

THE CODE OF CORPORATE GOVERNANCE IN NIGERIA: EFFICIENCY GAINS OR SOCIAL LEGITIMATION?

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Abstract

This paper is the first study which examines the rationale behind the adoption of corporate governance codes, the requirements of the codes and their operationalisation, and the effectiveness of the codes in addressing corporate governance abuses in the turbulent and endemically corrupt environment of sub-Saharan Africa (Nigeria). It examines the extent to which the adopted Codes of Corporate Governance is as a result of international pressures or internally driven by the need for effective accountability to the shareholders, in a way which addresses the peculiar problems of corporate governance in Nigeria. Through the theoretical lens of efficiency gains and social legitimation, the paper found that the Code of Best Practices for Corporate Governance in Nigeria is driven more by social legitimacy pressures while the Code of Corporate Governance for Banks in Nigeria Post Consolidation, developed by the CBN, is predominantly aimed at pursuing efficiency gains.

Keywords: Code of Corporate Governance, Nigeria, Efficiency Gains, Social Legitimation, Corruption

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Introduction

The observation of patterns of change whether in the development of a person or a national economy can be quite fascinating. The latter is particularly relevant within the context of a developing economy like Nigeria, where it would appear that international pressures for change have over time influenced developments in corporate governance and executive accountability. Like most developing countries, efforts are constantly being made in Nigeria to aspire to standards of best practices developed in the more advanced economies. Change of course can be considered from two perspectives – ‘positive patterns of change’, which signal progress, or ‘negative patterns of change’, which would suggest retrogression. There are obvious peculiarities in the socio-cultural, political and the economic environment in Nigeria, which dictate these patterns of change. These are some of the issues addressed in this paper.

The paper presents evidence of how a developing economy, Nigeria², has attempted to

respond to the international pressures for change in corporate governance and financial accountability within the private sector, whilst at the same time struggling to maintain its individual identity as a nation. It attempts to provide insights into the query: ‘to what extent are Corporate Governance Codes in Nigeria aimed at (local) efficiency gains or (international) social legitimation?’ This sector is very important to the economic growth and development of the nation.

Recurring corporate scandals continue to reiterate the need to ensure the effective governance of corporations across the globe. In particular, they

dependency burdens; 4) high and rising levels of unemployment and under-employment; 5) significant dependence on agricultural production and primary product exports; 6) dominance, dependence, and vulnerability in international relations. The countries described as “developing” embrace countries in the North and South dichotomy. The focus of this paper is on one of the countries in the mid-stream of the continuum between the less developed countries (LDCs) and the more developed countries (MDCs). Nigeria is Africa’s most populous nation and the world’s eight largest producer of oil. Unfortunately, corruption and mismanagement mean that despite the country’s vast oil wealth, some 60% of Nigerians live in poverty (BBC News UK Edition, 2005).

² Todaro (1985: 28) identifies the common characteristics of developing economies and classifies them into six broad categories: 1) low levels of living; 2) low levels of productivity; 3) high rates of population growth and

have led to the emergence of Codes of Best Practices in different countries. Nigeria is no exception. However, the system of corporate governance and executive accountability existing in any country is often shaped by a wide array of internal as well as external factors. Internal factors include the state of maturity of the economy and the capital market, corporate and business cultures, the legal system, governmental policies (see Adegbite et. al. 2011), the presence and vibrancy of professional/regulatory bodies, the local challenges faced, amongst others. The impact of these factors and the differences in the systems operating within each country are well documented in the accounting and corporate governance literature (see, Radebaugh, 1975; Nobes and Parker, 1991; Roe, 1993; Shleifer and Vishny, 1997; La Porta et. al., 1999; Rose and Meyer, 2003; Aguilera and Jackson, 2003; Okike, 2007; Zattoni and Cuomo, 2008). Indeed one of the keys to understanding corporate governance regulatory systems is to account for these internal institutional conditions which guide or constrain their legitimacy (Judge et al., 2008; Adegbite and Nakajima, 2011a). Thus in formulating corporate governance regulatory systems (and in particular, the formulation of Codes of Conduct and Best Practices), countries need to account for their institutional environments in order to confront peculiar challenges and to realise the benefits of effective corporate governance for the firm and its capital providers.

Zivkov et. al. (2006) analyzed the extent to which the contents of corporate governance codes of countries in the European Union are driven by external (internationally accepted corporate governance best practices) or domestic (institutions, culture, etc.) forces. Their analysis show that the majority of the codes of the European Union countries are not in full accordance with the priorities of the European Commission but reflect that codes are driven by both external and domestic forces. No doubt, the corporate governance regulatory systems of different countries do not exist in isolation but cohabit with one another and are subject to external and cross-national influences. As interdependent economic activity transpires between nations, as a result of international trade and the effect of globalisation, the need to harmonise business practices becomes pertinent.

Although globalisation is not a new economic paradigm, it has in recent times made a significant impact in shaping businesses across continents, albeit in different dimensions. With this impact comes the demand for comparability in reported corporate information, backed by international standards of corporate governance (Whitley, 1999; Davis and Steil, 2001; Mallin, 2002; Van den Berghe, 2002; OECD, 2003). No doubt as Davies and Schlitzer (2008) note, a global corporate governance code of best practice from a legal, corporate ownership structure and financial systems perspectives is not

necessarily the right approach but convergence on fundamental features of shareholder protection, independence of directors and establishment of committees. They further noted that the acceptance of a global corporate governance code is limited due to the adaptations in the business environment, investor confidence and corporate successes and failures.

Nigeria is one of the most important financial markets in sub-Saharan Africa, with a market capitalisation of \$43.06 billion at the end of 2011 (NSE, 2012).³ This paper examines the extent to which the adopted Codes of Corporate Governance in Nigeria are as a result of international pressures or internally driven by the need for effective accountability to the shareholders, in a way which addresses the problems of corporate governance in Nigeria. In particular this paper reviews the antecedents of corporate governance regulation in Nigeria and specifically examines the Code of Best Practices for Public Companies as well as the Code of Corporate Governance for Banks in Nigeria Post Consolidation.

