GLOBALIZATION AND CORPORATE GOVERNANCE CHALLENGES IN NIGERIA: A REGULATORY AND INSTITUTIONAL PERSPECTIVE

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ABSTRACT

This article examines corporate governance practice and challenges within the Nigerian corporate environment. A clear lesson the global recession taught the corporate world is that no corporation can be too big to fail. This article highlighted some of the causes of corporate failures in Nigeria and suggested ways of improving the standards of corporate governance. Over the years, investors and depositors in numerous companies in Nigeria have encountered untold hardship and loss due to weak corporate governance practices, regulation and implementation. The paper suggests that traditional approaches to enforcement are inadequate to meet the challenge imposed by the sudden growth of the Nigeria capital market.

Keywords: Corporate Governance, Regulation, Globalization.

JEL classifications: G3, G38, O16.

1. INTRODUCTION

The compliance culture to the corporate governance regulations in Nigeria is not at its best and as a result, there has been reoccurrences in the failure of both public and government owned corporations. The concept of effective corporate governance has aroused the interest of shareholders, investors, government and other stakeholders in all continents since 2001. As witnessed in the past, corporate failures had significantly exposed the gap between ownership and control and thereby, increased the awareness for enhanced corporate governance practice. An important theme of corporate governance is to ensure the accountability of certain individuals in a corporation through mechanisms that try to reduce or eliminate the ownership and control problems. Failures, whether public corporation or states owned, are traceable to the activities of the respective agents representing the organizations. Yet, both law and reality support the use of agents for the company’s activities because of the company’s peculiar nature as a legal entity. Governance of corporations has become a matter of great concern worldwide and bodies like the

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3 Sections 63 and 64 Companies and Allied Matters Act (CAMA), CAP C20, Laws of the Federation of Nigeria, 2004
Organization for Economic Co-operation and Development (OCED) has developed core principles of corporate governance which is viewed as representing the moral consensus of the international community. Therefore, in order to change the old ways which led to our current economic crisis, we must now talk about many things that for many years have seemed unthinkable. As a result, many governments around the world reacted differently to these failures for safeguards that were overlooked or considered unnecessary.

Because governance of the corporation is now as important as governance of countries, Nigeria’s observance of the principles of corporate governance has been secured through a combination of voluntary and mandatory mechanisms. These corporations are not only major employers and taxpayers with a significant impact on the Nigerian economy, but are also an important repository for the savings of the Nigerian citizens. In recent years, international economic pressures have induced Nigeria to adopt programmes and rules geared towards greater economic growth and contribute more to responsible corporate governance. Subsequently, Securities and Exchange Commission (SEC), and the Central Bank of Nigeria (CBN), intervened with each regulator providing different Codes of corporate governance. Against this background, this article focuses on the promotion of effective corporate governance standards and implementations in Nigeria in the light of the trend in the United States and United Kingdom. The particular focus is on Nigeria because of the current reforms being undertaken after several years of military government.

2. DISCUSSIONS

2.1. Globalization And Corporate Governance In Nigeria

Over the years, the principle of separate personality of corporations has been accepted and formed part of many legislation across the globe. Significantly, in Nigeria, this principle was incorporated into company law principal legislation, Companies and Allied Matters Act, 2004 (CAMA) thereby making a corporation an artificial person in law and a body corporate with a separate legal personality. Given the collapse of some corporations and the recession that followed it, the standard of corporate control and management by those who are paid to manage the affairs of corporations was again exposed. Globalization means an increasing process in cross-border societal exchange and transactions not limited to economic ones, but including communication, culture, security, mobility and environment. Therefore, there is a link between the failures of corporation and the economy of nations. However, corporate governance involves the balance of power with which the organization is directed, managed, supervised and held accountable. Corporate governance to an extent is a set of mechanisms through which outsider investors protect themselves against

