

## RETHINKING CORPORATE GOVERNANCE IN NIGERIA

Augustine UJUNWA\*

### Abstract

Corporate governance is generally seen as a critical determinant of corporation's growth and development, most especially for low income countries. Corporate governance laws have evolved in developed economies often in response to corporate failures or systemic crises. The recent focus on corporate governance has accentuated due to corporate failure in different parts of the world. Most countries developed corporate governance codes that address their institutional specifics. However, corporate laws in Nigeria draw extensive inspiration from British laws maybe, because of the colonial legacy. This study documents extensive evidence to show that existing laws in the country are grossly inadequate to promote good corporate governance. The author advocates for total overhaul of company laws in Nigeria. Such policy prescription must recognize the peculiar challenges of the Nigerian corporate environment, and also establish proactive mechanism for enforcement and compliance.

**Keywords:** Board of Directors, Corporate Governance, Company Laws

\* *Department of Banking and Finance, University of Nigeria, Enugu Campus*

*Tel: +2348035010116*

*Email: [austinesilver@yahoo.com](mailto:austinesilver@yahoo.com)*

### Introduction

Corporate governance is generally viewed from corporation and public perspectives. From public policy perspectives, corporate governance is about nurturing enterprise while ensuring accountability in the exercise of power and patronage by firms (Iskander and Chamlou, 2000). This definition focuses on the role of regulatory agencies in providing firms with incentives and discipline to maximize the divergence between private and social reforms and to protect the interest of the stakeholders. From a corporation's perspectives, the emerging consensus is that corporate governance is about resolving the conflict between managers and owners as rooted in the agency theory. This places the analytic spotlight on corporate board of directors as the centrality of corporate governance.

Recent focus on the corporate governance has accentuated due to two key factors. First, the corporate scandals in different countries such as Enron, WorldCom, Tyco International in the United States, HIH Insurance in Australia, Parmalat in Italy have highlighted the inadequate role played by the boards and failure of corporate governance processes (France and Carney, 2002; Bosner and Fisher, 2007, Byron, 2007). Second, the recent crisis in the financial markets has increased public scrutiny of corporate boards as effective monitors of management (Hagendorff and Keasey, 2008).

The public disquiet after the stock market crisis in Nigeria propelled the Securities and Exchange

Commission into some sweeping reforms. For instance, the Director General of the Nigerian Stock Exchange was unceremoniously relieved of her duties among others. The objective of these reforms has been to improve the effectiveness of the Exchange and other corporate governance practices. Several developments in other areas have also contributed to renewal of interest in understanding the role of board and top management. Good corporate governance practices are now recognised and advocated for, globally as source of effective firm performance and economic growth (Healy, 2003).

The global corporate governance reforms focus mainly on board of directors. It is widely accepted that the composition of the board of directors could play a vital role in determining corporate financial performance. Board of directors is an important element of corporate governance, most especially in developing economy like Nigeria where external governance mechanisms are weak. Board role can be even more important, because of the relative weakness of other governance mechanisms and institutions, such as market for corporate control, financial markets, regulatory monitoring and legal system.

Boards are by definition the internal governing mechanism that shapes firm governance, given their direct access to the two other axes in the corporate governance triangle: managers and shareholders (owners). Fama (1980) argues that the composition of board structure is an important mechanism because, the presence of non-executive directors represents a

means of monitoring the actions of the executive directors and of ensuring that the executive directors are pursuing policies consistent with shareholders' interests. Furthermore, boards of directors are one of the centerpieces of corporate governance reform. In effect, the board of directors has emerged as both a target of blame for corporate misdeeds and as the source capable of improving corporate governance (Carter, D'Souza, Simkins and Simpson, 2007). Much of the weight in solving the excess power within corporations has been assigned to the board of directors and, specifically, to the need for non-executive directors to increase executive accountability.

The purpose of boards of directors is defined in many different ways. Shleifer and Vishny (1997) feel that the sole responsibility of the board of directors is to ensure a return on investment for investors and shareholders. Gillian and Starks (1998) define corporate governance as a control of company operations through a system of rules, laws and governance, by boards of directors who sit on the border of internal and external operations of a firm. The board is influenced by outside shareholders to increase firm value, which increases return on investment. Shareholders' investment interests depend largely on how the board controls the company internally. Jensen (1993) believes that the most important part of the board of directors' internal responsibilities is to regulate and monitor senior management. It is up to the board to decide how much to compensate managers, as well as evaluate their performance.