Nigeria presents a good case study to examine these issues for two reasons. First, the increasing participation of foreign owned investments continues to amount to burgeoning external influences (particularly by foreign institutional investors, in order to protect their financial interests) on the country's corporate governance regulatory infrastructure. For example, the Nigerian Stock Exchange recorded a total of \$3.01 billion in foreign portfolio investment in 2011 up from \$2.7 billion (NSE, 2012). Second, Nigeria's peculiar institutional arrangements and local infrastructure for doing business often times are in tangent from external influences and orientations towards good corporate governance principles (Adegbite and Nakajima, 2011a). This paper thus aims to contribute to studies on corporate governance and accountability, by enhancing our understanding of the rationale and operationalisation of the corporate governance codes of developing economies, including the suitability and the effectiveness of these codes, in addressing corporate corruption and corporate governance abuses. Corruption has traditionally been at the centre of governance issues in Nigeria, including public and corporate governance, with a history of a considerable number of high profile corporate corruption perpetrated by managers and directors of listed corporations (Adegbite, et al 2012). Recent corporate governance scandals in Nigeria include the Unilever scandal, the Siemens bribery scandal, and the banking crisis which led to the failure of a number of banks.

The rest of the discussions are organised as follows. First, the Nigerian context is examined

³ Nigeria is also ranked 127 of 139 countries on 2010-2011 Global Competitive Index on the World Economic Forum Ranking (NSE 2012).

followed by a review of relevant literature and the theoretical underpinning of this study. We then provide a review of the Code of Corporate Governance and also the Code of Corporate Governance for Banks in Nigeria Post Consolidation, in the light of their rationale, legitimacy, operationalisation and effectiveness in the context of internal and external influences. Following further discussions, some conclusions and recommendations for future research are presented.

The Nigerian context

As the world's eighth largest producer of oil, and Africa's largest market for goods and services, Nigeria is significant in the global economy. However, a very peculiar and recurring problem within the socio-cultural and political context of public and corporate accountability and governance in Nigeria is the issue of corruption. One must note that for a number of years, Nigeria earned the unenviable reputation of being one of the most corrupt nations in the world, with endemic corruption permeating every facet of the society (see Okike, 1994; 2004). Hence, since the election of a democratic government in 1999, following decades of turbulent military dictatorships, the Nigerian economy has been undergoing some restructuring aimed at addressing the socio-economic malaise in the country. For example, one of the top priorities of the immediate past, and the present democratically elected government is to address the issue of corruption. It would thus appear that the anti-corruption initiatives⁴

⁴ These include the Independent Corrupt Practices and Other Related Offences Commission (ICPC), established by the ICPC Act 2000 with the mandate "to prohibit and prescribe punishment for corrupt practices and other related offences". It is also an Approved Anti-fraud Unit for the United Nations. The other is the Economic and Financial Crimes Commission (EFCC), established by the EFCC Act 2004 to investigate and combat financial and economic crimes. The Commission is empowered to prevent, investigate, prosecute and penalise economic and financial crimes and is charged with the responsibility of enforcing the provisions of other laws and regulations relating to economic and financial matters. There is also a newly established *National Think Tank (NTT)*; "a body of articulate and well-informed men and women with sound analytical minds, saddled with the onerous responsibility of fashioning out an agenda for the country... (it) will provide a basis for analyzing the areas of success or failure of public governance in Nigeria and proffer credible solutions to the country's myriad of socio-economic and political problems. It will provide the basis for assessing governance both in the public and private sector. ... The NTT has ... chosen to assist the incoming governments at all levels, to achieve the highest standards of effective governance in a rapidly changing socio-economic environment" (The National Think Tank Project, 2007). However, the recent dismissal of the

introduced by the government have begun to yield minimal results. At number 143 on the Transparency International (TI) 2011 corruption index survey conducted in 183 countries, Nigeria could be said to be striving to move away from the notoriety of being one of the most corrupt countries in the world.

Nevertheless, the problems of financial accountability and corporate governance in Nigeria are part of a larger problem of the Nigerian society which is characterised by political instability, bad leadership, ethnic and religious tensions, firmly embedded in endemic corruption (Adegbite and Nakajima 2011b). Addressing corruption in Nigeria, particularly corporate corruption, certainly requires the promotion of certain values at all levels; for example a principle/culture of discipline, accountability and honesty should be encouraged throughout corporations by any corporate governance regulatory initiative (Adegbite, 2012). So we find that on one end of the accountability spectrum in Nigeria is the peculiarity of the corrupt socio-cultural environment, whilst at the other end is the need and/or the desire to be seen to be globally competitive to attract foreign investments.

There are two codes of corporate governance in Nigeria; the Code of Corporate Governance for Public Companies (SEC Code) and the Code of Corporate Governance for Banks in Nigeria Post Consolidation (CBN Code). The former applies to all listed companies while the latter only applies to banks. By reviewing the dichotomy of Nigerian corporate governance codes, this paper proceeds to examine the extent to which the adoption of codes in Africa's most populous nation is driven by social legitimation pressures placed on the developing world by cross-border investors and the international financial market, or whether the codification of governance principles are driven more by efficiency gains to reflect the afore mentioned local challenges. The paper also examines whether the adoption of these codes has prevented corporate governance abuses and corruption in the private sector in Nigeria⁵?

Literature review, theoretical underpinning and research focus

There is a considerable volume of literature on financial accountability and corporate governance regulation in advanced economies (see, for example:

CEOs of three major banks in Nigeria because of poor governance calls into question the extent to which the NTT is fulfilling its mission.

⁵ Despite the comparative lacuna in literature on corporate governance in sub-Saharan Africa, some recent publications have provided some reviews of the corporate governance system in Nigeria and how it has devolved over time. For example see: Amao and Amaeshi, 2008; Adegbite Amaeshi and Amao 2012; Ahunwan, 2002; Okike, 2007; Yakasai 2001 and Adegbite 2012.