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5 See Sarbanes-Oxley Act, 2002. This Act is essentially a response to the systematic problems in corporate governance, following the collapse of WorldCom, Enron and other big corporations in USA.
8 The apex regulator of the Nigerian Capital market
9 The apex and major regulator of the Nigerian financial sector
10 See The Case of Sutton Hospital, 10 Coke Rep. 1, 32 (1613); Salomon V. Salomon & Co. (1897) A C 22
11 S. 37 CAMA, CAP C20 Laws of the Federation of Nigeria, 2004
12 Principle was emphasised in Nigeria case of Marina Nominees Ltd V. Federal Board of Inland Revenue. (1986) 2 NWLR (Part 20) 48
13 Enron, WorldCom, etc
14 P. Alston, Non–state actors and human rights (Oxford University Press)
expropriations by the insiders and management. Corporate governance is defined as ‘the system by which companies are directed and controlled’. Another competing definition is that corporate governance is a ‘set of relationship between a company management, its board, its shareholders and other stakeholders’. It is also ultimately about regimes of accountability. The above definitions concerns the organizational structure for the direction and control of the corporation with its main focus on the management. The basis of corporate governance does not end at how companies are directed and managed, but includes how to ensure and promote accountability and responsibility to all stakeholders. Therefore, corporate governance has always been in existence as long as the corporate structure has allowed for conflicts between investors and managers. Nigeria, in the face of the recent global economic crisis, boldly admitted that it is not immune to the global economic meltdown. The global financial crisis left the Nigerian economy with dwindling government revenues, a weakened banking sector, a devalued currency, crash of the stock market among other tales of economic woes and thus, undermined confidence in the financial sector. Nigeria’s experience of the recession triggered the review of the regulations of some corporation laws and promulgation of corporate governance Codes. Frankly speaking, there is an inseparable link between corporate governance, management and investor confidence as hardly would an investor considers a corporation devoid of transparency and accountability.

The structure of ownership of a business entity determines how the business will be managed and controlled. Ownership usually implies control. Corporate governance in Nigeria is influenced by both internal and external factors comprising of various institutions and individuals charged with the responsibility to ensure effective management, control and accountability of public companies. The evolution of corporate governance system in Nigeria has a nascent history, though; its focal principles were covered by CAMA and improved further in the various Codes of Corporate Governance. The corporate governance situation in Nigeria does not represent a complete lack or absence of structures, legislations and regulations rather, the ineffectiveness of the legislations and structures to effectively ensure compliance and enforcement. Good governance can be identified through acceptable principles which consist of guidelines for decision makers to enable them competently manage the economic and human resources in open, accountable, transparent and lawful behaviour. However, mechanisms for good corporate governance in Nigeria are partly

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20. Fortune and Class, ‘When those that are paid to know don’t know’ February 7, 2009. Available at >www.worldpress.com (accessed 28-02-11)


voluntary and mandatory either in the form of an Act of the National Assembly or Codes made by regulatory bodies.

2.2 Corporate Governance Institutions In Nigeria Corporate Environment

The corporate terrain in Nigeria has been grasping for survival since the 80s and 90s and even in our today’s world as financial distress can still be seen haunting the financial sector. In recent times, Nigeria experienced corporate failures with the most recent resulting from factors such as macro economic instability caused by large and sudden capital inflows; major failures in corporate governance practices; lack of investors and consumer protection; inadequate disclosure and transparency about the financial position of companies; critical gaps in regulatory framework and regulations; uneven supervision and enforcement; unstructured governance and management process and the weaknesses in the business environment in the country.

Interestingly, the remarkable thing about corporation is that it is created by process of law and exists only by virtue of the law. In Nigeria, the Corporate Affairs Commission (CAC) administers the Companies and Allied Matters Act, 2004 (CAMA). Though, companies registered under this Act may either be private or public and a company, whether private or public may be limited by shares, guarantees or unlimited. Because, publicly held corporations are viewed in purely economic terms as a means by which capital is raised from a large number of public savers and used by businesses, corporate governance focuses on the suppliers of capital (shareholders and creditors) and those who manage and control the company.

