PROTECTION OF SHAREHOLDERS' AND INVESTORS' RIGHTS *VIDE* EFFECTIVE CORPORATE GOVERNANCE: AN APPRAISAL

Abstract

The concept of lifting the veil of incorporation is an important element in the effective governance of corporate entities worldwide. Natural persons rather than corporate entities are held liable for negligent acts performed during their day to day operations as Executives and Management staff of companies. The principal objective was to carry out their functions with due care, diligence and utmost good faith but the reverse has been the case being entitled to bonus salaries and emoluments even when the investor's interests and shareholders' interests have not been duly considered. This act of negligence on management passes the financial brunt of wrong decisions, uncalculated management risks, and avoidable losses incurred by the company to the shareholders. This article took a journey from several jurisdictions, dissecting their corporate governance rules and pin pointing particular regulations that were aimed at protecting the interests of shareholders and investors. Of particular emphasis was the corporate governance laws of Nigeria, and recent developments in the Nigerian Legal System, which ensured adequate protection to shareholders and investors in the day to day decisions making by the management of these companies. Areas where the opinions of shareholders were sought before major decisions were taken were highlighted. Avenues offered by these rules and regulations to aggrieved shareholders who may want to contest the decisions by the management of these companies where they are minority or majority shareholders were discussed. The study compared the different rules guiding corporate governance in different jurisdictions and suggested the best applicable rules. The Methodology used was the doctrinal research method which required the use of primary and secondary research materials. It was recommended that the relevant regulatory periodically issued laid down codes of governance to guide corporate businesses.

Keywords: Company Law, Shareholders, Investors Rights, Corporate Governance

1. Introduction

In many industrialized nations, there is a serious controversy about the purpose of the corporation involving the media, economists, policymakers, and managers. Ultimately, the dispute is about whether the corporation should maximize value for shareholders or for stakeholders or, in many ways, about corporate social responsibility.[1]

Over the years the ideology of shareholder value has become entrenched as a principle of corporate governance among companies based in major industrialized nations.[2]

2. Corporate Governance in Nigeria

Having reviewed the corporate governance laws of several advanced jurisdictions including the OECD countries, this work at this point will commence a thorough review of the development of Corporate Governance in Nigeria up until 2011, when the Country took a giant leap by establishing a Financial Reporting Council of Nigeria, under the Financial Reporting Council of Nigeria Act, 2011.[3] This Act repealed the Nigerian Accounting Standards Board Act,[4] and offered a more broad approach to effectively regulate the corporate arena of businesses in Nigeria, unlike the Accounting Standards Board that focused squarely of financial reporting of businesses in a domestic sense. Major global players in the Nigerian economy and businesses that have a strong international presence but

*By **M.I ANUSHIEM**, **LLM, PhD, BL,** Lecturer, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra state Nigeria.Tell:08032641757. Email:mi.anushiem@unizik.edu.ng, and

[*]**C.O.K. EZEAMA, LLB, BL, LLM**, Lecturer, Department of Commercial and Property Law, Nnamdi Azikiwe University, Awka, Anambra State. 08109001356 lexactlegal@gmail.com.

[1] Petra Jörg, Claudio Loderer, and Lukas Roth, 'Shareholder value maximization: What Managers say and what they do.'*Universität Bern, InstitutfürFinanzmanagement, Engehaldenstrasse 4, CH - 3012 Bern, Switzerland* February 19, 2003

[2]WiliamLazonick and Mary O`Sullivan, 'Maximizing Shareholder Value: a new ideology for corporate governance' Economy and Society, Volume 29, number 1, February 2000: 13-35.