The composition and duties of corporate boards in Nigeria are contained in various laws, notable among them are; the Company and Allied Matters Act 1990 as amended, Code of Best Practices for Public Companies in Nigeria, Banks and Other Financial Institutions Act 1991 as amended, Code of Corporate Governance for Banks in Post Consolidation of 2006. The effectiveness of these laws in ensuring sound and sustainable corporate governance practice in the entire spectrum of the Nigerian corporate environment has elicited research interest among scholars and practitioners. These studies have only succeeded in prescribing the panacea to the corporate governance problems in Nigeria, without evaluating the evolving processes of company laws in Nigeria. This study fills that important research gap by evaluating corporate governance laws in Nigeria, with the aim of identifying the loopholes in Nigerian governance laws, and also prescribing measures that must be put in place to promote good governance in Nigeria.

### **The Evolution of Corporate Governance in Nigeria**

Corporate governance systems have evolved over centuries, often in response to corporate failures or

systemic crises. For example, much of the securities law in United States was put in place following the stock market crash of 1929 (Iskander and Chamluu, 2000). The Enron collapse also led to the enactment of 'The Sarbanes-Oxley Act 2002'. However, the principles of company laws in Nigeria were derived from English law, which can be traced to the influence of colonization. The early companies that operated in Nigeria were British based companies. By virtue of Colonial statutes enacted between 1876 and 1922, the laws applicable to companies in Nigeria at this time were the 'common law, the doctrines of equity, and the statutes of general application in England on the first day of January, 1900' subject to any later relevant statute (Nigerian Law Reform Commission, 1991). The implication of this approach is that the common law concepts such as the concept of the separate and independent legal personality of companies as enunciated in *Salomon v. Salomon* was received into the Nigeria Company law and has since remained part of the law (Amao and Amaeshi, 2008).

With the continuous growth of trade, the colonialist felt it was necessary to promulgate laws to facilitate business activities locally. Hence, the first company law in Nigeria was the Companies Ordinance of 1912, which was a local enactment of the Companies (Consolidation) Act 1908 of England. The Ordinance was amended severally and consolidated into the Companies Ordinance of 1922 (Nigerian Law Reform Commission, 1991). The 1922 Ordinance was subsequently amended in 1929, 1941 and 1954 respectively. The attainment of independence in 1960, coupled with the vitriolic criticisms that trailed the existing company law in Nigeria at that time, led to the enactment of Company Act of 1968.

One of the important provisions of the 1968 Act was the legislation that all companies operating in Nigeria must be incorporated in the country. However, the legal framework of the Act has its root in the British legislation. The Company Act of 1968 was, of course, a replica of the United Kingdom Companies Act of 1948. The 1968 Company Act was also criticized for not taking into cognizance the peculiar nature of the Nigerian corporate environment, but protected only British business interest in Nigeria. Amao and Amaeshi (2008) argue that British nationals controlled the major enterprises in Nigeria, and to protect their economic interests, they had to bring their company legislation. They further argue that the mimicking of the United Kingdom's Companies Act in Nigeria failed to accommodate the economic interests and development aspirations of the country.

In responding to the agitation that the Nigerian economy was dominated by direct foreign investment capital, the government made the promotion of indigenous participation in industrial activities one of its core policies in the Second National Development

Plan. According to CBN (2000), “[b]efore 1972, the Nigerian economy was dominated by foreign investment capital. In the Second Development Plan period, therefore, the promotion of indigenous participation in industrial activities became one of the prominent policy instruments designed to encourage industrial development”, and led to the led to the promulgation and implementation of Nigerian Enterprise Promotion Decree of 1972 (also known as the Indigenisation Decree of 1972 amended in 1977). The 1972 Act categorized all businesses into two schedules (Schedule 1 and Schedule 11). Schedule 1 contained the list of all enterprises exclusively reserved for Nigerians, while Schedule 11 listed enterprise in which Nigerians must have at least 40 per cent equity holding. The difficulties encountered in the implementation of the Decree led to its amendment in 1977. The 1977 amendment categorized all businesses into three schedules and became more liberal to foreign investors.

