The Legal Regime of Corporate Governance in Nigeria: A Critical Analysis.

Leonard C. Opara, Esq., LLB (Lagos) LLM (Ife) ACTI.
Lecturer and Notary Public, Acting Head, Department of International Law & Jurisprudence, Faculty of Law, Nigeria Police Academy, Wudi-kano State, Nigeria.Email:chinardslaw@gmail.com

Ayodele John Alade Esq. LLB (UNIJOS) LLM (LASU)
Lecturer and Solicitor, General Studies Department, School of Management & Business Studies, Lagos State Polytechnic, Ikorodu, Lagos State, Nigeria. Email: j.ayodele@yahoo.com

Abstract
The impact of a corporate governance system on economic efficiency, with a strong emphasis on shareholders' welfare is encouraged. In large firms where there is a separation of ownership and management and no controlling shareholders, the activities of the company be it public or private entity are governed by the ethics of good and corporate governance to boost investors interest. Corporate scandals of various forms have maintained public and political interest in the regulation of corporate governance. This paper will examine the legal regime of corporate governance and sound ethical principles on some of the regulatory agencies in Nigeria that control the economy with the provision of code of conduct as best practices in corporate world. The paper recommends that SEC, CAC, CAMA and other regulatory agencies in our business environment should administer good corporate governance's codes to have the confident of its customers, investors and shareholders as obtainable in other jurisdictions to avoid the reoccurrence of a disastrous social impacts seen in the last decade of global financial crisis..
Keyword: Corporate Governance, Legal Framework, Code of Conduct, Regulatory and Management, Public and private Entities.

1. Introduction

Corporate governance refers to the system by which corporations are directed and controlled. The governance structure specifies the distribution of rights and responsibilities among different participants in the corporation (such as the board of directors, managers, shareholders, creditors, auditors, regulators, and other stakeholders) and specifies the rules and procedures for making decisions in corporate affairs. Governance provides the structure through which corporations set and pursue their objectives, while reflecting the context of the social, regulatory and market environment. Governance is a mechanism for monitoring the actions, policies and decisions of corporations. Governance involves the alignment of interests among the stakeholders.

Corporate governance has also been defined as "a system of law and sound approaches by which corporations are directed and controlled focusing on the internal and external corporate structures with the intention of monitoring the actions of management and directors and thereby mitigating agency risks which may stem from the misdeeds of corporate officers.

Corporate governance can also be defined as "the set of conditions that shapes the ex post bargaining over the quasi-rents generated by a firm. The firm itself is modelled as a governance structure acting through the mechanisms of contract. Here corporate governance may include its relation to corporate finance.

In contemporary business corporations, the main external stakeholder groups are shareholders, debt holders, trade creditors, suppliers, customers and communities affected by the corporation's activities. Internal stakeholders are the board of directors, executives, and other employees.

There has been renewed interest in the corporate governance practices of modern corporations, particularly in relation to accountability, since the high-profile collapses of a number of large corporations during 2001–2002, most of which involved accounting fraud. Corporate scandals of various forms have maintained public and political interest in the regulation of corporate governance. In the U.S., these include Enron Corporation and MCI Inc. (formerly WorldCom). Their demise is associated with the U.S. federal government passing the Sarbanes-Oxley Act in 2002, intending to restore public confidence in corporate governance. Comparable failures in Australia (HIH, One.Tel) are associated with the eventual passage of the CLERP 9 reforms. Similar corporate failures in other countries stimulated increased regulatory interest (e.g., Parmalat in Italy).

2. Corporate Governance in Nigeria.

The dominant influence of corporate governance principles in corporate administration is beyond question. The pervasive influence of corporate governance principles has been largely attributable to the adverse consequences of non-compliance with provisions of corporate governance codes; Nigeria is no exception in the implementation of corporate governance codes. The global financial crisis and the ensuring spotlight of media and public attention have changed that for the long term. This is made manifest by the fact that there exists in Nigeria a multiplicity of corporate governance codes; some of which are industry specific. In the implementation of corporate governance principles, some crucial matters are either being overlooked or ignored. This paper, while highlighting the legal framework for corporate governance in Nigeria and the benefits of adherence to sound corporate governance principles, points out some inherent shortcomings of the corporate governance regime in the country. The regulators have shown no sign of abating their determination to be seen raising standards. The investment community or sectors are now assured of the compliance of good corporate practices by the regulatory bodies and agencies that monitor these entities be it in the public or private sectors environment.