It is important that the activities of corporate executives are under constant vigorous and public scrutiny, because those activities are crucial to the economic well-being of society. The idea is that managers serve as specialists who use their expertise to increase the value of the firm while the actual owners are passive investors who are diversified, supply large amount of capital, and seek gains from increases in the value of the business. Contrary to the fact that directors’ and auditors’ are protecting and serving the public interest, they may be, if not properly supervised, wholly responsible for the causes of distress and the collapse of the corporation all over the world. Corporations should serve the shareholders’ interest, the own the company, after all. Nigeria is today a free enterprise country in which economic activities are greatly encouraged, except where the national interest may be at stake.

2.3 Companies And Allied Matters Act, (CAMA) 2004

The Act remains the fundamental legal framework for Nigerian companies and a mandatory legal instrument. The Act provides for the duties and functions of directors,

23 Companies and Allied Matters Act (CAMA) CAP C20, LFN 2004, Banks and other Financial Institutions Act (BOFIA) 1999, Investment and Securities Act (ISA) 2007 and Central Bank of Nigeria Act
25 S. 7 (a) – (c) CAMA.
28 CAMA,CAP C20, Laws of the Federal Republic of Nigeria, 2004
29 Ibid, S 279 -283
shareholders\textsuperscript{30}, and audit committee\textsuperscript{31} as the key players in corporate governance. It further provided for disclosures and financial statements,\textsuperscript{32} control of the board by the shareholders through a mandatory annual general meeting\textsuperscript{33} and its venue for easy access to shareholders\textsuperscript{34}. A company in Nigeria shall act through its members in a general meeting or its board of directors.\textsuperscript{35} Hence, the general meeting acts as the company’s legislative authority.\textsuperscript{36} Failure of members in general meeting to use, and exercise their powers could lead to abuse of power by the Board and a defeat to the intent and aim of the provisions of this Act.

However, in recent times, corporate governance idea requires further than just the directors’ traditional duties of care, due diligence, to effective monitoring of the management by the board, the board’s accountability to the company and to the shareholders, and ensuring strategic guidance of the company.\textsuperscript{37} Arguably, an inappropriate penalty could encourage weak corporate governance practices and deter directors’ from acting in the best interest of the company.\textsuperscript{38} Management position imposes the responsibility of accountability and disclosure through the preparation of financial statements.\textsuperscript{39} Companies are mandated to comply with the accounting standards issued by the Nigerian Accounting Standards Board (NASB)\textsuperscript{40} for auditing; though, this can be said not to be in conformity with international accounting standards\textsuperscript{41} following the World Bank report on the observance of standards of Codes 2004\textsuperscript{42} wherein institutional weaknesses in the areas of regulation, compliance and enforcement due to lack of human and financial resources were identified. It also retains the power to arrange or conduct an investigation into the affairs of any company where the interest of the shareholders and the public so demand\textsuperscript{43}. It has been argued that CAC has not been so active in its enforcement functions given its inability to penalize and prosecute offenders of company legislations.\textsuperscript{44}

2.4 Investment And Securities Act, (ISA) 2007

The Investment and Securities Act, 2007,\textsuperscript{45} allowed for the continued existence of the Securities and Exchange Commission\textsuperscript{46} as the apex regulatory authority in the Nigerian capital market. The Commission ensures the protection of investors, maintains fair, efficient and transparent market and reduction of systematic risk. To ensure adequate protection of investors\textsuperscript{47}, the Act\textsuperscript{48} specifically provided for businesses to be registered in accordance with

