (Pt. 253) 288 at 304.

<sup>58</sup> The court of competent jurisdiction in this circumstance is the Federal High Court by virtue of the combined provisions of section 251 of the constitution of the Federal Republic of Nigeria, 1999 (AS Amended).

their job could occur as result of the gravity of the corporate governance failure most especially where it leads to the ultimate winding up of the victim company.

### **The Country**

The viability or otherwise of the economy of a country depends largely on the contribution of its local companies. The performance of the corporate entities in a given country translates into the country's economic growth.<sup>59</sup> The foregoing is not an exception in the Nigerian case. It is beyond debate that the major purpose of incorporating a company is to engage into a profitable business of which certain returns will be made to the government agency by way of taxes.<sup>60</sup> Thus, under normal circumstances, the annual taxes usually paid by the companies to the government agency<sup>61</sup> breathe life into the economy of the country which in turn translates into social development. This is only achievable where there is effective corporate governance. The point therefore here is that in the event of corporate governance failure, this opportunity, by necessary implication, eschews the government which will in turn negatively affect the general economic and developmental growth of the country. A corporation that is effectively governed has a capability to positively and directly contribute to the country's social development by way of corporate social responsibility.<sup>62</sup> Thus, a company that has suffered an occasion of corporate governance failure might even find it difficult to offset the arrears of its accumulated taxes payable to the government, amongst others, let alone perceiving an idea of discharging the voluntary corporate social responsibility.

### **9. Conclusion**

By the concept of corporate governance the board of directors is vested with power to govern the affairs of the company with fiduciary duties imposed on them to diligently serve the interests of the corporation rather than their own selfish interests or those of the company's management. The roles of corporate secretary, stakeholders and shareholders in corporate governance cannot be over emphasized. The board of directors, the corporate secretary, stakeholders and the shareholders make up the human organs of the company. The human organs of the company are expected to positively impact on the overall economy of the country base on transparent and efficient market strategy. However, where the human organs of the company fail to effectively govern the affairs of the company, the end result is corporate governance failure. The study revealed that the leading player in corporate governance failure is the board of directors who are at the helms of affairs in corporate administration and expected to be above the board but fail do so. Also, other human organs of the company such as the corporate secretary, stakeholders and the shareholders of the company do engage in complementary acts amounting to corporate governance failure. Therefore, the incidence corporate governance failure inevitably has a number of negative effects on the human organs of the company, the company itself and the country at large. The negative effects of corporate governance failure on the company ranges from the creation of bad image of the company and unwarranted litigations through causing set back to the growth of the company and to the ultimate winding up of the company in extreme cases. As regards the human organs of the company, the effects of the corporate governance failure on them include lifting of the corporate veil, personal liability of the affected human organs, criminal prosecutions and massive retrenchment of the company's employees as a result of the company's financial incapability. The country also suffers from the aftermath of corporate governance failure economically because the annual returns payable by local companies will drastically reduce and thereby affecting financial viability of the country. Thus, to curb the menace of corporate governance failure, strict enforcement paradigm of the relevant provisions of CAMA is highly recommended so as to preserving and sustaining the integrity of the corporate governance in Nigeria.

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<sup>59</sup> See OECD 'Principle of Corporate Governance', p. 4.

<sup>60</sup> These are annual returns payable to the coffer of the Federal Government of Nigeria by all the companies incorporated under the Companies and Allied Matters Act except where some companies granted exception. These returns are generally payable annually and there is even penalty for late payment.

<sup>61</sup> In the Nigerian case, the Corporate Affairs Commission is the agency of the Federal Government empowered by virtue of the Companies and Allied Matters Act to determine the amount payable as annual return and to collect same from the companies whenever it becomes due from them.

<sup>62</sup> Corporate social responsibility refers to business practices involving initiatives that benefits society. It encompasses a wide variety of tactics from designating a portion of a company's proceeds to implement certain social developmental projects by way contributing their quota to the overall development of the country where it operates. See generally S Caramela, 'What is Corporate Social Responsibility?' Business News Daily Contributor, June 27, 2016, available at <<http://www.businessnewsdaily.com>> accessed on 25<sup>th</sup> July, 2016.