The importance of corporate governance in corporate administration cannot be overemphasized. This is so given the dominant involvement of corporate governance breach in most of the corporate failures witnessed since the 1990s and as recently experienced in the banking sector in Nigeria. The importance of corporate governance is further highlighted by the adoption of corporate governance codes by nearly every country. Also, these codes are frequently revised to keep them contemporary and suited to meet the demands of corporate environment. The absence of a universal corporate governance code applicable in all countries has posed some challenges. Countries have their different corporate governance codes created specifically to suit their peculiar purpose. This is not surprising given the difference in the corporate environment of different countries. Again, the corporate structures in different countries are different. The presence of these peculiar challenges confronting nations in their corporate environment must necessarily occasion the presence of different corporate governance codes in different countries.

There are different and peculiar challenges faced by nations in their efforts at fashioning corporate governance codes that are effective, actively enforced and dependable. These challenges if not properly handled could derail corporate administration and other relevant institutions in the country concerned. The initial challenge in respect of corporate governance is that of providing a well-accepted definition for the concept. Different definitions exist for the term. However, basically it can be defined as a system of reconciling the interests of all the stakeholders of a corporate entity, whether as shareholders, management, suppliers, customers, financiers and society at large. A major process of overcoming the challenge is by defining the components of effective corporate governance. The common components of effective corporate governance are fairness, transparency, accountability and responsibility. However, as a result of the recent financial crisis which occurred in spite of the lessons of past corporate failures, such as, Enron, Worldcom, Parmalat, etc, and the issuance of revised corporate governance codes, it is without doubt certain that enforcement of corporate governance code is a crucial element in corporate governance effectiveness. In this article, the problems confronting the country in relation to corporate governance application in corporate organizations are examined. Also, suggestions are made for possible reforms in the corporate governance sphere.

3. CORPORATE GOVERNANCE MECHANICS

Corporate governance mechanisms and controls are designed to reduce the inefficiencies that arise from moral hazard and adverse selection. There are both internal monitoring systems and external monitoring systems. Internal monitoring can be done, for example, by one (or a few) large shareholder(s) in the case of privately held companies or a firm belonging to a business group. Furthermore, the various board mechanisms provide for internal monitoring. External monitoring of managers' behavior, occurs when an independent third party (e.g. the external auditor) attests the accuracy of information provided by management to investors. Stock analysts and debt holders may also conduct such external monitoring. An ideal monitoring and control system should regulate both motivation and ability, while providing incentive alignment toward corporate goals and objectives. Care should be taken that incentives are not so strong that some individuals are tempted to cross lines of ethical behavior, for example by manipulating revenue and profit figures to drive the share price of the company up. Furthermore, the CBN through its former Governor Sanui Lamido Sanui in Nigeria introduced a corporate governance code or principle where no Managing Director or Chief Executive of a commercial bank who have spent ten years or more should head the bank and no financial or auditing firm who has audited or consulted for the financial institutions for a period of ten years are allowed to audit the financial status of these banks. It is important to state that it is novel idea for transparency and accountability but these financial advisers or chartered accountants may register a new business name and start to operate in a different corporate entity since Corporate Affairs Commission (CAC) does not prohibit an individual from practicing or registering his business name for purpose of business registration. The writer is of the view where the corporate profile of the partners should be exhibited at its office nationwide and the professional bodies like ICAN, ANAN, CITN, etc. who regulate the practice of accounting and taxation should also be involved if the true nature of corporate accountability and governance to checkmate double registration or practice by an individual practitioner who has been prohibited from one financial institution to another.