This legislation changed the landscape of Nigerian corporate environment. The policy was alleged to have been adopted by the Nigerian government to limit the level of foreign control in the Nigerian economy (Ejiofor, 1981). To drive home this point, the Sixth Progress Report on the implementation of the 1977 Act showed that the Nigerian Enterprise Promotion Board (the implementer of the Decree) did not stop at regulating equity ownership, but asked companies to have certain minimum number of Nigerian executive directors on their boards. The indigenisation policy not only localized corporate activities among Nigerians, but also created an avenue for the government to launch itself into the ownership and control of banks in Nigeria. According to Ezeoha (2007), “it was for instance during the implementation [of the indigenization policy] that government utilized the opportunity to take over the controlling shares in the three largest foreign-owned banks in the country – namely First Bank, Union Bank and United Bank for Africa”. This policy reform led to the takeover of most foreign-owned companies by Nigerians and State participation in many areas of the economy. The consequence was that many state-owned enterprises were set up in virtually all areas of the economy. Most of these companies were monopolies and remained so for a long time. This also promoted poor corporate governance practice in Nigeria. By the middle of the 1980s, concerted efforts to appraise the performance of these public corporations showed that the corporations were economic waste pipes. The need for a rethink coupled with the pressure from International Monetary Fund led to the adoption of the Structural Adjustment Programme (SAP).

Uche (2002) notes that, “[t]he Structural Adjustment Programme was designed to achieve balance of payments viability by altering and restructuring the production and consumption patterns of the economy, eliminating price distortions,

reducing the heavy dependence on consumer goods imports and crude oil exports, enhancing the non-oil export base, rationalizing the role of public sector and achieving sustainable economic growth”. In order to downsize the public sector and allow the government concentrate on regulation of corporate environment in Nigeria, the Privitisation and Commercialisation Act was promulgated in 1988. This Act established the privatization and commercialization programme of public corporations, which is still ongoing to this day. The privatization programme is under the purview of the Bureau of Public Enterprises. The shady manner the political class in Nigeria handled the privatization exercise helped in promoting corporate scandal instead of good corporate governance practice.

The need to reform the Nigerian Companies Law in the post Structural Adjustment Era gained importance because of the following; at the time of promulgating the Company Act of 1968, the United Kingdom Companies Act of 1948 on which the 1968 Act was based was already being subjected to very critical examination and actions for improvement (in fact the Jenkins Report was already published and, indeed, the companies Act of 1967 had already been enacted); the changes in the Companies Law of Ghana, a sister country with similar experience; and the inability of the statute to cope with the challenges of the Enterprise Promotion exercise and Structural Adjustment Programme (Nigerian Law Reform Commission, 1991). The Companies Act of 1968 was repealed by the Companies and Allied Matters Act of 1990 as amended in 2007. The new law contained some radical features. It codified a good number of rules of common law and equity applicable to companies. It also codified some important provisions normally contained in articles of association (Okonkwo, 2009). The introduction of the Corporate Affairs Commission to replace the companies’ registry was a major innovation. Some other major landmarks of the Act relates to the doctrine of constructive notice, pre-incorporation contracts, share capital, payment of shares in kind, debentures, directors and secretaries, minority protection, financial statements, audit committee and insider trading. The Act has undergone some specific amendments with the latest amendment in 2007. Yet, the Act has some traces of weaknesses in the framework for corporate governance. These weaknesses were discussed under the critique of company laws in Nigeria.

Another feature of Nigerian institutional reform was the promulgation of the Nigerian Investment Promotion Council (NIPC) Act of 1995 to replace the Nigerian Enterprise Promotion Decree of 1972. The Act was amended in 1998 to become the Nigerian Investment Commission (Amendment) Act of 1998 with subsequent amendment in 2004. The Act deals primarily with foreign direct investment, but an area of it that promotes corporate governance is the abolition of restrictions hitherto placed on the

percentage of equity participation by foreigners in Nigerian enterprises. Under this law, foreigners can now invest freely in any enterprise of their choice except for sectors under the negative list.

In the last decade, codes of good governance have risen to prominence around the world as a result of the major corporate scandals in different countries. In responding to this global phenomenon, the Nigerian Securities and Exchange Commission set up the Atedo Peterside committee in 2001 to identify weaknesses in the Nigerian corporate governance with respect to public companies and make recommendations on the necessary changes therein. A Code of Best Practices for Public Companies in Nigeria was adopted. By implication the major corporate laws in Nigeria are the company and Allied Matters Act 1990 as amended, and the Code of Best Practices for Public Companies in Nigeria.