Clarke, 1998; Betta and Amenta, 2004; Dewing and Russell, 2004; Fisch, 2004; Jong, et. al., 2005; Proimos, 2005; Gillen, 2006; Udayasankar and Das, 2007). The literature on corporate governance and responsibility in developing economies of sub-Saharan Africa (and in particular, Nigeria) indicates a promising future (see, for example: Okike, 2007; Amao and Amaeshi, 2008). However, despite the increasing scholarly interest in the subject, it is important to note that an understanding of the motivations/reasons for the adoption of and the effectiveness of, codes of good governance in different countries is very minimal. Why do countries adopt codes of good governance? What are the factors which impact the adoption of these codes, especially in developing economies? How effective are these codes in addressing corporate governance abuses and financial accountability in these economies?

Two theoretical insights have been provided in order to explain why new practices are often adopted within a social system (see DiMaggio and Powell, 1983; Tolbert and Zucker, 1983; Ruef and Scott, 1998; Strang and Macy, 2001; Aguilera and Cuervo-Cazurra, 2004). The first relates to the efficiency gains or benefits that would result which provide a rational basis for such adoption. In the context of corporate governance regulation, the adoption of codes of conduct and best practices would be seen to improve actual governance practices and produce better governance outcomes, in the light of protecting and attracting investments. The study by Picou and Rubach (2006) would appear to provide evidence in support of this theoretical reasoning. In their study which examined stock price reactions following the enactment of corporate governance guidelines, they found that firms that announced the enactment of corporate governance guidelines experienced increased stock prices following the announcements.

The second theoretical perspective relates to the need for social legitimation which implies the adoption of principles/practices which are expected within the society. Legitimacy "reflects a positive normative evaluation of a practice and possesses a pro-social logic revealing constituent beliefs about whether the practice effectively promotes societal welfare as determined by the audience's socially constructed value system" (O'Dwyer et al. 2011; 36). This conception of social legitimacy emphasizes the consistency of organizational goals with societal functions such that organizations are subject to the application of generalized societal norms (DiMaggio and Powell, 1983; Ruef and Scott, 1998). As Suchman (1995: 574) noted, legitimacy represents the "reactions of observers to the organisation as they see it; thus, legitimacy is possessed objectively, yet created subjectively" (Ruef and Scott, 1998). Suchman (1995: 574) also notes that "legitimacy is a

generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions" (Ruef and Scott, 1998). Thus organisational systems (and in this context, corporate governance regulatory systems) seek legitimacy and support by incorporating structures and procedures that match widely accepted cultural models embodying international beliefs and knowledge systems (Meyer and Rowan, 1977; Ruef and Scott, 1998). The need for markets to enjoy social legitimacy, according to Abdelal and Ruggie (2009) is important because their political sustainability ultimately depends on it. They argue that social legitimacy is an essential principle of 'embedded liberalism' which is relevant in the contemporary global economy.

Aguilera and Cuervo-Cazurra (2004) provide insights into how efficiency needs and legitimation pressures impact the adoption of codes of good governance. They also suggest that countries with legal systems with strong shareholder protection rights tend to be more prone to develop codes, possibly for efficiency reasons. Zattoni and Cuomo (2008) also extend our understanding of the diffusion of governance practices by providing empirical evidence on the reasons for the adoption of codes of good governance in civil and common law countries. They also suggest that both legitimation and efficiency reasons are influential in the diffusion of good governance codes. However civil law countries tend to issue codes of good governance for reasons of legitimation rather than for the need to "dramatically improve the governance practices of national companies" – efficiency gains (Zattoni and Cuomo 2008: 2).

Why have countries with no previous corporate governance codes voluntarily adopted them? There is a gap in literature in this regard although Aguilera and Cuervo-Cazarra (2009) reveal that despite the criticism that the voluntary nature of the adoption of codes limits their ability to improve governance practices, codes of good governance appear to have generally improved the governance of countries that have adopted them, although there is need for additional reforms. This paper contributes a sub-Saharan African perspective to this budding literature and aims to address the gap in our knowledge and understanding of the rationale and operationalisation of the code of best practices for corporate governance in developing countries, which have been considerably less represented in the burgeoning debate. In particular, it examines how both international legitimation pressures and the peculiarity of efficiency gains shape the corporate governance regulatory landscape in Nigeria and the impact of this.

Code of corporate governance in Nigeria: efficiency gains or social legitimization?

Core Principles of Good Corporate Governance Codes

The impact of the well-publicised and high profile corporate scandals in the UK (for example, Maxwell, BCCI, Mirror Group, RBS, etc) and the USA (Enron, Worldcom, Xerox, etc) as well as the 2009 global economic recession have not only led to the enactment and implementation, but also to the revision of corporate governance Codes of Best Practices across the world. Also, the influence of international organisations such as the Organisation for Economic Co-operation and Development (OECD), the World Bank, International Monetary Fund (IMF) as well as regional organisations such as the African and Asian Development Banks is helping to shape financial accountability and corporate governance around the globe. For example, the first set of internationally acceptable standards of corporate governance were produced by the OECD and these standards have acted as the spring board for addressing weaknesses in financial accountability and the development of codes of best practices in many countries.

Codes touch fundamental governance issues such as fairness to all shareholders, clear accountability by directors and managers, transparency in financial and non-financial reporting, the composition and structure of boards, the responsibility for stakeholders' interests, and compliance with the law (Gregory and Simmelkjaer II, 2002; Coombes and Chiu-Yin Wong, 2004). Gregory and Simmelkjaer II (2002) and also Zattoni and Cuoma (2008) identified the following as core principles of good governance codes:

- directors' remuneration, remuneration committee, nomination committee and audit committee.
- They suggest that all good corporate governance codes do embrace these core principles. However, this does not necessarily imply that all corporate governance codes issued in every country has all these core principles embedded in them, and even if they are, it does not imply compliance, neither does compliance imply effectiveness. For example, Zattoni and Cuoma (2008) found that the 'coverage of codes' and the 'strictness of code recommendations' varied, and was significantly different between common law and civil law countries in some aspects. For example, they found that "codes in common law countries are significantly more likely than codes in civil law countries to issue stricter recommendations on the separation between Chairman and CEO ... and the audit committee" and on boards of directors (Zattoni and Cuoma, 2008: 11).