4. Legal Framework for Corporate Governance in Nigeria

Apart from the main statute regulating corporate organizations in the country, that is, the Companies and Allied Matters Act, there are several corporate governance codes in force; some of them are industry specific. The law has also been seen as an element in governance and the idea that governance is a non-statutory regime. For instance in the United Kingdom(UK) where the listed or quoted company comply or explain regime applies under the United Kingdom corporate Governance Code is a myth. The corporate governance codes applicable in the country are the Code of Best Practices on Corporate Governance in Nigeria 2003, which was issued by the Securities and Exchange Commission; the Code of Corporate Governance for Banks in Nigeria Post-Consolidation 2006, which was issued by the Central Bank of Nigeria; the Code of Corporate Governance for Licensed Pensions Operators 2008, which was issued by the Pension Commission; and the Code of Corporate Governance for Insurance Industry in Nigeria 2009, which was issued by the National Insurance Commission, The 2003 SEC Code is currently being reviewed by the Security and Exchange Commission. In fact, a draft Revised Code of Corporate Governance has been exposed to the public by the Securities and Exchange Commission since last year as initial steps toward the finalization of the Revised Corporate Governance Code. As can be gleaned from the above; there is a multiplicity of corporate governance codes in Nigeria. There is a specialized court in Nigeria that prosecutes securities matters involving stockbrokers, firms as well as individuals known as Investment Security Tribunal(IST) sitting in major commercial cities in Nigeria such Lagos, Abuja, kano, Enugu just to mention but a few. This is a novel idea to reduce the delay in federal high courts and fast track cases on stock dealings to bring back the investors' confidence in our jurisdiction and to boost the economy.

(i) Benefits of Corporate Governance Codes

The heightened awareness of effective corporate governance is not without justification. A well-implemented corporate governance regime has tremendous benefits to all stakeholders.

These benefits are the endearing attributes of corporate governance. In the first place, it is unarguable that an effective corporate governance mechanism, backed up with adequate monitoring and enforcement regime, would build investors confidence, eliminate financial scandals and curb corporate failures. Also, it has the potential of raising the standards of performance and driving reforms for corporate growth and achievement. It readily provides an assessment framework for corporate bodies. In that wise, it facilitates peer and sectorial comparison and analysis. Furthermore, it forms the basis for corporate governance codes for companies.

In a nutshell, therefore, it is certain that corporate governance codes promote efficiency in the use of corporate assets, assist corporate bodies in attracting low-cost capital, ensure overall positive corporate performance and the ability to meet societal expectations.

(ii) Issues about Corporate Governance in Nigeria

There are several issues that have arisen in the course of the implementation of corporate governance in Nigeria. These issues have had the effect of adversely impacting on the realization of the whole benefits realizable from corporate governance code implementation.

a) **Multiplicity of codes:** There are too many corporate governance codes in the country. As previously observed, there are presently four corporate governance codes of which three are industry specific and one applicable to all public companies. While it can be argued that the multiplicity of codes enable particular industries to fashion out a corporate governance code suited to the peculiar needs and requirements of the industries concerned, the multiplicity of corporate governance codes could occasion confusion, hardship and uncertainty. Corporate governance rules are basic principles that are applicable to organizations. Thus, the justification for multiplicity of corporate governance codes becomes insubstantial. In fact, the multiplicity of corporate governance codes in the country is attributable to the inadequacies of the 2003 SEC Code which is now non-contemporary vis-a-vis corporate governance developments and practice.

b) **Independent directors:** The corporate governance codes have provisions relating to independent directors. However, it is doubtful if the drafters of the different codes had a full understanding of that specie of directors in the course of drafting the codes. In the first place, there is no uniformity of definition of an independent director. In fact,, some codes just stipulate that independent directors are to be appointed by organization within the purview of the code, but did not define who an independent director is.8 In addition, it is clear that the role to be played by independent director is either not fully appreciated or grossly ignored. For example, the global trend is to have a majority of the directors on the board of directors to be independent directors.9 In Nigeria, the situation is different. In some codes the independent directors are to be not more than If independent directors are not in the majority on the board, they would be ineffective in playing the crucial balancing role expected of them. An independent director is that director who is independent of management and free from any business or other relationship that could materially interfere with, or could reasonably be perceived to materially interfere with, the exercise of his unfettered and independent judgment. Another area of defect in relation to the provisions of the corporate governance codes on independent director is in relation to their roles. Some codes did stipulate some roles for independent directors, but these stipulations are weak and inconsequential. The global trend is to have the independent directors to constitute the entirety or majority of key corporate governance committees, such as, audit, nomination and remuneration committees of companies.