### **a. Company and Allied Matters Act: A Critique**

The prominent law that regulates companies in Nigeria is the Company and Allied Matters Act, 1990 as amended. This Act was considered landmark legislation because of its provisions. For instance, Okonkwo (2009) argues that the Company and Allied Matters Act, 1990 contained some radical features, which he identified as “the introduction of Corporate Affairs Commission ... to replaced the chaotic companies’ registry. It is generally argued that the CAMA has input from all stakeholders when compared to previous company laws.

This is not to suggest that CAMA is absolved of any shortcomings in terms of promoting good corporate governance in Nigeria. First, a law that has lasted for twenty-one years needs total overhaul, no matter the number of amendments. This has become imperative given the fact that laws should be allowed to evolve as the society evolves, which will also allow for the codification of the provisions of CAMA and the necessary amendments into a single document. In the overhaul, certain provisions that laid the foundation for weak corporate governance also need to be reviewed. Notable among the provisions is section 359 (4). The section requires that audit committee should consist of an equal number of directors and representatives of shareholders. The purpose of audit committee is to show the members how financially transparent the directors and management were in the use of the company’s resources in line with the agency theory. What then is the rationale for persons being investigated to be made members of the investigating team with equal numerical strength with other members? Such provision renders the audit committee ineffective and could be traced to series of corporate frauds in Nigeria.

Additionally, section 359(4) provides that members of the audit committee shall not be entitled

to remuneration. This provision has been justified as a measure of making audit committee membership unattractive. However, the ability of the audit committee to put in their best without any form of remuneration has been seriously challenged. It has been observed that audit committee members either collect sitting allowances from the company contrary to the provisions of CAMA, or pester directors for contracts or employment of relatives. In view of the above, one way of strengthening the audit committee is to allow the payment of reasonable amount to the members. This will cover their cost of several visits to the company, and make them discharge their duties professionally, instead of perceiving their role as mere charity.

Interlocking or multiple directorships is a feature of corporate governance in Nigeria. This involves one person sitting on the board of as many companies as he or she wishes. This phenomenon has been criticized for so many reasons. First, it is argued that while interlocking directorship results in wealth of experience that is beneficial to the firm, it also imports disharmony, deflated or bruised ego which they must reflect or heal, greed and avarice, from one board to another (Egwuonwu, 1997). Second, interlocking directorship can create professional board members whose livelihood is sitting on different boards. These persons may associate their numerous board positions with superior intelligence, exposure, and understanding of board intricacies, which might make them arrogant. Third, interlocking directorship leads to conflict of interest, which negates the principle of fiduciary duties of care and diligence. According to section 281, a person can be the director of multiple companies in so far as he/she does not derogate from his duties to each company including a duty to use the property, opportunity or information obtained from company to the benefit of the other company or personal advantage. If the essence of the provision is to prevent insider trading or corporate espionage, then, the law is rather promoting these vices. This is practically impossible as evidence abounds in Nigeria, where directors use insider information obtained from one company for the benefit of another company. One of the effective measures of minimizing conflict of interest and insider abuse is to abolish interlocking directorship in Nigerian company laws, most especially for public companies.

The Act prescribes the minimum number of board members to be two directors, without placing any ceiling on the number of directors. The implication of this provision is that companies are allowed to fix their maximum board size. This runs contrary to the French company law which provides that board of directors shall composed of at least three persons, and at most twelve persons. The average board size of Nigerian firms is approximately nine. This appears to be very high when compared to average board size of companies in other jurisdiction

in relation to total assets (Ujunwa, 2011). Scholars have argued for small board size in emerging economies on grounds of easy coordination, cohesiveness and effective communication (Lipton and Lorsch, 1992). O'Reilly (1989) argues that as the board size increases, interpersonal communication becomes less effective. Empirical study by Ujunwa (2011) documents extensive evidence that large boards impact negatively on the performance of Nigerian firms. The implication of this result is that as corporate board size increases, loafing and free riding increase among board members in the Nigerian corporate environment. Also, increase in board size is likely to increase monitoring cost which exacerbates rather than ameliorating agency cost. Perhaps, there is an urgent need to legislate maximum number of board members to at most twelve as practiced in France. This will ensure that firms select board members from a pool of best competency and capability, instead of increasing board size in order to accommodate all interests.