The Code of Best Practices for Corporate Governance in Nigeria

The above socio-cultural contextual background is useful in exploring the parallelisms between corporate governance systems and institutional factors such as the political context, the rule of law, the maturity of democracy, democratic representation and accountability, the distribution of power, the protection of property rights and equality (Sison, 2000). The Nigerian law is based on a British defined common law, precedents and local statute, as Nigeria is a former colony of Britain (Okike 1994; Adegbite, 2012). Prior to 2003, there was no Code of Best Practices for Corporate Governance in Nigeria. However, Okike (2007) and Adegbite (2012) provide some insights into the current framework for corporate governance regulation in Nigeria, including the mechanisms put in place to ensure the effective governance of public companies in Nigeria. Whilst the papers provided some background information on the development of the Code of Best Practices for Corporate Governance in Nigeria, they did not examine the rationale behind the code, the requirements of the code or its operationalisation, nor the effectiveness of the code in addressing corporate governance abuses in Nigeria.

The importance of corporate governance in the international corporate scene cannot be underestimated. Recent corporate scandals in Europe and America and the need to protect cross-border investments have seen renewed emphasis on maintaining good corporate governance in public companies across the globe. Countries and companies with weak corporate governance systems are unlikely to attract foreign investments. Before committing their funds, investors need reassurance that companies are run according to sound business practices that minimise corruption and mismanagement. This is

important not only for local businesses but also for the growth and prosperity of the entire business community. Given its reputation as a country where corruption is endemic, the government of Nigeria appears keen to do away with such a reputation. Hence, it is aiming to ensure that Nigeria can effectively compete in the global market place and attract international investors to help in the development and growth of the economy. Quite appropriately, the Securities and Exchange Commission (SEC) in collaboration with the Corporate Affairs Commission (CAC)⁶ set up a committee in June 2000 to address the weaknesses in the corporate governance framework within the country.

The Code of Corporate Governance for Public Companies (SEC Code) thus came to being in October 2003, representing the first code of corporate governance in Nigeria. A revised version of the code was released in the first quarter of 2011, with the principles and provisions largely consistent, although some amendments were introduced. Some of these are examined in subsequent discussions. In the preface to the 2003 code, the reason for setting up the committee was given as “the need to align with the international best practices”. Adegbite (2012) also notes that the development of the SEC Code is connected to global inclinations towards corporate governance regulation. According to a lead consultant to the committee which drafted the 2003 code:

“It has become accepted that only with good corporate governance practices can any company attract investments especially FDI. Prior to developing the code, we conducted a survey which revealed several problems with the status quo. These include lack of awareness of best practices in corporate governance; the norm of Chairman/CEO role duality; directors’ habit of not attending board meetings; and infrequent board meetings. There was no guidance, no template/no signpost to work with. Again in the midst of this was the Unilever scandal which all together made industry watch dogs and regulators to realise that the time has come to write the rules” (Adegbite, 2012; 265).

The 2003 SEC Code (pp. 2) further confirms this:

“Companies perceived as adopting international best corporate governance practices are more likely to attract international investors than those whose practices are perceived to be below international standards”

“This realisation prompted the Securities and Exchange Commission (“SEC” or “the Commission”), the apex regulatory body in the Nigerian capital market, to inaugurate the Committee

on Corporate Governance of Public Companies in Nigeria (“the Committee”) on 15 June 2000”

This supports the social legitimation theory (DiMaggio and Powell, 1983; Tolbert and Zucker, 1983 and Strang and Macy, 2001). As in other countries, the content of the SEC Code have been influenced by developments in other countries. In its ‘terms of reference’, the Committee that drafted the SEC code was required (amongst others), “to examine practices in other jurisdictions with a view to the adoption of international best practices in corporate governance in Nigeria”. Furthermore, the SEC Code committee ascertained existing corporate governance practices in the country, comparing them with corporate governance practices around other jurisdictions and markets and countries such as the UK. Whilst it is good to learn from other countries, adopting corporate governance guidelines which are better suited for more advanced economies may constitute significant misfits (see Okike, 2007; Adegbite, 2012). This view is supported by Doidge et.al. (2007), who developed and tested a model to ascertain the effect of country characteristics (such as legal protections for minority investors and the level of the economic financial development, influence firms’ costs and benefits in implementing measures to improve their own governance and transparency). They found that country characteristics explain much more of the variance in governance ratings (ranging from 39% to 73%) than observable firm characteristics (ranging from 4% to 22%). They also show that firm characteristics explain almost none of the variation in governance ratings in less-developed countries and that access to global capital markets sharpens firms’ incentives for better governance.

Indeed, both the SEC and the CAC “are convinced that the adoption of the Code will ... enhance corporate discipline, transparency and accountability” (SEC Code; Pp ii) which supports the efficiency gain perspective. To examine the efficiency gain-social legitimation dichotomy further, it is useful to take a critical look at the provisions contained in the Code. The SEC Code of Best Practices in Nigeria is described as follows:

“A code to make provisions for the best practices to be followed by public quoted companies and for all other companies with multiple stakeholders registered in Nigeria in the exercise of power over the direction of the enterprise, the supervision of executive actions, the transparency and accountability in governance of these companies within the regulatory framework and market; and for other purposes connected therewith”.

The Code is required to be cited as the “Code of Best practices on Corporate Governance in Nigeria”, and is divided into five parts – A to E.

Part A, relating to the board of directors provides guidance on the responsibilities of directors, the composition of the board, the positions of the chairman and chief executive, proceedings and

⁶ See Okike (2007) and Adegbite (2012) for more insights into the roles of the SEC and the CAC in corporate governance in Nigeria.

frequency of meetings of the board, specifics relating to non-executive directors, compensation of board members and their reporting obligation. The Code also requires boards of listed companies to put in place adequate systems of internal control and to manage the affairs of their company in a lawful and efficient manner, so as to create value for the shareholders. The board should ensure that the value being created is shared among the shareholders and employees with due regard to the interest of the other stakeholders. This reinforces the efficiency rationale for having good corporate governance codes (Aguilera and Cuervo-Cazurra, 2004). Indeed apart from the global inclination with regards to the need to codify corporate governance principles and requirements, which supports the social legitimation argument, the need to prevent corporate scandals further facilitated the development of the SEC Code. The 2003 SEC Code (Pp 2) further confirms this:

“The importance of effective corporate governance to corporate and economic performance cannot be over-emphasised in today's global market place”.