[3] Financial Reporting Council Of Nigeria Act 2011

[4]CAP NO. 22 LFN 2003

domiciled in Nigeria, felt the need to comply with the International Financial Reporting Standards since they were major players in the Global Financial Market. Their agitations and other remote factors prompted the enactment of the Financial Reporting Council of Nigerian Act which complies with the requirements of International Financial Reporting Standards.[5]

With the adoption of the IFRS standards, the opportunities for foreign investment in Nigeria were increased and just three years after a long military dictatorship, transparency in its corporate governance was a major factor that attracted Foreign Direct Investments (F.D.I). Major Global players and multinational corporations before investing in any foreign jurisdiction apart from their place of domicile consider the transparency of the Corporate Governance laws of the place of potential investment. The benchmark was the country`s adoption of the IASB (International Accounting Standards Board) of which the FRCN Act complied with. Since the establishment of the Financial Reporting Council of Nigeria, they have been mandated and have lived up to expectation by reeling out regulations that govern the Corporate Governance Spheres in the country up until January, 2019. Nigeria seem to enjoy some form of stability in its corporate governance, as criminal acts that led to the failed bank tribunals and the Financial Crisis have been nipped on the bud. Since the inception of this Act, certain improvements in regulation of Financial Reporting, Borrowing, and other forms of corporate compliance like the distinction between the offices of the Chief Operating Officer (C.O.O) and the Chief Financial Officer (C. F.O) in an organization have been witnessed not only in the financial sector but other sectors of the economy. These are but a few of the innovations introduced by the restructuring of the corporate governance arena in Nigeria.

The emergence of new laws to regulate the corporate governance arena in Nigeria is mainly to protect the rights of the shareholders who bear the brunt of any carelessness by the management of any public company. These shareholders invest in these multinationals whose executives earn six figures living off the investment of shareholders who may not much input in the day to day running of the business. Major decisions are taken by the Management and sometimes due care and diligence is not observed as these decisions are taken as a result of which incurs loss on the investment of these shareholders. A critical analysis of the Financial Reporting Council of Nigeria Act 2011 and other legislations will outline some of the relevant provisions where an attempt has been made by the draughtsman to protect the rights of the shareholders who may not be aware of major decisions taken which may adversely affect their investment in the companies. In recent past, management decisions of posting bogus financial statements, making huge borrowings just before the end of the financial year, giving the public and shareholders a false sense of belief that the going concern was viable, and insider-trading was some of the activities that this Act has nipped on the bud.

Central Bank of Nigeria Code of Corporate Governance

As a ripple effect of the Global financial crisis and the adverse results it had on our local banks, the Central Bank of Nigeria in a bid to protect the financial institutions in Nigeria set into motion the provisions of some enabling Act in Ss. 57 -63 of the Banks and Other Financial Institutions Act (BOFIA) of 1991 as amended and S. 33(1) of the CBN Act No. 7 of 2297, and issued a code of governance to guide the practices of corporate financial institutions.[6] Within the stipulations of these codes of corporate governance are the rights of the shareholders to be informed of strategic risk to be taken by the Management of the companies where they hold such rights, and to also contest if need be, the policies that may be detrimental to their interest in the shares they hold in the financial institution. S.3.3 of the CBN Code of Corporate Governance for Finance Companies in Nigeria specifically makes provision for the protection of shareholders rights and interests. Particular reference was made in S.3.3.2 for minority shareholders protection from the overbearing influence of the board or the majority shareholders.

[5]J.O. Olamide & A.A Temitope, 'Evolution of Accounting Standards in Nigeria: A Historical Perspective, '*International Journal of Advanced Academic Research,* Vol. 2, Issue 8, August 2016.
[6]The Central Bank of Nigeria Code of Governance with effect from April 3, 2006.

Financial Reporting Council of Nigeria Act

The FRC of Nigeria is a federal government agency established by the Financial Reporting Council Act No. 6[7], 2011 whose function amongst others is to ensure accuracy and reliability of financial reports and corporate disclosures, pursuant to various existing laws in Nigeria. Prior to the enactment of this Act, corporate organizations especially financial institutions were colluding in posting bonus end of year financial reports misleading the public on their financial buoyancy. A major step taken by the regulatory bodies was to have a common financial year for financial institutions, being the major culprits in colluding and posting bogus statements. Funds were moved by colluding banks that had different financial year end and misled the public on the viability of their businesses. However, with the enactment of this act, certain accounting requirements like accurate and reliable financial reports are condition precedents before publicly posting financial statements.