\textsuperscript{30}Ibid, S. 81
\textsuperscript{31}Ibid, S. 357-369
\textsuperscript{32}Ibid, S. 335-341
\textsuperscript{33}Ibid, S. 213-214
\textsuperscript{34}Ibid, S. 216
\textsuperscript{35}Ibid, S. 63
\textsuperscript{36}Ibid, S. 41
\textsuperscript{37}Ibid, S.279 (3)
\textsuperscript{38}Ibid, S. 348
\textsuperscript{39}Ibid, S.334
\textsuperscript{40}S. 335
\textsuperscript{43}S. 7(c) CAMA
\textsuperscript{44}E. Okike, ‘Corporate Governance in Nigeria: The Status quo’ (2007) Vol. 15, No. 2 Corporate governance international review p 176
\textsuperscript{45}It repealed the Investment and Security Act, 1999
\textsuperscript{46}Hereinafter, called the Commission
\textsuperscript{47}S.54 ISA
\textsuperscript{48}S. 38 ISA
this Act. However, the Act\textsuperscript{49} in its bid to frustrate fraudulent activities and to promote transparency and accountability provides further that no securities exchange or capital trade point as defined in section 315 of this Act shall commence operation unless it is registered with the Commission\textsuperscript{50}. The Act places the responsibility of ensuring that the integrity of the financial controls and reporting, on the board of directors.\textsuperscript{51} Auditors must be registered by the Commission\textsuperscript{52}. However, the Act, to ensure its strict enforcement and compliance, made certain offences criminal\textsuperscript{53} with more appropriate punishment of both imprisonment and fine; and, established the investment and securities tribunal\textsuperscript{54} to adjudicate on disputes arising under the Act. This shall save a lot of time that is naturally encountered by the use of the ordinary court and shall also, be expected to give a sound ruling due to the expertise of the members of the tribunal\textsuperscript{55}. Notwithstanding, the SEC requires every company that participates in the capital market to comply with the provisions of CAMA and Nigerian Accounting Standard Board (NASB) and the mandatory periodical filing of audited financial statements.\textsuperscript{56}

2.5 Bank And Other Financial Institution Act, (Bofia) 1991

The Central Bank of Nigeria (bank) as the chief statutory body is charged with the responsibility of supervising and monitoring the activities of banks in Nigeria\textsuperscript{57} and has powers to make subordinate legislation and regulations.\textsuperscript{58} Banks' failures in Nigeria have over the years plagued the Nigerian financial sector, which lay to financial losses to shareholders, depositors and creditors as well.\textsuperscript{59}

Yet, insider trading has been identified as one of the major factors that cause failures in banks and other financial systems in Nigeria.\textsuperscript{60}, In a like manner, the Act provided for criminal prosecution for any director\textsuperscript{61} for non compliance of the provisions of the Act\textsuperscript{62}. Having identified corruption and weak rule of law as major challenges to effective corporate governance in Nigeria, it is clear that the ongoing reforms in the banking sector placed the Nigerian Central Bank in an interventionist role in the economy.\textsuperscript{63} However, It is mandatory for the banks to keep and maintain books of account which must be in compliance with accounting standards as may be prescribed by the Bank\textsuperscript{64} or other legislation; and, appoint auditors who shall be approved by the Bank.\textsuperscript{65} Following the success of the banking sector consolidation, the CBN realized the need for adequate control of the banks and thus, drafted a mandatory Code of corporate governance for banks in Nigeria. The CBN Code acknowledged certain challenges and weakness of corporate governance to include: Passive

\textsuperscript{49} Investment and Securities Act, 2007
\textsuperscript{50} S. 28 ISA
\textsuperscript{51} S. 61 ISA
\textsuperscript{52} S. 62 ISA
\textsuperscript{53} S. 115 ISA
\textsuperscript{54} S. 274 ISA
\textsuperscript{55} S.275 ISA
\textsuperscript{56} S. 312 and 60 ISA
\textsuperscript{57} O. Adetunji. 'Nigeria’s banking rules on insider related credits’ (2004) J.I.B.L.R. 382
\textsuperscript{58} S. 55 of BOFIA
\textsuperscript{60} O. Adetunji ‘ Nigeria’s banking rules on insider related credits’ (2004) J.I.B.L.R. 382 p 7
\textsuperscript{61} S. 20(5) includes director’s wife, husband, father, mother, son, daughter, brother, sister and their spouses.
\textsuperscript{62} S. 26 and 27 BOFIA
\textsuperscript{64} S. 24 BOFIA
\textsuperscript{65} S. 29 BOFIA
shareholders; Insider abuses; Technical incompetence, poor leadership and administrative ability; Ineffective board and statutory audit committee; Transparency and adequate disclosure of information; Rendition of false returns. Surprisingly, the Code failed to provide for penalties that could avert its non compliance and was also silent on the qualifications required for the auditors. Today, many banks are only paying lip service to the compliance of many sections of the Code.