The code further states in Paragraph.1(c) that the “the Board's functions should include but not be limited to the following:

- i. Strategic planning
- ii. Selection, performance appraisal and compensation of senior executives
- iii. Succession planning
- iv. Communication with shareholders
- v. Ensuring the integrity of financial controls and reports
- vi. Ensuring that ethical standards are maintained and that the company complies with the laws of Nigeria”

In line with the OECD principles of good corporate governance, the code also requires that the board be composed in such a way as to ensure diversity of experience without compromising compatibility, integrity, availability, and directors' independence. Whilst the Code recognizes the need for the separation of the chairman and CEO roles (para.2(b)), it states that “in exceptional circumstances where the position of the Chairman and Chief Executive Officer are combined in one individual, there should be a strong non-executive independent director as Vice Chairman” (para.2 (c)). Meetings of the board are further required to take place at least once a quarter, with sufficient notice (at least 21 days) being given to the shareholders. The service contracts of directors should not exceed three years without the prior approval of shareholders. The Code requires that companies establish remuneration committees consisting mainly of non-executive/independent directors and chaired by a non-executive director. The remuneration committees are to recommend the remuneration of directors. Also the total emoluments of directors should be fully disclosed, including those of the Chairman and the highest paid director. Such

disclosures include pension contributions and stock options where earnings are in excess of N500, 000 (\$3,170).

Furthermore, considerably owing to social legitimation/alignment pressures with other codes of best practices, the SEC Code states that the prime responsibility for maintaining an adequate system of internal control rests with the board. They must also report on the effectiveness of the system of internal control, and that the business is a going concern, with supporting assumptions or qualifications as necessary in compliance with the Companies and Allied Matters Act of 1990 (CAMA). CAMA (1990) is the main legal framework for corporate governance in Nigeria. Also, there is an overriding need to promote transparency in financial and non-financial reporting. The Board is also required to maintain “an objective and professional relationship” with the auditors. The latter should not have any business relationships with the company. Many of these requirements and other ones relating to the directors (‘deontology’ for directors) (executive and non-executive) are similar to what obtains in the UK Corporate Governance Code, including the need for newly appointed directors to be properly orientated and given appropriate training, where deemed relevant, at the company's expense. This further suggests that the need for social legitimation acted as a strong factor in shaping the Nigerian corporate governance code.

PART B of the 2003 SEC Code deals with shareholders' rights and privileges. The board of directors should ensure that shareholders' statutory and general rights are protected at all times. The code states that the shareholders “should remain responsible for electing directors and approving the terms and conditions of their directorships”. There is a strong emphasis in the code on the need to ensure equity in the treatment of shareholders. Whilst the code encourages boards to use the general meeting as a forum to communicate with shareholders, it requires that shareholders holding more than 20 percent of the total issued share capital of a company should as far as possible have a representative on the board unless they are in a competing business or have conflicts of interest that warrant their exclusion from the board. Appropriately, majority shareholders should act and influence the standard of corporate governance positively and thereby optimize stakeholder value. Also, as much as possible, there should be one director on the board representing the interest of minority shareholders (para.9 (j)). Further, boards of directors are required not to discourage shareholder activism whether by institutional shareholders or by organized shareholders' groups. PART C of the code relates to audit committees – their composition, qualification, terms of reference and meetings. The code requires that audit committees be established as specified in the Companies and Allied Matters Act (CAMA) 1990 (Section 359 (4)). CAMA 1990 stipulates that the audit committee should consist of

an equal number of directors and representatives of the shareholders of the company (subject to a maximum of six members). The code strengthens this requirement by stating that not more than one executive director should be on the audit committee. It also states that “the chairman of the audit committee should be a non-executive director, to be nominated by the members of the audit committee. Majority of the members of the audit committee should be independent of the company, and the committee should meet at least 3 times in a year. These provisions further suggest that the need for social legitimation as well as the pursuit of efficiency gains acted as a strong factor in shaping the Nigerian corporate governance code.

In order to improve corporate governance in Nigeria, the SEC, in September 2008, inaugurated a National Committee for the Review of the 2003 Code of Corporate Governance for Public Companies in Nigeria to address its weaknesses and to improve the mechanism for its enforceability and effectiveness. Some of the amendments introduced by the Board include limiting its coverage only to public companies, as well as removing any unnecessary restrictions on the freedom of companies to innovate in their management practices. The revised code of corporate governance notes that unlike the previous code, it is intended to be fully enforceable by SEC, aims to ensure the highest standards of transparency, accountability and good corporate governance, without unduly inhibiting enterprise and innovation. Whilst the revised code sufficiently demonstrates significant social legitimation pressures, it can be suggested that the Code has moved towards the pursuit of efficiency gains, to particularly address problems relating to corporate corruption, which it highlighted as a major obstacle to good governance in Nigerian corporations. The extent to which the SEC Code has achieved this objective is addressed later in the paper.

The Code of Corporate Governance for Banks in Nigeria Post Consolidation

Prior to April 3, 2006, all publicly quoted companies and all other companies with multiple stakeholders including banks had to comply with the ‘*Code of Best Practices on Corporate Governance in Nigeria*’. In addition banks had to comply with the Code of Corporate Governance for Banks and Other Financial Institutions, which had also been approved in 2003 by the Bankers’ Committee. However, following the consolidation of banks in Nigeria, which saw the number of banks dwindle from 89 to 25 in 2005, the Central Bank of Nigeria (CBN) recognised the need for a more robust Code to compliment the existing ones and enhance their effectiveness for the banking industry in Nigeria. The suggestion is that the CBN Code will also help address and overcome difficulties often associated with mergers and acquisitions, as a

result of the banking consolidation. Other mandatory provisions relating to banks are contained in the Companies and Allied Matters Act (CAMA) 1990, the Banks and Other Financial Institutions Act 1991, the Investments and Securities Act 1999, the Securities and Exchange Commission Act (SECA) 1988 (and its accompanying Rules and Regulation). In 2006 the CBN issued a Code of Conduct for Directors of Licensed Banks and Financial Institutions Post Consolidation. Compliance with the provisions of these codes is mandatory.