3. Protection of Shareholders and Investors Rights in Nigeria

Protection of Shareholder's Rights under Companies and Allied Matters Act

S. 303 of the CAMA[8], makes provisions for an applicant to seek the leave of court to bring an action in the name of the company or to intervene in an action to which the company…for the purpose of prosecuting, defending, or discontinuing the action on behalf of the company. Certain categories of persons were allowed by the Act to bring such an action and amongst such persons were shareholders, former shareholders and directors of a company. While this type of action is called a derivative action, certain laid down procedures stipulated by the CAMA Act must be fulfilled before such an action can be entertained before a court of competent jurisdiction. For example the CAMA stipulates that before a minority shareholder is allowed to bring a derivative action, he must show that he has a '*locus standi'* or sufficient interest in the subject matter before the courts can entertain the matter. While the Nigerian CAMA Act remains liberal by permitting current shareholders and former shareholders to bring a derivative action against an erring company, its counterpart Act in the United Kingdom adopts a more restrictive approach allowing only members (Directors) of a company to bring such a derivative action against the company.

Protection of Investors and Shareholders Interest under Investment and Securities Act

The capital market that is regulated by the Security and Exchange Commission was established by the Investment and Securities Act of 2007.[9] Under this act there is a special provision for the protection of the investment of individuals and there was created an Investors Protection Fund which amongst its functions are compensating persons who suffer pecuniary loss from the revocation or cancellation of their registration with the capital market operator, insolvency or bankruptcy or a negligent dealer or a firm, any criminal act committed by any director of a firm or any member of a firm as regards funds given to him for official purposes etc. Such claimants whose investments are mismanaged have a right to appeal the decisions of the trading firm or broker at the Investment and Securities Tribunal showing sufficient proof and locus that their investment was mismanaged. This avenue is one of the ways in which the interest of individuals and investors are protected under the Nigerian Legal System.

4. Appraisal of Corporate Government in Other Jurisdictions

4.1. Corporate Governance in the United Kingdom

In response to a number of financial scandals, the United Kingdom set up a committee in May 1991 chaired by Sir Adrian Cadbury to make recommendations aimed at tightening corporate control mechanism.[10] The committee introduced what is believed to be the first code setting out corporate governance known as 'Cadbury Code' which brought about a new regulatory concept called 'comply or explain' under which companies have the option either to follow the best practice or explain to their shareholders why they considered that they were not appropriate in the

[7] Financial Reporting Council Act, No. 6, 2011
[8] S. 303 Company and Allied Matters Act, 2004
[9] Investment and Securities Act 2007
[10] Janet Dine & Mario Skoutsias*on, company law* (6th edn PM 2007) pg 187

companies circumstance.[11] The committee's recommendations were on the board, that the position of the chairman of the board and the chief executive should be separated to ensure balance of power and authority; it also provided for the independence of the non-executive director who contributes on the issue of strategy and performance of the company. It further provided for the auditors to work with the management while remaining professionally objective in verifying their financial statements and accounting to the shareholders. The 'comply or explain' approach to corporate governance has now been in operation in UK for more than 19 years.[12] Empirical research has further shown that one of the most distinctive features of the UK economic regulation and in particular its corporate governance regulation has been its self-regulatory nature[13] and flexibility. The purpose of the 'comply or explain' in UK is to allow the investors to make an informed assessment of whether non-compliance is justified in the circumstances.[14]