2.6 Code Of Best Practice On Corporate Governance In Nigeria

The SEC Code is not intended to be a rigid set of rules; it is a dynamic document defining minimum standards of corporate governance expected particularly of public companies with listed securities in Nigeria. With commendable recommendations designed to enhance effective corporate governance in Nigeria, the SCE Code voluntary and self-compliance nature poses a huge problem on implementation and enforcement. The 2011 SEC Code addressed three major areas of corporate governance which are the board of directors, the shareholders and the audit committee.

a) Directors And Board Size

The powers, duties and functions of directors are the most evident means of control and management of corporations. Good corporate governance must be displayed in all actions and decisions of the board like disclosure, risk management, and reporting functions. Board functions include strategic planning, selection, performance appraisal and compensation of senior executives, succession planning, communication with shareholders, ensuring the integrity of financial controls and reports, and compliance with ethical standards and laws of Nigeria.

Under the Code, the board is saddled with the responsibility for ensuring good corporate governance in every public company. To ensure maximum performance by the leadership of the company, the Code provided for a flexible board size that is relative to the complexity of the company’s operation and recommended remuneration sufficient to attract and retain skilled and qualified persons.

The requirement for a remuneration committee, which consists solely of non-executive directors for decisions regarding remuneration of executive directors is an advantage over the directors’ power to fix and take whatever amount of investors’ money as they wish. Whether this is in practice achieved, is a matter for the shareholders. However, though the non-executive directors are intended to act as a counter-weight to executive directors to ensure transparency and accountability in the board decisions, failures of the non-executive directors to challenge the executive board has recently attributed to the causes

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66 Code 2.8 CBN Code
67 Code 2.10 CBN Code
68 Code 2.13 CBN Code
69 Code 3.12 CBN Code
70 Code 3.16 CBN Code
71 Code 3.10 CBN Code
72 Code 1.3 SEC Code 2011
75 Code 2.3 SEC Code 2011
76 2011 SEC Code on corporate governance for public companies in Nigeria
77 Code 4, SEC Code 2011
78 Code 14 SEC Code 2011
79 Code 11 SEC Code 2011

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of corporate governance failures given that they owe the same extent of duties to the company.  

b) Shareholders

An expected relationship between the company and the shareholders’ was recommended to facilitate the participation of shareholders’ at general meetings for interaction between the shareholder, management and the board. Hence, venue for the general meeting should be accessible and affordable as to enable the shareholders’ attend. This provision is in line with the shareholders’ value principle and in tune with Morgan Friedman’s idea of the responsibility of a corporation. Nigeria company law adopts a shareholders’ value approach to corporate governance. Obviously, lack of involvement of shareholders in company affairs has contributed greatly to the problems of corporate governance as same would leave the powers of the management unchecked, resulting to constant abuse of powers and bad corporate governance practice.

c) Audit And Audit Committee

The audit committee is paramount for an effective corporate governance standard. The audit committee is required to monitor the integrity of financial statements, review internal financial controls and management systems, monitor and review the internal audit function, assist in the appointment of external auditors and their remuneration package. Also, an audit committee monitor and review the independence, objectivity and the effectiveness of external auditors, and devise and implement a policy to govern non-audit work provided by the external auditor. The audit committee’s composition under CAMA presents a balance and fair representation. This can be implied from the opportunity given to the representatives of the shareholders; hence, meets the international standard and requirement. The Code provided for equal number of directors and representatives of the shareholders of the company who shall examine the auditors’ report and make recommendations to the annual general meeting.

Nigeria, like the United States has a system of mandatory corporate governance disclosure which calls for the credibility of financial disclosures by the Committee. Public companies are enjoined to establish a system of internal controls over its financial reporting and ensure the integrity of the company’s financial controls and reporting. Auditors lend credibility to the annual accounts through their independent examination of the company’s record and financial books. The audit function is part of the mechanisms for enhancing confidence, accountability and control in corporate annual reports. Hence, auditors must have the requisite training and experience, be ethically bound in the conduct of their duties in accordance with recognised procedures and standards. Auditors of a company must be appointed in annual general meetings by the shareholders’, hold office to the next annual general meeting and must be a member of a body of accountants in Nigeria established.