The Code of Corporate Governance for Banks consists of two parts. PART 1, which is introductory, provides the rationale for a new code of corporate governance for banks (such as the recent high profile corporate scandals in the US, Europe and elsewhere; the weaknesses in the corporate governance of banks in Nigeria, pre-consolidation⁷, and the challenges of corporate governance for banks post consolidation⁸).

⁷ The following weaknesses (Central Bank of Nigeria, 2006) were identified in the governance of banks in Nigeria pre-consolidation, which necessitated the need for a mandatory Code of Corporate Governance post-consolidation:

- Disagreements between Board and Management giving rise to Board squabbles
- Ineffective Board oversight functions
- Fraudulent and self-serving practices among members of the board, management and staff.
- Overbearing influence of chairman or MD/CEO, especially in family-controlled banks.
- Weak internal controls
- Non-compliance with laid-down internal controls and operation procedures
- Ignorance of and non-compliance with rules, laws and regulations guiding banking business.
- Passive shareholders
- Poor risk management practices resulting in large quantum of non-performing credits including insider-related credits
- Abuses in lending, including lending in excess of single obligor limit
- Sit-tight Directors – even where such directors fail to make meaningful contributions to the growth and development of the bank
- Succumbing to pressure from other stakeholders e.g. shareholder’s appetite for high dividend and depositors quest for high interest on deposits
- Technical incompetence, poor leadership and administrative ability.
- Inability to plan and respond to changing business circumstances.
- Ineffective management information system.

⁸ The challenges include:

- Technical incompetence of members of the Board and Management to effectively manage the merged entities

Part II presents the 'Code of Best Practices on Corporate Governance', and is broken down into the following subsections:

- Principles and practice that promote good corporate governance
- Code of corporate governance practices for banks post consolidation.
- Industry transparency, due process, data integrity and disclosure requirements
- Risk management, and
- Role of Auditors.

Principles and practices that promote good governance address issues dealing with effective board oversight, including management reporting and oversight, balance of power on the board, schedule of meetings and the responsibilities of directors, shareholders, audit committees, internal and external auditors and compliance with all regulations. The section on 'Code of Corporate Governance Practices for Banks Post Consolidation deals with equity ownership (to curb abuses especially by family members on boards), organizational structure (addressing balance of power on boards, board memberships, board committees, performance appraisal, quality of management and the reporting structure). Industry transparency, due process, data integrity and disclosure requirements, are described in the Code (para. 6.1.1) as "the core attributes of sound corporate governance practices that are essential to installing stakeholder confidence". Directors of banks and those related to them are required by the Code to fully disclose all interests in bank transactions. They must not make false disclosures in statutory returns to the CBN. The Code (para. 6.1.4) states that

"False rendition to CBN shall attract very stiff sanction of fine plus suspension of the CEO for six

- Handling the relationships among Directors of the merged banks
- Squabbles between management and staff arising from knowledge gaps, harmonization of roles, etc.
- Increased levels of risk given the huge amounts of funds that will be available and the increase in lending limits that will arise as a result of the consolidation.
- Ineffective integration of the merged entities
- Poor integration and development of IT systems, accounting systems and records
- Inadequate management capacity
- Resurgence of high level malpractices
- Insider-related lending
- Rendition of false returns to regulatory authorities
- Continued concealment of material issues discovered by banks during their pre-merger due-diligence.
- Ineffective Board/Statutory Audit Committee.
- Inadequate operational and financial controls
- Absence of a robust risk management system
- Disposal of surplus assets
- Transparency and adequate disclosure of information.

months in the first instance and removal and blacklisting in the second. In addition, the erring staff would be referred to the relevant professional body for disciplinary action".

These foregoing discussions suggest that the CBN code has been driven more by the pursuit of efficiency gains. Furthermore, banks are encouraged to establish 'whistle-blowing' procedures that encourage all stakeholders to report any unethical activity/breach of the corporate governance code using, among others, a special email or hotline to both the bank and the CBN (para.6.1.12). In addition to monitoring compliance with the money laundering requirements, the banks' Chief Compliance Officers (CCOs), also monitor the implementation of the Code of Corporate Governance, as well as make returns on whistle-blowing reports and any breaches to the CBN. Every year, both bank CCOs and CEOs have to certify that they are not aware of any breaches or violations of the corporate governance code. These provisions suggest that whilst the need for social legitimation has acted as a strong factor in shaping the Nigerian banking sector corporate governance code, the CBN code has been driven more by the pursuit of efficiency gains.

Corporate governance regulation in the Nigerian banking industry could be described as specifically tailored to address the problems confronting the sector. First it was designed specifically to address the governance problems which arose from the aforementioned consolidation exercise. Nevertheless, the provisions in the code focused on particular issues which have trailed the banking sector for decades, and almost led to its collapse in the 1990s. These problems relate to significant (and non-positive) governmental participation, particularly in State owned banks, concentrated ownership in the hands of families and fraud. Given the increasingly important role of the Nigerian banking sector to the country's economy, it would appear that the pursuit of efficiency gains is imperative. For example, as financial institutions, such as banks are exposed to different types of risks, and as such the Code of Corporate Governance for Banks Post Consolidation requires Boards of banks to put in place adequate systems of internal controls and appropriate risk management strategies. In particular, external auditors are required to render reports to the CBN on banks' risk management practices, internal controls and level of compliance with the regulatory directives (CBN Code para.7.1.4).

In addition to a Risk Management Committee, all banks are required to have as a minimum, an Audit Committee and a Credit Committee. Whilst there is no specific mention of a Remuneration Committee, the Code suggests (CBN Code para. 5.3.7) that "a committee of non-executive directors should determine the remuneration of directors". The Code disallows the practice of a Board Chairman serving simultaneously as a chairman or member of any of the

board committees, as this is against the concept of independence. Whilst many of these provisions are contained in the code of many other countries, mandating compliance to them further suggests that the CBN code has been driven more by the pursuit of efficiency gains, in the light of the endemic corrupt corporate environment.