c) **Audit committee:** The audit committee is a vital board committee as far as corporate governance is concerned. However, the CAMA has confused its composition by the stipulation that its membership should consist of equal number of the representatives of directors and shareholders. The consequence of shareholders membership of the audit committee is that some companies have a Board audit committee different from the CAMA stipulated audit committee. The key responsibilities of audit committee as stipulated in the CAMA are then referred to the Board audit committee while the CAMA audit committee merely "approves" quarterly results already approved by the Board on the recommendation of the Board audit committee and discusses other inconsequential matters brought to their attention. In effect, the CAMA audit committee has become ineffective and irrelevant, except to the extent that it affords some shareholders, who are members of the committee, an opportunity to have assured access to the directors of the companies in which they are members of their audit committees. The confusion concerning audit committees is further compounded by inconsistent stipulations in corporate governance codes concerning their chairmanship.

While some codes provide that the chairman of audit committee should be a board member some others stipulate that the audit committee should be chaired by a shareholders' representative. Surprisingly, the draft Revised Code is silent on what category of membership should produce the chairman of an audit committee in spite of the fact that it has some roles specifically assigned to the chairman of an audit committee. This audit committee is only applicable to public companies that are quoted at the Nigeria Stock Exchange (NSE).

d) **Openness and transparency:** It is regrettable to note that shareholders are still substantially left in the dark in the administration of their companies. The annual reports and accounts of companies do not contain sufficient information to keep shareholders adequately informed about their companies. It is obvious that the statutory stipulation concerning the contents of annual reports and accounts are no longer contemporary. Arising from the complex nature of company administration, advancement in technology and global best practice, annual reports issued by Nigerian companies to their shareholders have insufficient contents. There is the yawning absence of key reports which are consistent with international best practice. Examples of such reports are corporate governance reports, sustainability reports, and remuneration reports, It is noteworthy that the draft Revised Code has provisions for such reports.

e) **Disclosure obligations:** Beyond the disclosure made in the annual reports of companies as stipulated by the CAMA, there is a real need to take further steps to ensure that shareholders actually get necessary corporate information. The information could be provided in a dedicated corporate governance section in a company's website. The corporate governance report or section of the annual report should contain appropriate website references and links to enable shareholders to access the information. In the case of companies without websites, which is most certainly an aberration in these times, such companies should be willing and able to provide such information by email or through the post, in a timely manner.

f) **Role of shareholders' associations and institutional investors:** In other jurisdictions, institutional investors play active role in ensuring that companies operate within the ambits of good corporate governance practices. Unfortunately, institutional investors are rather somnolent in Nigeria. This rather unfortunate situation perhaps stems from the fact that they are not under strict and rigorous scrutiny from the owners of the funds they manage. The ignorance and complete freehand commonly granted institutional investors by the owners of the fund have made institutional investors too uninvolved in the administration of the companies in which they have invested other people's funds.
As for the shareholders' associations, it is noted that some of them are exhibiting commendable activism in shareholders' education, training and involvement, though there is still so much room for improvement.