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80 A. Arora, ‘The corporate governance failings in financial institutions and directors’ legal liability’ (2011) Comp Law 3, p 2
82 Code 23 SEC Code 2011
83 M. Friedman ‘The social responsibility of business is to increase profit’. (The New York times Magazine, September 13, 1970)
84 A Davis, Best Practice in Corporate Governance: Building Reputation and Sustainable Success (Gower, Aldershot, 2006) p 7
86 S. 359(4) CAMA
88 Code 30.1 SEC Code 2011
89 S. 61 ISA 2007
90 E. Okike, ‘Corporate Governance in Nigeria: The Status quo’ (2007) Vol. 15, No. 2 Corporate governance international review p 181
91 S. 357 CAMA
from time to time by an Act. Though CAMA provided for punishment for dishonest and incompetent auditors, the prosecution has hardly taken place for non compliance of guidelines and standard.

2.7 Challenges Of Corporate Governance In Nigeria

The greatest asset of any capital market is the investors. Largely, where confidence in the financial market is lost by the investors, the ability to raise fund for economic development shall be flawed. Efforts made to ensure effective corporate governance in Nigeria can also be said to be commendable as these reflect some of the key highlights of the OECD. The Nigeria company law has over the years, suffered depravity in terms of implementations and review, which affected her economic strength and reputation. With the emergence of a democratic government, the need for her to participate favourably in the international market and ensure that acceptable corporate governance standards are adhered to, were re-echoed.

Enforcement is the hub of all corporate governance rules and principles and whereby there is little or no guarantee of corporate governance implementation and enforcement, the Codes, laws and principles are largely defeated. It is believed that corporate governance challenges and shortcomings basically come from the mechanisms for enforcement and compliance, which so far is weak and ineffective in Nigeria. Hence, government participation in company law and corporate governance requires more than investors’ protection to ensuring that conflicts and abuses are judged and timely adjudicated and that strong enforcement mechanisms and structure are in place. Though CAMA and ISA provided for penalties for non compliance with certain provisions, some of the punishments are not measurable and strict, weak, and cannot deter corporate pilots from committing such abuses.

Effective corporate governance cannot be isolated from the theory of an effective risk management structure. Risk management principle obliges directors to identify and monitor risk areas and key performance indicators and then formulate strategies to implement the chosen value. However, absence and poor or inadequate risk

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92 S. 358 CAMA
93 S. 643 CAMA
97 Separation of the role of the CEO and the board chairman, improved quality and performance of board membership, protection of shareholders rights and privileges, introduction of transparency, disclosure and due process, transparency on financial reports, defining the composition, role and duties of the audit committee and the prescription of executive and non-executive directors on the board.
100 See the 2003 SEC Code of Corporate Governance which has been reviewed and replaced with the 2011 Code of Best Practice on Corporate Governance in Nigeria
102 See S. 378 CAMA, fine of 1,000 Naira for non compliance with mandatory annual returns provisions.
management and ineffective management information are among major weaknesses that led to the failures of Nigerian banks. There is a dire need for an institutionalized robust risk management system that is transparent and ethical for a sound corporate governance practice. Risk management performance hangs on the issues of skills, knowledge and expertise of directors. The absence of these prerequisites affects a company’s risk management strategy demands and practices. Risk management requires the involvement of management with appropriate communication process for effective risk information transmission. The Code however mandated a risk management unit headed by a senior executive to oversee and manage policies on risk management in line with the directives of the Board Risk Management Committee.

Almost all reported cases of corporate failures point to some kind of inadequacies and inefficiencies of the directors in the discharge of their duties. It can also be deduced that corporate governance reforms lie hugely at the discretion of directors’ given their power to act bona fide in the interest of the company. Therefore, corporate governance must put in place strong internal and external control mechanisms as a check to the oversight functions of the board. An appropriate mechanism in place shall encourage accountability, transparency and shall also discourage deliberate accounting fraud and inaccurate financial reporting, which has in the past led to corporate failures.