By 1995, there was an outcry against directors' large pay increases by the public and shareholders in the UK. This resulted in the constituting of a committee chaired by Sir Richard Greenbury on directors' remuneration and also prepared a code of such practice for use by UK PLCs.[15] The committee recommended that companies should have a remuneration committee consisting exclusively of non-executive directors,[16] whose role would be to set the remuneration packages for the executives[17] and the committee also specified the level of disclosure required by the shareholders in the company's annual report and accounts. Based on the recommendation of the Cadbury and Greenbury committees that a new committee should review the implementation of their findings, a committee chaired by Ronnie Hampel was established in 1995 and its report was produced in 1998.[18] The committee stated that good corporate governance is not a matter of prescribing corporate structures and complying with a number of hard and fast rules, that there is a need for broader principle and all concerned should apply these flexibly.[19] Furthermore that good corporate governance is a matter of implementation rather than the 'the box ticking' approach. The committee's main proposal was that the Cadbury and Greenbury reports and their recommendations be incorporated into one code called the 'combined code'.

Next was the Turnbull report setting out the best practice on internal control of UK listed companies published in 1999 and was later updated by the FRC in 2005. In 2003, Derek Higgs concluded his review[20] and made several recommendations such as board composition (at least half the members of the board, excluding the chairman, should be independent non-executive directors)[21], the responsibility and role of directors, performance, and remuneration policy. Furthermore an audit committee chaired by Sir Robert Smith concluded its proposed report guidance in 2003.Based on the findings of Cadbury, Greenbury, Hampel, Turnbull, and Smith, the combined code 2003 emerged. It contained virtually the same provision as to the earlier combined code of 1998 but it has more recommendations as to the best practice in corporate governance. This combined code of 2003 was later revised in June 2006, June 2008 and the latest version in June 2010.

Challenges to Comply or Explain

It is now 19 years since 'comply or explain' approach of UK corporate governance has been in existence and it is believed that its problems must have been resolved with time. Furthermore, although its flexibility has been praised, the major problem of enforcement is still unresolved as the institutional investors and shareholders charged with its

---

[11]Christopher Hogg, 'The 'Comply or Explain' approach to improving standards of corporate governance' <http://www.qfinance.com/corporate-governance-viewpoints/the-comply-or-explain-approach-to- improving-standards-of-corporate-governance?page=1> accessed on 9/04/2011.
[12] Ian Macneil and Xiao Lee, ' 'Comply or Explain': market Discipline and non- compliance with the combined code' [2006] corporate governance Vol 14:5, 494
[13]Alan Dignam, 'Capturing corporate governance: The end of the UK self-regulating system' [2007] *International Journal of Disclosure and Governance* vol. 4, 1, 24
[14] Ian Macneil and Xiao Lee (n 5)489
[15]Report of a study group on directors' remuneration 1995
[16] (n 11) para 4.8
[17] Elliot Shear, Rob Moulton, Ben Price and Nicola Kay, 'Corporate Governance in financial institutions' [2010] compliance officer bulletin 3
[18] Committee on Corporate Governance final report 1998
[19] (n 14) para 1.11
[20] Review of the role and effectiveness of non-executive directors (2003)
[21] (n 16) para 9.5

enforcement are nonchalant once the company is performing financially even though the company failed to comply with the code of best practice. Macneil and Li[22] argue that 'it appears that investors' tolerance of non-compliance is linked to some extent with superior financial performance (in terms of share price). This is not to say that out performance causes non-compliance, but it does seem to be the case that investors do not value reasoned arguments for non-compliance and prefer to use financial performance as a proxy to determine when non-compliance can be excused'. Also it can be argued that although the shareholders can exercise their right of enforcement either by voting at the AGM or by selling of their shares, this position is met with some difficulties.