The Code places some degree of importance to the internal audit function. Accordingly, banks are required to have well-functioning internal audit departments, headed by a professionally qualified senior officer, not below the rank of an Assistant General Manager. He/she is expected to report directly to the Audit Committee, but must submit a copy of his report to the CEO of the bank. External auditors are required by the Code (para. 8.2.1) "to maintain arms-length relationship with the banks they audit". Their appointment has to be approved by the CBN, and they cannot audit any bank for a period of more than ten years. They cannot be re-appointed until after another ten years has elapsed. Furthermore, external auditors are precluded from providing the following services to the clients whose accounts they audit (para.8.2.4):

1. Bookkeeping or other services related to the accounting records or financial statements of the audit client;
2. Appraisal or valuation services, fairness opinion or contribution-in-kind reports;
3. Actuarial services;
4. Internal audit outsourcing services;
5. Management or human resource functions including broker or dealer, investment banking services and legal or expert services unrelated to the audit contract.

Also, an audit firm cannot provide audit services to a bank if one of the bank's top officials of the rank of director, Chief Finance Officer or Chief Accounting Officer had been in the employment of the audit firm and taken part in the previous year's audit. There is in addition the provision to undertake a quality assurance audit if the CBN suspects corruption by external auditors. Such auditors will be blacklisted from undertaking the audit of banks and other financial institutions for a period of time to be determined by the CBN. No doubt, these requirements of the Code of Corporate Governance for Banks appear to be driven by the pursuit of efficiency gains such that it is arguably more robust and understandably more stringent than the Code of Corporate Governance for Public Companies.

Have the Codes of Best Practices Prevented Corporate Governance Abuses?

Whilst it would appear that the CBN has taken the necessary steps to ensure the protection of shareholders' interests and depositors' funds (efficiency gains theory), through the establishment of

a robust Code of Corporate Governance for banks, it is doubtful that it has accomplished its objectives since "the underlying legal, institutional and regulatory framework for corporate governance in Nigeria are weak, inefficient and inadequate" (Wilson, 2006: 3). Recent events in the banking sector in Nigeria lend credence to this assertion. The efficiency gains proposition suggests that the adoption of codes of best practices would be seen to improve actual governance practices and produce better governance outcomes, that is, shareholders' investments will be protected, as well as depositors' funds. However, the establishment of these codes has not prevented corporate governance abuses in the banking sector in Nigeria. In 2009, the CBN bailed out eight banks with over \$4.03 billion of public money and dismissed their chief executives and other top management of these banks. The banks are Intercontinental Bank, Union Bank, Afribank, Oceanic Bank, FinBank, Bank PHB Plc, Equitorial Trust Bank Plc and Spring Bank Plc. The bank executives were accused of fraud, lending to fake companies, giving loans to companies in which they had vested interests and conspiring with stockbrokers to boost share prices (Krekow, 2011). These moves by the CBN further emphasize the efficiency gains perspective of the adoption of the banking sector code in Nigeria, although the efficiency achieved is still minimal. Away from the banking sector, corporate scandals such as the Cadbury Nigeria scandal of 2007, the Halliburton scandal in Nigeria of 2008 and the Siemens bribery scandal of 2009 suggest that social legitimation predominantly pursued by the SEC Code has equally failed to prevent major corporate governance scandals.

The dismissal of the banks' CEOs was the first step in a series of corporate governance measures taken by the CBN to promote accountability in Nigeria's ailing banking industry (Burgis, 2010). Other measures include placing a limit on the tenure of bank CEOs. Accordingly, the country's 24 banks have been instructed to place a 10-year limit on the tenures of their Chief Executives. All CEOs who had served for 10 years were required to relinquish their positions and hand over to their successors (Burgis, 2010).

Another recent development in the banking sector in Nigeria is the nationalization of three banks "in the course of an ever-widening probe of corruption allegations and mismanagement of fiscal institutions in the oil-rich nation" (Adigun, 2011). In an article entitled 'Nigeria nationalizes 3 banks in corruption probe', Nigeria's Finance Minister was quoted as saying that the "authorities took over Afribank PLC, Bank PHB and Spring Bank PLC after markets closed (Friday, 5 August) in Africa's most populous nation, quickly renaming the institutions Mainstreet Bank Ltd, Keystone Bank Ltd and Enterprise Bank Ltd" (Adigun, 2011). Some CEOs of these banks have been arrested and charged with

stealing depositors' funds. According to the Finance Minister, this move "represents an important milestone in the process of stabilizing the banks and enables these banks to move forward with a more certain future and bring to closure the banking crisis that started in 2008 in Nigeria" (Rubinfeld 2011).

These developments in the Nigerian banking industry lend credence to the findings of Doidge, Karolyi and Stulz (2007) that the characteristics of a country determine the variations in the measures taken to improve their accountability, governance and transparency. Whilst it thus appear that the enactment of a Code of Corporate Governance for Banks in Nigeria did not preclude bank executives from corporate governance abuses, because of endemic corruption in the country, steps taken by the regulatory body, the CBN, to address these issues suggest that the regulators are determined to ensure that corporate governance is not only socially legitimate (because of the need to maintain the confidence of foreign investors in the country's financial market), but also, that the efficiency gains (the protection of shareholders' investments and depositors' funds) of adopting the codes are realised.

Further discussions and conclusion

The foregoing discussions suggest that the rationale behind the adoption of the Codes of Best Practices for Corporate Governance in Nigeria support both the efficiency gains and the social legitimation theories. The Codes of Corporate Governance in Nigeria recognise the need to keep in line with international standards of best practices, whilst at the same time emphasise the need to create value for shareholders and other stakeholders. The 2003 Code of Best Practices for Corporate Governance in Nigeria developed by the SEC nevertheless appears to be driven more by social legitimacy pressures while the 2006 Code of Corporate Governance for Banks in Nigeria Post Consolidation, developed by the CBN, tends to be aimed at pursuing efficiency gains. Given that the less stringent SEC Code applies to all listed firms, the dominant pursuit of efficiency gains by the more stringent corporate governance regulatory infrastructure of the Nigerian banking industry, could explain why it is arguably the sector with the most developed corporate governance system.