Accounting practices in Nigeria are believed to suffer from institutional weaknesses in regulation, compliance and enforcement of standards and rules. Another challenge identified in codes is on disclosures. The role played by auditors in corporate failures call for more realistic disciplinary measures in the ethics of their professional conduct against unreliable and erring members. It is time to make auditors’ inefficiencies criminal in both the company legislation and the codes. The legal requirement by CAMA for directors to make annual returns of certain statements is also usually flawed by directors. Permit me to mention that Nigeria admitted to adopting the international Report Standards (IFS) for National Accounting Standard (NAS) to ensure that financial reports in Nigeria are at par with the global standards. These automatically would call for the long overdue needed amendments in Nigerian laws and Codes to reflect such standards.

The legal system of a country plays a key role in the corporate governance effectiveness and management control. The foundational structures for which any robust capital market should be based would be an effective legal system that adequately protects and enforces property rights in a speedy manner and consistent application of the rule of law. The rules and guidelines are provided by company law and Codes of corporate governance for the operation of a company, thereby pushing its enforceability to the courts. The importance of the legal system to company law does not only cover corporate governance, but also the company’s relationship and transactions with third parties. Therefore, an effective judicial system that is capable of enforcing rights would enhance a strong corporate governance practice. Nigeria lacks an effective judicial system with an economy characterized by underdeveloped market institutions, deep rooted corruption and a
general disregard of the rule of law. \(^{112}\) Delay in courts are caused by certain factors such as lack of judicial personnel, corruption, weak rules of procedure, laxity on the part of legal practitioners, the undue use of the Alternative Dispute Resolution processes and poor infrastructural facilities like electricity and adequate, standard courtrooms. As a matter of fact, weak legal system makes business activities risky, affect the economic reputation of a country and also signals weak corporate governance structure. No doubt, Nigeria does not have regulatory and enforcement regimes as developed and effective as in the United Kingdom and United States and courts are slow, expensive and slightly ineffective in adjudicating commercial disputes. Thus, shareholders and regulators are discouraged from instituting actions against the directors for alleged corporate abuse, misconducts and non compliance. \(^{113}\)

Shareholders’ activism in Nigeria can be said to be reactive instead of proactive. The need for improved, enlightened, informed and educated shareholders can effectively act as a check to the powers of the directors. The average Nigerian investor needs to be educated, informed and reoriented, more responsible, responsive and enlightened.

Corruption is another big obstacle to be achieved and implementing a sound corporate governance structure. Corrupt practices by office holders are not alien to Nigeria. A Global corruption report of 2008 by Transparency International ranked Nigeria the 121\(^{st}\) most corrupt nation\(^{114}\) in the world. Interesting, the absence of provisions dealing with corrupt practices in the Codes and CAMA suggest that regulators have a lot of work to do to reassure, lure and win the confidence of investors in the Nigerian capital market.

The government needs to step up in its crucial role by providing the legal framework for incorporation, defining the parameter for business activities, monitoring their operations to ensure conformity with established standards and meeting obligations to all stakeholders\(^{115}\). Inadequate laws and regulations for the control and management of companies could be argued to be a foundation for bad corporate governance practice. However, some other challenges exist in the efforts to have better corporate governance includes the behaviour of investors and behaviour of regulators-combined, insider dealing, share price manipulations, connected lending.\(^{116}\)

3. CONCLUSION AND RECOMMENDATIONS

Due to the globalization of economies of financial and investment markets, challenges of corporate governance became enormous considering the growth, development and expansion of corporation over the globe. It is acknowledged that the institutions, structures and legal framework for effective corporate governance are not completely extinct in Nigeria. However, the entire the legal framework for efficient and effective corporate governance in Nigeria cannot be realistic if the underlying legal, institutional and regulatory frameworks are weak, inefficient and inadequate. The responsibility of monitoring the compliance of corporate governance rules requires institutional dedication and human


\(^{114}\) Global corrupt report, Transparency International, Available at http://www.transparency.org/publications/gcr/gcr_2009#6.1 < (accessed 05/05/11)


resources so as not to be seen as overburdened hence, its ineffectiveness to carry out the extra role of monitoring compliance.