Firstly, the shareholders are remarkably passive and secondly, there are drawbacks in trying to foster reliance on shareholders input in the operation of efficient corporate governance in the UK[23]. More so it can be argued that while the shareholders are unable to monitor and supervise the overall performance of the company as a result of their individual minority, the institutional investors are fraught with the difficulties of monitoring 'due to high transaction costs incurred by less knowledgeable investors. For example, in order to gain a meaningful analysis that can be traded upon, institutional investors must first spend time, and possibly money, collecting information. This process may be incomplete, insufficient and suffer from asymmetry that can easily arise when investors are external to the company and have little way of knowing or substantiating whether the information supplied by managers is correct and true.'[24] Irish H-Y Chiu[25] also argues in line with the inadequate responsibility of the shareholders to enforce corporate governance and stated that although shareholders could propose specific resolutions on governance issues to be voted on, empirical research has shown that specific shareholder resolutions on aspects of corporate governance are harder to initiate and carry through.

Finally, the global financial crises of 2008 wherein two UK Banks (Halifax Bank and Royal Bank of Scotland) and other UK industries experienced major financial breakdown, is a good example of the inadequate enforcement of 'comply or explain' in UK. It can also be argued that the financial crises would have not occurred in UK if the mechanism for the enforcement of 'comply or explain' is not flawed. This is because, if both the shareholders and institutional investors insist in enforcing 'comply or explain' by demanding an in-depth explanation for non-compliance by the board rather than basing compliance in terms of financial performance of the company, the crises would have been averted.

In conclusion, it can be argued that shareholders/institutional investor's action alone are adequate to ensure the enforcement and effective functioning of 'comply or explain' in UK, however, empirical research has shown that this mechanism of enforcement has been fundamentally flawed. It is also an established fact that flexibility is the main feature of 'comply or explain' approach to UK Corporate Governance, there still remains a significant incidence of non-compliance[26]. The shareholders are more concerned with the financial performance of the company rather than whether the company complied with the code of best practice. Finally, for there to be an effective functioning of 'comply or explain' in UK, the shareholders/institutional investors need to adopt a more participatory role by demanding full explanation for non-compliance by the board rather than the mere practice of stating ordinarily that they do not comply with the code of best practice.

4.2. Corporate Governance in the United States of America

Prior to the enactment of the Sarbanes-Oxley Act hereinafter referred to as Act 2002, the existing legal order on the prevention and detection of corporate fraud and theft in the US was loose. Thus issues of a general rise in accounting restatements, earnings management i.e. discretionary or special items in a firm's reported earnings, or unusually large changes in inventory or accounts receivable relative to sales, all suggestive of opportunistic accounting by corporate managers, rose steadily from 1987 to 2001. In addition to the above, liquidity and investors' confidence had been experiencing a decline and the number of securities frauds alleged in significant class action lawsuits rose dramatically. Finally, the number of audit failures implicating top audit firms also grew leading to the hurried passage of the Sarbanes-Oxley Act 2002 (SOX).[27]Many public companies dealing with compliance of Sarbanes-

[22]Ian Macneil and Xiao Lee (n 5) 494
[23]Robett Webb, Mathias Beck and Roddy McKinnon, 'Problems and limitations of Institutional Investor participating in corporate governance' [2003] corporate governance vol 11:1, 68
[24]Robett Webb, Mathias Beck and Roddy McKinnon, (n 25) 68
[25] Irish H-Y Chiu, 'The role of a company's constitution in corporate governance' [2009] Journal of Business Law 702-703
[26]Macneil and Xiao Li (n 5) 494
[27]John C. Coates, 'The Goals and Promise of the Sarbanes-Oxley Act' *The Journal of Economic Perspectives*, Vol. 21, No. 1 (winter, 2007), pp. 91-116 published by: American Economic Association Stable

Oxley found the law to be overly costly, both in monetary terms as well as in human capital. The perception among most executives is that the law was hastily passed, and adds little value to their processes, and less to restore public confidence in corporate governance. Although the larger companies to which the law was truly aimed will be able to absorb the compliance costs. Many of the small companies will struggle with the substantial expense related to compliance with the Act. Because of these compliance challenges, smaller companies may deregister their stocks and go private and exempt themselves from most of the disclosure provisions of the Act that will be discussed in the following part of this work.[28]