Furthermore, it is important to note that whilst the pursuit of efficiency gains can be achieved in an 'internationally/socially legitimate' way, both objectives may also be tangential from each other which poses important limitations for the Nigerian corporate governance regulatory framework, particularly in the light of the peculiar challenges of corporate governance in Nigeria. For example, a dominant focus on the pursuit of efficiency gains, would lead to the development of Codes of Corporate Governance which take into account peculiar systemic issues which border on Nigerian corporations,

business culture, including the role of the State. An efficiency driven corporate governance regulatory strategy would thus be internally driven and aimed at tackling problems relating to majority ownership/control in many firms, endemic corporate corruption and fraudulent behaviour by managers and directors and the laxity in regulatory enforcements which are peculiar to the Nigerian corporate governance system. Tackling these challenges in order to realise efficiency gains (provide value to share-holders) may require approaches which may not be consistent with the 'internationally accepted models of ensuring good corporate governance' and thus not socially legitimate. Indeed this paper suggests that whilst it is commendable that there are Codes of Corporate Governance in Nigeria, the relevance to Nigeria's peculiar socio-economic, political and cultural environment must be ensured. In formulating corporate governance regulatory systems (and in particular, the formulation of Codes of Conduct and Best Practices), countries need to account for their peculiar institutional environments in order to realise the benefits and *efficiency gains* of effective corporate governance for the firm and its capital providers. It appears that Nigeria is taking a bold step in this direction.

More importantly the transplanted of corporate governance codes from a particular national context to another may significantly lag in leading to real/sustainable improvements in governance practices (efficiency gains), as a result of the limited attention paid to relevant internal institutional conditions at the socio-economic, legal and political levels in the governance environment. This may be the case in many developing countries in sub-Saharan Africa, where the mechanisms for the enforcement of such standards and/or codes are non-existent, non-robust or inappropriate. Accordingly, in many developing economies, where there are limited established local standards of accounting, auditing and/or principles and codes of best practices in corporate governance, caution must be exercised in adopting standards, principles and codes of best practices that are established in the more advanced economies, due to social legitimation pressures. In particular, this would likely only result in similarities in "the letters of codes of corporate governance across countries" but fail to harmonise actual corporate governance practices in different countries. Indeed the multiple problems associated with such adoption and implementation in the context of developing economies have been highlighted in recent works such as Uddin and Choudhury (2008); Reed (2002); Rossouw (2005); and West (2006).

Often times, the desperation to attract foreign investments by countries in the developing world, such as Nigeria has led to the adoption of codes of corporate governance which appear to be better suited for advanced economies, with limited attempts paid to address the corrupt-ridden institutional infrastructure

for effective corporate governance. The debate on the convergence of national systems of corporate governance/ the harmonisation of accounting and auditing practices across the globe needs to take note. This is because developing countries may find themselves being stretched beyond their levels of competence, which may lead to the passing of legislation/adoption of codes that are merely perfunctory given the lack of the institutional capacity/mechanism necessary for adequate enforcement. It is thus anticipated that the discussions in this paper will contribute to studies on executive accountability and corporate governance regulation across the world, by enhancing our understanding of the rationale and operationalisation which underpin corporate governance regulation in different institutional contexts, and in particular those of the developing economies, including the suitability and the effectiveness of these codes.

In conclusion, this paper has aimed at understanding the rationale, operationalisation and effectiveness of the corporate governance codes in developing economies with a particular focus on Nigeria. It has done this through an examination of the development and operationalisation of the Code of Best Practices for Public Companies, and the Code of Corporate Governance for Banks in Nigeria Post Consolidation. The primary objective has been to provide insights as to why corporate governance codes in Nigeria were adopted, and to ascertain the operationalisation and effectiveness of these codes in addressing corporate governance abuses. The authors have revisited two different codes of corporate governance and distinguished two motives – efficiency gains (which were a main driver of the code for the banking industry in Nigeria) and social legitimation (which was the main driver of the more general code of the SEC in Nigeria). Both motives have been conceptualized as a dichotomy operating within the Nigerian corporate governance regulatory system. Overall the paper contributes to a better understanding of the effects and development of corporate governance regulation in sub-Saharan Africa. This is vital to three groups of stakeholders: a) the public officials, practitioners, consultants as well as local and international agencies who are involved in developing national Codes of corporate governance; b) to the managers and firms adopting and/or operationalising the Codes; and lastly c) to the corporate governance scholars who research these processes, especially in the context of comparative corporate governance research.

Limitations of study and recommendations for future research

Although the scope of this paper may be limited in an empirical context, it does provide some anecdotal evidence about the influence of a country's socio-economic and political environment on the

effectiveness of the adoption and implementation of codes of best practices for corporate governance. In the case of Nigeria, the adoption of what has earlier been described as a robust Code of Corporate Governance for Banks in Nigeria, did not prevent corporate governance failures in some banks, and supports the findings of previous research (such as Doidge et. al. (2007)). The paper presents opportunities for further research into this whole area of why countries adopt codes of best practices, and the assessment of the effectiveness of these codes. In examining our claims further, future research might employ empirical evidence (for example via interviews with different stakeholders) in order to demonstrate that the different codes are majorly based on these motivations. Furthermore, it would be useful to further explore why the SEC code was motivated by social legitimation, while the CBN code seems to be based on efficiency gains. It is anticipated that the insights offered will encourage future discourse on effective executive accountability and corporate governance regulation in sub-Saharan Africa.

The question of whether the adoption of codes of best practices for corporate governance in Nigeria has prevented corporate governance abuses and corruption in the private sector is an important research question that requires empirical work which this paper has not fully addressed due to its descriptive nature. In this paper, we have attempted to use a dichotomy between legitimation and efficiency as antecedents of the development of corporate governance codes. The insights we offer can be better categorised with further empirical work.

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