One of the protective rights of shareholders is the right to vote on important issues, which the election of the company's directors is the most significant. The essence of this control mechanism is to afford shareholders the opportunity of off-loading unproductive director(s) and/or director(s) that is/are due for retirement (section 259 of CAMA). The ability of shareholders in exercising this right effectively depends on the quality of information available to them on the performance of the directors. The Company and Allied Matters Act, 1990 compounded this problem by providing that "when a director presents himself for re-election, his record of attendance at the meetings of the board during the preceding year shall be made available to members of the general meeting (Section 28(2))". The effectiveness of board members may depend on how often the board members meet to discuss various issues affecting the firm. But, effectiveness of any board member depends on his or her contribution to the strategic decisions of the firm. The quality of contribution depends on his or her diligence, which includes other aspects such as preparation before meetings, attentiveness, participation during meetings, and post meetings follow-up (Nmehielle and Nwauche, 2004). Ideally, attendance at a board meeting should not be the only yardstick since it blurs the parameters for measuring effective participation. There ought to be an independent mechanism for individual assessment of each board member, which must be considered sufficient to assist the shareholders in making an informed decision in that regard.

The Act also made provision for directors to accept post gratification. Nigerian Law Reform (1991) argues that the common law rule prohibits a director from accepting a bribe, a gift, a commission or a share in the profit of a third party to any transaction. Thus, any director that receives a gift in

the course of managing the affairs of the company commits a breach of duty. The gift whether in cash or in kind is recoverable by the company and the company can as well bring legal action against the director and the third party jointly or severally for damages sustained. However, section 287(3) of the Act prescribes that "where a gift is made after transaction has been completed in a form of unsolicited gift as a sign of gratitude, the director may be allowed to keep the gift, provided he declares it before the board and the fact shall also appear in the minutes book of the director". Uche (2004) argues that "...for a company which can be taken as a going concern and dealing in a particular line of business, an unsolicited ex-post gratification to directors of a client company, may well be equal to ex-ante bribe for future contracts". He further argues that if the aberration must be allowed to stay, the disclosure should be in the published accounts. Such provision has the ability of exacerbating corporate governance problems, and should be expunged from Nigerian company laws.

The Act also vests near absolute powers on the directors. This is discernible from the combined effects of sub-sections 63 (2) (3) and (4). In subsection (2), the articles of association determines the sharing of powers between the two organs except otherwise stipulated by the Act. This subsection makes the Act superior to the article which is within the powers of the members to vary by using the expression "subject to the provisions of this Act" as its opening paragraph.

There are other weaknesses in the Act such as; directors liability; disqualification of fraudulent persons (section 254 (1) (b) (i)); when does the disqualification period under section 254(1) begins to run? Disqualification of a person who has been convicted of an offence not connected with any company; register of disqualification order; definition of small companies; power to annul a general meeting; inconsistency in periods for making return; constructive notice; among others. Based on these, the Act needs serious amendment or complete review in order to strengthen corporate governance practices in Nigeria.

## **b. Code of Best Practices on Corporate Governance in Nigeria: A Critique**

The rate of corporate scandals globally brought intense scrutiny on the subject of corporate governance and specifically on the question of board of directors' responsibilities and accountability for corporate results. Government of developed and developing countries responded to the public disquiet by introducing corporate code of conduct for firms operating in their jurisdictions. International institutions like Organisation for Economic Corporation Development (OECD), International Monetary Fund (IMF), among others, encouraged

member countries to adopt internationally best accepted standards for companies in their respective countries. Countries responded to this clarion call by encouraging studies on corporate governance. In order to prevent a repeat of the Enron episode, the US government enacted the Sarbanes-Oxley Act of 2002, which enjoins the boards to ensure adherence to regulations and organisational performance standards leading to transparency and integrity (Moeller, 2004).

Other countries also evinced keen interest on the role of boards and governance. For example, the UK commissioned different reports to make boards and governance effective. These include Cadbury report on the financial aspects of corporate governance (1992), Greenbury report on directors' remuneration (1995), Hampel report on corporate governance (1998), Turnbull report on guidance for directors (1999), Higgs report on role and effectiveness of non-executive directors (2003), Tyson Report on recruitment and development of non-executive directors (2003), and Combined Code on corporate governance (2003). In other jurisdictions, Italy issued Preda Code (2002) for self regulation by listed firms, South Africa released King Report on corporate governance (2002), among others.