Relevant Sections in the SOX Act

The creation of The Public Company Accounting Oversight Board (PCAOB) pursuant to Section 101[29] was a major reform by the SOX and the duties of the Board includes registering and disciplining accounting firms that prepare audit reports on public companies; establishing audit and accounting standards; and conducting inspections and investigations of registered accounting firms that audit public companies.[30]The SOX also attacked the issue of lack of auditor independence which led to the major scandals by using S.201, by forbidding auditors of public firms from providing to their audit clients most non-audit consulting services.[31]SOX continued its major reforms by focusing on another key factor affecting auditor independence with the adoption of Section 203. This section mandates the rotation of audit partners in charge of audit clients. Lead audit partners and audit partners who are responsible for review of the audit must be rotated off after five years. In addition, these partners are subject to a five-year time-out period. Other audit partners, not including lead or concurring partners, are subject to a seven-year rotation and a two-year time-out period.[32]Section 301 requires that public companies have audit committees that will take charge of the audit and the selection of the auditors. Section 302, and Section 906, requires CEO's and CFO's to certify that the company's SEC filings are accurate. Section 402 prohibits issuers from making personal loans, directly or indirectly, to their directors or executive officers and must sign two separate certifications in their companies' periodic reports to the SEC. Other relevant sections of the SOX that protected the shareholder`s interests were 307, 404, 501, and 601.

Challenges of SOX Act

Cost of SOX Compliance

Business leaders lament that they have far too little time to spend attending to core business issues because so much time, money, and effort is spent complying with Section 404. They express concern that the time and effort invested in complying with the internal control and reporting requirements reduce the type of innovation that makes businesses profitable. This has been especially problematic for smaller companies, who may be deterred from taking entrepreneurial risks. Moreover, the enhanced auditing requirements of Section 404 have strained relationships between clients and their auditors. Firms complain that overzealous auditors focus on irrelevant minutiae, further wasting manager's time and the shareholders' money[33].

---

[28] Wilkins J. Brent, 'Sarbanes-Oxley Act of 2002: The Ripple Effects of Restoring Shareholder Confidence, The [comments]' *Southern Illinois University Law Journal*, Vol. 29, Issue 2 (Winter 2005), pp. 339-360

[29] S. 101

[30] S.106

[31] S.203

[32] Lisa Parles, Sussan O`Sullivan, and John Shannon, ' Sarbanes Oxley : An overview of current issues and Concerns'avialble on http://susanosullivan.net/sos/wp-content/uploads/2009/12/SOXArticleSOS.pdf

[33] Cheryl L. Wade, 'Sarbanes Oxley 5 Years Later: Will Criticism of SOX Undermine its Benefits.' (2008) *Loyola University Chicago Law Journal* Vol. 38

Professional Conflict under the SOX Act

While many provisions of the Sarbanes-Oxley Act address the minutiae of reforming corporate boards and auditing at publicly traded companies, one provision addressed specifically to lawyers is the conflicting Section 307.[34] The SEC took up the cause of enlisting lawyers in the battle against corporate crime by proposing rules to implement S. 307 that went beyond the limited requirement of attorney reporting within the corporation.[35] The response from the organized bar was swift and vituperative. References to the hoary role of lawyers as protectors of the innocent and the last bastion of independence from the all-powerful state were brought out to assail the Commission's proposal. An oft-repeated criticism of the proposed rule was the purported unseemliness of the government's attempt to enlist counsel as an agent working against the interests of the lawyer's client—another 'cop on the beat.'[36]Chinaris[37] concludes that the application of this section is unclear and may lead to conflict with state codes of professional conduct and additional malpractice liability, and may affect the integrity of the confidentiality of the attorney-client relationship.