g) **Role of the Securities and Exchange Commission:** The Securities and Exchange Commission as an apex regulatory body that deals on securities and derivates of equity has enormous responsibility in the entrenchment of good corporate governance practice in the country. It is on record that the first corporate governance code applicable in the country was the brain-child of the Commission. Also, the Commission is in the process of revising the 2003 SEC Code. However, beyond the making of corporate governance codes, the Commission has other incidental responsibilities. First, it must strengthen its monitoring, enforcement and compliance unit. Of what use is the corporate governance code if it is neither complied with nor enforced by the regulator? Experience has shown that compliance with regulations is boosted through enforcement of same through some form of sanction, including "naming and shaming" of violators. More manpower may be needed by the Commission to undertake this huge but necessary responsibility. Secondly, the Commission should be actively engaged in awareness drives, including training and retraining of all stakeholders in the corporate governance domain. These must be regular, sustained and widespread. Thirdly, it seems now necessary to formally institute corporate governance audit for all public companies. In this connection, the Institute of Chartered Secretaries and Administrators of Nigeria, as the custodian of corporate governance practice in country, would readily be available to render whatever services that may be necessary in that regard. Fourthly, as an encouragement to those companies that are compliant with the tenets of good corporate governance, it may be necessary to institute a annual corporate governance award to deserving corporate bodies; something akin to the Annual President's Award of the Nigerian Stock Exchange, In the alternative, strong corporate governance compliance should be fully and formally crafted into the criteria for the eventual selection of winners of the said President's Award. Fifthly, the Commission should pay closer attention to the setting up, functioning and involvement of the key corporate governance committees of the board in corporate administration. It is not enough for companies to report the existence of these committees in their annual reports and accounts. The Commission should set up a structure to ensure that it is furnished with advance notification of the dates of meetings of these committees and to occasionally attend such meetings. It should also formalize the process of receiving the agenda and minutes of such committee meetings, especially the audit committee, which arguably is the most crucial and tasking of the board committees. Sixthly, the Commission should prepare and make available on its website, for download by those requiring them, templates and specimen of reports, guides and manuals necessary for good corporate governance practice by corporate bodies. Finally on the role of the Commission, it is important that the corporate governance code is regularly and frequently reviewed and with speed too. The last corporate governance code issued by the Commission was in 2003; some odd seven years ago! The tremendous corporate growth experienced in the country since then is better left to the imagination. It is arguable that the inadequacies of the 2003 SEC Code has led to the multiplicity of corporate governance codes in the country. The regulators of the specific industries concerned felt a need for a more robust corporate governance code than the Commission has offered and had to issue theirs to regulate companies operating in their specific industries. The Commission must be more active in corporate governance code reviews. It is noted that the attempt to review the 2003 SEC Code which commenced in 2008 through the inauguration of the National Committee for the Review of the Code of Best Practices on Corporate Governance in Nigeria 2003 is yet to be concluded, about three years after the inauguration of the committee. However, the present SEC DG, Ms Oteh has initiated the basic principles of code of practice for stockbrokers and firms who are trading on the floor of the stock market that it is no longer business as usual, thereby bringing back the investors' interest and stakeholders trust in the Nigeria stock market where erring firms are sanctioned and their respective licensees withdrawn..

5. THE CHALLENGES OF CORPORATE GOVERNANCE.

- Demand for information: In order to influence the directors, the shareholders must combine with others to form a voting group which can pose a real threat of carrying resolutions or appointing directors at a general meeting.
- Monitoring costs: A barrier to shareholders using good information is the cost of processing it, especially to a small shareholder. The traditional answer to this problem is the efficient market hypothesis (in finance, the efficient market hypothesis (EMH) asserts that financial markets are efficient), which suggests that the small shareholder will free ride on the judgments of larger professional investors.
- Supply of accounting information: Financial accounts form a crucial link in enabling providers of finance to monitor directors. Imperfections in the financial reporting process will cause imperfections in the effectiveness of corporate governance. This should, ideally, be corrected by the working of the external auditing process.

6. Conclusion:

Good corporate governance practice is now a sine qua non in corporate administration as a result of its huge benefits to companies, its shareholders and other stakeholders. The challenge therefore is to ensure that the system is constantly monitored, sufficiently tweaked and regularly updated to ensure that the corporate governance codes are contemporary, relevant and reliable. Beyond the CAMA, there is the need to have corporate governance codes to regulate companies. It may be thought that if corporate governance codes are so beneficial that they should be extended to private companies. This argument is supported by the fact that private companies existing in those industries with their specific corporate governance codes are not exempted from complying with those codes. Nevertheless, it seems not appropriate at the moment to extend the coverage of corporate governance codes to private companies because, quite frankly, it can be expensive to comply with the provisions of corporate governance codes, especially for incorporated small family businesses which do not need such exposure in view of their restricted ownership and/or business dealings. The regulators, especially the Securities and Exchange Commission, have a huge role to play in the sanitation of the corporate governance environment in the country. Also, shareholders' association and institutional investors should get more interested and involved in corporate administration as well as professional bodies. This will encourage social justice and serves them better to do so to protect the corporate image and governance.

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