The Code of Corporate Governance for quoted firms in Nigeria is the result of the work of the Committee on Corporate Governance of Public Companies in Nigeria, which finalized its report in April 2003. The Committee, which was made up of 17 members was inaugurated at the instance of the Nigerian Securities and Exchange Commission (SEC) and the Corporate Affairs Commission on 15 June 2000, on realizing the need to align with the international best new practices. The Committee was composed of members who were selected across all sectors of the Nigerian economy: professional organizations, organized private sector, and regulatory agencies. The terms of reference of the Committee were; to identify weaknesses in the current corporate governance practices in Nigeria with respect to public companies; to examine practices in other jurisdictions with a view to adopting international practices in corporate governance in Nigeria; to make recommendations on necessary changes to current practices; and to examine any other issue relating to corporate governance in Nigeria.

The Committee reported that "the system of corporate governance in Nigeria is still in its rudimentary stage," noting that principles of corporate governance are not well appreciated in the country. The Committee's survey revealed that "only 40% of the publicly quoted companies had codes of corporate governance." It pointed out, however, that those without codes were willing to embrace one – emphasizing the "urgent need for the development of a code for Nigeria." The Peterside report addresses three broad areas of corporate governance: the board of directors, the shareholders and the audit committee.

For board of directors, the Code begins with the responsibilities and functions of the board. It identifies board's responsibility as directing the affairs of the company in a lawful and efficient manner to ensure that the company continues to improve its value creation. The Code lists the board's functions as including strategic planning; selection, performance appraisal and compensation of senior executives; succession planning; communication with shareholders; ensuring the integrity of financial controls and reports; ensuring that ethical standards are maintained and that the company complies with the laws of Nigeria.

The Code advocated for diversity of experience in the composition of the board so as to not to compromise "compatibility, integrity, availability, and independence." To achieve this goal, it recommends a board size of not more than 15 and not less than 5 with a mix of executive and non-executive directors. In this mix, shareholders holding more than 20% of the issued capital of a company ought to have a representative on the board except where they engage in competing businesses or there are conflicts of interest that necessitate their exclusion from the board. The interest of minority shareholders is also protected in composing the board. The Code requires that at least one director should represent them on the board.

According to the Code "non-executive directors is a critical part of the corporate governance structure" and imposes a number of responsibilities and restrictions designed to ensure that they are independent in the discharge of their functions. To prevent undue concentration of power in the hands of one person on the Board, the Code recommends that different persons should hold the position of chairman and chief executive and in the event that this is inevitable, a strong non-executive independent director should be vice-chairman. Nonexecutive directors ought to be independent of companies in which they serve except for their fees and allowances. They ideally should not be "involved in business relationships with the company that could fetter or encumber their independent judgment" and they should not also "participate in share option schemes with the company nor be pensionable by the company." While they should be appointed for a specified period, they should be given formal training at the company's cost before they begin their term.

The Code also makes far reaching recommendations on the remuneration of directors. Nonexecutive directors should set the remuneration of executive directors through committees. For directors' remuneration, the Code requires some disclosures such as "directors' emoluments and that of the chairman and highest paid director; relevant information about stock options and any pension contributions" and "future service contracts."

On board meeting, the Code recommends that the board should meet with sufficient notices, at least

four times a year with clearly defined formal schedules. The board bears the responsibility for reporting and control and is under obligation to “present a balanced, reasonable and transparent assessment of the company’s position.” It must ensure that an objective and professional relationship with external auditors such that they are not involved in business relationships with the company. The board must also “establish an audit committee of at least three non-executive directors with written terms of reference, which deal clearly with its authority and duties,” and “report on the effectiveness of the company’s system of internal control in the Annual report.”

On shareholders’ activism, the Code makes a number of recommendations to facilitate the participation of shareholders at general meetings. In this regard, a general meeting’s venue should be such that it is possible and affordable, cost and distance wise, to enable a majority of shareholders to attend and vote, so as not to disenfranchise them. The Code requires enough notice of such meetings to be given to shareholders. Thus, “notices of meetings should be sent at least 21 working days before the meeting with such details (including annual reports and audited financial statements) and other information as will enable them to vote properly on any issue.” The general meeting should become an opportunity for the board of a company to communicate with the shareholders and to encourage shareholder participation in the governance of the company.

On audit committee, the Code gives prominence to audit committee because of its place in ensuring the objective of raising corporate governance standards. It appears that the recommendations on audit committees are designed to supplement the provisions of section 359 of the CAMA. On its composition, the Code requires that there should not be more than one executive director on audit committees, while a majority of non-executive directors serving on the committees should be “independent of management and free from any business or other relationship, which could materially interfere with the exercise of their judgment as committee members.” To ensure this independence, the Code requires a non-executive director to serve as the committee’s chair with a fixed tenure, and members of the committee should be eligible for re-election. Additionally, a member of the committee must “be able to read and understand basic financial statements, and should be capable of making valuable contributions to the committee.”