Nigeria, an emerging market, operates a system of mandatory information disclosure. Though, changes within socio-economic and political environment of a country affect its corporate audit reporting and accountability; Nigeria lacked adequate securities regulations to support the sudden growth of its capital market as evidenced in weak accounting standards and lack of disclosure. Regardless of the standard applied, inadequate disclosures by companies and auditors may prolong Nigeria’s recovery from financial crisis. A common thread in corporate failures in Nigeria was their lack of, or poor corporate governance culture, such as, poor regulation and supervision, poor and inexperienced management, insider abuse and trade, and corruption and fraud by management and board members.

An effective regulatory and investment framework is of utmost importance to the success of the Nigerian capital. No doubt, a sound judicial system impacts positively on corporate governance to boost the confidence of the shareholders and prospective investors in the capital market and for speedy resolution of disputes and the administration of justice.

Accordingly, the following recommendations need to be taken cognizance of, if corporate governance is to serve its main purpose in Nigeria:

- The regulatory bodies have proved to be overburdened with so many functions which they carry out. Therefore, given the sensitivity and the holistic nature of corporate governance, the compliance, monitoring, enforcement and implementation should be delegated to a separate body altogether for this sole purpose only. However, the interventional power of the CBN to appoint directors for banks in whatever circumstances should be controlled.
- An immediate review of the legislation (CAMA) on company law due to lack of and its inability to provide adequate penalties and punishment for non-compliance of several corporate governance provisions. These penalties are not seen as prohibitive and remain major causes of institutional weakness in the enforcement of corporate governance rules.
- Specialized commercial and business courts should be introduced in all legal jurisdictions across Nigeria, which shall be manned by eminent persons of integrity with vast and reasonable knowledge of company law and practice.
- On the qualifications of auditors, a standard should be provided for by CAMA and strict penalties provided to promote compliance with ethics and international standards. Hence a review of all necessary laws that regulates all aspects of accounting practices and audit in Nigeria to unify the various accounting bodies in Nigeria and provide for a common disciplinary body and punishment of offenders.
- Given the voluntary nature of the SEC Code, compliance is not assured. It is hereby recommended that either the Code is made mandatory, or that certain provisions of the code be made mandatory in which compliance shall be reported to a regulatory body periodically to ensure compliance. Therefore, there is a need for collaboration of all regulatory bodies for better effective corporate governance.
- A competent board must be encouraged by appointing persons with requisite and vast knowledge for the job. Adequate training should be made mandatory for directors and other officers of the company to make them more conversant and effective in their oversight functions. Where a person appointed lacks the requisite knowledge, he shall be held criminally liable and be made to refund all entitlements and benefits taken when acting as a director. The onus of requisite knowledge and competence should be on the

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to-be director to disclose qualification and competence and not on the company. However, a mandatory internal regulations and code of conduct ethics should be mandated in CAMA for all companies.

- Shareholders activism’ and participation must be encouraged as provided in CAMA. Though the education of shareholders is one of the functions of the SEC, CAMA should also be reviewed to mandate CAC to also play a role in the education and enlightenment of these investors, by notifying them of their various rights under CAMA.

Finally, Good corporate Governance is the foundation of a stable capital market; it promotes investors’ confidence, encourages transparency and accountability and has a positive effect on the economy of a nation. The attainment of transparent and reliable financial reporting is a collective responsibility of all stakeholders and shareholders inclusive. It has also shown that the enforcement mechanisms in Nigeria should be reviewed and overhauled. To this end, effective regulatory frameworks remain the hallmark of an effective capital market. Thus, Nigeria’s recovery from the global financial crisis would mean to start all over again to install an effective regulatory framework with strong implementation and enforcement mechanisms and provisions. Conceptually, it is hereby recommended that the principles of corporate governance in Nigeria, be persuasive and thus, mandatory through legislations as obtainable in the United States.

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