Loss of Corporate Autonomy

Another overriding concern identified is that of the loss of corporate autonomy and the rise of 'federalization' of corporate law. With the enactment of Sarbanes-Oxley, the Federal government has stepped into many areas that were previously controlled in-house or traditionally regulated by state legislatures and state courts.[38]Another criticism can be made with respect to Section 402(a) and Section 302. Section 402(a) prohibits public companies that are not financial institutions from making loans to executives. This Section of SOX was enacted to avoid obvious conflicts between the interests of executives and the interests of the firms for which they work. However, empirical research suggests that executives increase their equity investment in their firm after obtaining firm loans. These equity purchases help to align the executives' interests with those of the firm and its shareholders. Therefore, observers disagree about the efficacy of S.402 (a) as a measure that protects investors.[39]

4.3. Corporate Governance in China

China's economy has, over the last three decades, staged the strongest growth over any given period in history, as the country moved away from a purely state-owned, centrally-planned economic system to one where foreign capital and private enterprises are allowed. For international investors, the biggest challenge to business in China is the lack of transparency. The guiding principle behind corporate governance is that firms should not just keep the profits for themselves; they should share them with their investors. The other way to look at it is that the interests of all stakeholders have to be aligned.[40]

Corporate Governance in China Criticized

A major issue faced by international investors and businesses operating in China is the lack of a clear separation between ownership and the company's management. While there is a growing number of privately-owned, non-government companies, SOEs (State Owned Enterprises) still hold a significant presence in China's economy, especially in vital infrastructure-related and finance industries. In China's context, ownership of listed SOEs often remains under the state. Chairpersons, board of directors, CEOs and general managers are also likely to be party members and government officials. This leads to suggestions that their responsibilities extend beyond profit-making as they also have social objectives to fulfill which will undermine shareholders interest on the long run.[41]

Corporate Governance in China Today

Deloitte conducted a new survey of internal control implementation of listing companies in May 2010 based on the survey results of year 2007, 2008 and 2009, in order to understand and study the current status of the internal control

[34] Peter J. Henning, 'Sarbanes Oxley Act S. 307 and Corporate Counsel: Who Better to Prevent Corporate Crime' 2005, *Buffalo Criminal Law Review*, Vol. 8, p. 324.
[35] *ibid*
[36] *ibid*
[37] Chinaris Timothy, ' More than the Camel's Nose, The Sarbanes Oxley Act As Bad News for Lawyers, Clients and Public' The Twenty Eight Law Review Symposium in the Wake of Sarbanes Oxley Act, 31 *OHIO N.U.L, Review*, 359, 2005.
[38] Lisa Parles, Sussan O`Sullivan, and John Shannon, ' Sarbanes Oxley : An overview of current issues and Concerns' Op cit.
[39] Cheryl Wade. Op cit. p. 602
[40] Corporate governance in China: No quick fix, No fixed solution Available on http://knowledge.smu.edu.sg/article.cfm?articleid=1261
[41] *ibid*

system development and assessment of the listing companies in China more deeply during the post-crisis times. According to the survey results, there has been positive development in building-up the internal control system and conducting assessment, transferring the internal controls from the paper into practice, and achieving the expectation of the management for the internal control results in the listing companies.[42]

4.4. Corporate Governance in OECD Countries

The OECD Principles of Corporate Governance, and the Methodology for assessing their implementation, seem to support those academic contributions which overcome the classic distinction between the shareholders primacy and the stakeholders' models of companies; they also appear to require a re-conceptualization of the interests involved and not simply a model of company, but a model of the successful company.[43] This was endorsed by OECD countries in 1999. While the OECD recognizes that there is no single model of good corporate governance, the OECD has identified and built on what it considers to be common elements that underlie good corporate governance. The OECD has set out a number of Principles covering the legal, regulatory and institutional framework underlying corporate governance.[44]

The OECD Principles of Corporate Governance

The OECD countries in 2002 requested an assessment and review of the Principles, which resulted in a revised version of the Principles which was endorsed by the OECD Council in May 2004. The assessment concluded that although the Principles were fundamentally sound, they should be revised to take into account new developments and concerns, while retaining their non-binding principles-based approach.[45] The aim of the revised 2004 corporate governance principle was to;promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities; protect and facilitate the exercise of shareholders' rights; ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights; recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises; ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company; and ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[46] The OECD Principles of Corporate Governance have become the agreed global standard for corporate governance reform efforts worldwide.[47]