The Peterside report recommends terms of reference for the Committee in line with the provisions of the CAMA, and empowers the committee to review the report of both the external and the internal auditors. To ensure that the committee has a grip on the financial health of the company, the Code provides that “the Audit Committee should meet at least three times a year,” and requires it to meet with external auditors at least

once a year in the absence of executive board members. The Code lists specimen terms of reference for the guidance of the Committee in its Schedule 1 as follows: (i) to consider the appointment of the external auditor, set the audit fee, and handle any questions of resignation or dismissal; (ii) to discuss with the external auditor (before the audit commences) the nature and scope of the audit, and ensure co-ordination where more than one audit firm is involved; (iii) to review the half-year and annual financial statements before submission to the board, focusing particularly on: any change in accounting policies and practices, major judgmental areas; significant adjustments resulting from audit; the going concern assumption; compliance with accounting standards; compliance with stock exchange and legal requirements. (iv) to discuss problems and reservations arising from the interim and final audits, and matters the auditors may wish to discuss (in the absence of management where necessary); to review the external auditor’s management letter and management response; to review the company’s statement on internal control system prior to endorsement by the board; (vii) where an internal audit function exists, to review the internal audit programme, ensure co-ordination between the internal and external auditors, and ensure that the internal audit function is adequately resourced and has appropriate standing with the company; (viii) to consider the major findings internal investigations and management response; (ix) to consider other topics as defined by the board.

The recommendations of the code, however failed to tackle crony capitalism which is a typical Nigerian type of agency problem commonly seen in the country’s corporate environment. Crony capitalism is an economic system which the allocation of resources and the adjudication of commercial disputes are generally made in favour of those who have a close relationship with political leaders or government officials, by blood (nepotism) or by bribes (corruption) (Vaugirard, 2004). Most board chairmen in Nigeria are retired military generals, ex-ministers and relations of ex-Nigerian leaders. This arrangement allows well-connected economic agents to earn returns above those that would prevail in an economy which the factors of production were priced by the market. Firms use these cronies to attract government patronage and shield from the axe of the law. Crony capitalism gives rise to agency problem between tax-paying citizens and policy makers and between corporate managers and stakeholders (Vaugirad, 2004). Cronyism takes the following forms in Nigeria; capital is inexpensively provided to acquaintances by means of cheap credits granted to their firms by government controlled banks; cronies also earn rents with the ability to charge high prices for the output; and the commonest form of such rewards are monopolies or protection from international competition by trade barriers.

The code also failed to address another Nigerian-type of agency problem – family ownership minority problem. This arises when a firm is young and small, controlling shareholders are also actively involved in the management of the company, the agency problem related to the dispersion of ownership and control is dissolved. However, another agency problem, that is between minority shareholders and controlling shareholders, may arise. A recent example of this problem was presented by the Parmalat scandal, where the controlling shareholder and CEO, Calisto Tanzi diverted about \$800m shareholder's wealth towards family controlled businesses. Family firms are typically characterized by large controlling owners who are actively involved in the management of the company and the board of directors typically reflects at least partially the ownership structure. Therefore, a board where the controlling family has an overwhelming influence on the board of directors and control the information provided to its members is less likely to provide good monitoring. This tends to put the minority shareholders who are not members of the family in disadvantaged position. A rethink of regulation that will resolve this kind of problem will promote governance practice in our corporate environment.

The proposal put forward in Nigeria by the Peterside committee is expected to be implemented and enforced by the market rather than by direct regulation. Specifically, it is assumed that mandatory disclosure of corporate governance practices by corporations will enable shareholders to compare them with benchmark of the guidelines and form a judgment about the value of such practices. In an efficient market, the shareholders' assessment would translate into share prices that adjust to reflect whether or not the practices are value-maximizing. In return, share price movements would exert pressure on directors to implement good corporate governance practices in order to maintain their corporation's access to the financial markets (Rousseau, 2003). The effectiveness of this market regulation framework depends on two fundamental prerequisites. First, shareholders must have access to an optimal level of information on the governance practices of corporations. Second, the information conveyed by corporations in this respect must be credible. To enable market to exert pressure on issuers, the Code requires listed firms to disclose their governance practices in their annual reports or in their proxy circular. However, there are reasons to doubt that companies meet the required level of disclosure in the current institutional settings. This problem is compounded by the general character of the requirements contained in the Code. For corporate governance disclosure to be meaningful to shareholders, it must be credible; that is, shareholders must be able to differentiate between accurate reporting and window dressing. Indeed, notwithstanding its limitations, the voluntary model of