5. Conclusion

Having reviewed some of the corporate governance rules of major advanced jurisdictions, the concluding part of this essay will conduct a comparative analysis of some these corporate governance rules guiding these jurisdictions and recommend the best model though under corporate governance rules or regulation, a one size fits all approach may

---

[42] http://www.corpgov.deloitte.com/site/ChinaEng/

[43] Luca Cerioni, Corporate Governance: The OECD Principles, The Scope For A 'Model Of The Successful Company', And A New Challenge For The Company Law Agenda And The Broader Regulatory Agenda. Available on http://works.bepress.com/luca_cerioni/1/

[44] Bob McDowall, 'The OECD view of corporate governance - a global perspective? Available on http://www.it-director.com/business/content.php?cid=6773

[45] Louis Bouchez, 'Principles of Corporate Governance, The OECD Perspective' available on http://www.kvdl.nl/NR/rdonlyres/4E09E7BB-C108-4D0E-B3C3-C8C26C185A21/0/LouisBouchezPrinciplesofcorporategovernance.pdf

[46] OECD Principles of Corporate Governance 2004 available at http://www.oecd.org/dataoecd/32/18/31557724.pdf

[47] http://www.oecd.org/document/30/0,3746,en_2649_34813_34724190_1_1_1_1,00.html

not be ideal, since the market is capital driven. As stated by the Millstein report[48] whose view point was from a private sector driven economy:

a. no one country or existing system can serve as the model that dictates reform worldwide
b. access to capital is the primary driver for the integration of core corporate governance practices in the international arena, hence proponents of corporate social responsibility or self-regulatory approach of corporate governance which may conflict with the profit making objectives in an organization, may have to take the back seat.

Haven elucidated on the above, a brief comparative analysis will be conducted between the models adopted by the United States Government and the United Kingdom. While the Cadbury Report[49], Hampel report[50] and the Combined Code/Turnbull[51] reports of the United Kingdom consists of a formal set of rules or codes to be adopted by companies, the united States 1997 BRT Report[52] parallels the one size fits all approach adopted by the United Kingdom corporate governance policy. They are of the opinion that companies should voluntarily make their own guiding rules and principles. General Motors (GM) in 1994 developed its own set of rules that has been adopted by most companies not only in the United States but outside the shores of the United States.[53]Since every corporation has its unique history and perspective, The researchers would tow the opinion of the United States NACD report on Corporate Governance Rules[54], which adopts the option of businesses making their own rules of corporate governance. However, fixed and rigid rules are necessary for developing economies that are yet to master the contemporary principle of self-regulation. For advanced jurisdictions like the United States and the United Kingdom, that has attained a free market and liberalized economies, corporations and companies should make their own set of rules as envisaged in the case of GM, and such rules may serve as a code of business practice for other smaller firms and organizations with suitable amendments. The effect of corporate negligence weighs a heavy toll on developing economies as it takes many years to recover from the ripple effect of such meltdowns. Take for instance the effect of the financial restructuring early 2000; its effect is still being felt up till today after many years of the closure of several financial institutions. Until there comes a time in the corporate governance structure of Nigeria, where business as a result of many years of applying judiciously the laid down principles and rules of the re-enacted CAMA, where some form of independence in the areas of self-regulation will be attained, but not until then, the researchers would strongly recommend that the relevant regulatory agencies periodically issue laid down codes of governance to guide corporate businesses.

[48] International Comparison of Corporate Guidelines and Codes of Best Practices in Developing and Emerging markets available at www.corpgov.com
[49]*ibid*
[50]*ibid*
[51]*ibid*
[52]*ibid*
[53] H. J. Gregory ANNEX II 'International Comparison of Corporate Governance and Codes of Best Practice investor viewpoints' 2001 edition
[54]*ibid*