disclosure aptly predicts that each issuer will have incentives to produce statements on its corporate governance practices that are "good news" for the market (Rousseau, 2003). Thus, it follows that management have the incentive to produce a clean compliance statement which states that the company does comply with the Code. Consequently, given the vagueness of the current disclosure requirements, issuers possess considerable latitude for reporting compliance creatively. In other words, managers have the incentives and the means to make disclosures that contain little useful information on their corporate governance practices. As seen above, there is serious reason to believe that these mechanisms suffer from shortcomings that reduce the pressure they create on companies. This indicates that there may be a role for public regulation to enhance compliance with these principles.

Ultimately, the sustainability of reforms in Nigeria will depend on the institutional infrastructure within the country to enforce the rules on a consistent and fair basis, and a gradual but firm culture change. First, the corporate governance infrastructure will have to be developed. This will include developing a strong cadre of directors, auditors, regulators, and other professionals who understand their roles and exercise their responsibilities within the system. It will require significant investment in training and recruiting of competent and ethical individuals, as well as enforcement of the rules in a timely and fair manner.

## Conclusion

Corporate governance in developing economies is important for healthy and competitive private sector. According to Iskander and Chamlou (2000), "[s]low economic growth remains a major cause of poverty in many low income countries, but the records also show that a focus on growth alone is not enough". They blame the poverty rate on uneven distribution of resources and poor corporate governance. Nigeria is faced with the challenges of corrupt and ineffective public and corporate governance. The history of company laws in Nigerian shows that the political class exacerbated the Nigerian corporate governance through obnoxious laws that were enacted to promote self instead of good governance. In most cases, company laws in Nigeria draws their inspiration from British company laws and fails to address the institutional peculiarity of the Nigerian corporate environment. For instance, the Code of Best Practices on Corporate Governance in Nigeria was said to be meant for guidance only and do not stop a company from adopting its own terms in accordance with the provisions of the CAMA. This shows that the Code lacks legal authority since there is no enforcement mechanism and its observance is entirely voluntary. Public Companies are called to observe its tenor. It



does not appear that there would be any adverse repercussions should they chose not to obey it.

Additional, Peterside Committee simply adopted one of the recently produced codes of corporate governance in United Kingdom. This is particularly so considering Nigerian's colonial legacy and resultant ties with Britain. This code drew substantial inspiration from the Cadbury Committee study in United Kingdom of 1992. For any code on corporate governance to be useful in Nigeria, the code must have the potential to act as a catalyst of good corporate governance, and must combining shareholder and stakeholder interests in anchored these on African values. Such code would enhance stability and legitimacy of the Nigerian economic system in what remains in a volatile sociopolitical climate. A good code must effectively address both shareholders and stakeholders concerns and anchor these concerns in a cultural framework that confers popular legitimacy on the system as a whole. If this is possible, getting a code that is just an assemblage of code of corporate governance in other countries that do not take into cognizance the peculiarities of our volatile economy will not promote corporate governance in Nigeria.

Effective governance entails the evolution of company laws as the society evolves. The Company and Allied Matters Act is anachronistic and cannot cope with the current governance challenges in the country. For example, the Act is deficient in regulating the peculiar agency problems in our jurisdiction (family ownership minority problem and crony capitalism agency problem). The external governance mechanism has given corporate managers the incentive to appropriate wealth for self. Some of the core characteristics of the Nigerian corporate environment are tax evasion, doctoring of financial statements, government and host communities peddle into the affairs of corporations, employment and award of contract based on nepotism and corruption, insider trading, among others. One way of curbing these corporate frauds is to rethink company laws in Nigeria, and devise a proactive compliance culture and enforcement mechanism.

## References

- Amao, O.O. and Amaeshi, K.M. (2008), "Galvanising Shareholder Activism: A Prerequisite for Effective Corporate Governance and Accountability in Nigeria, Retrieved on the 29<sup>th</sup> of December, 2009 from <http://ssrn.com/abstract=982577>, 1-16.
- Carter, D.A; D'Souza, F; Simkins, B.J. and Simpson, W.G. (2007), "The Diversity of Corporate Board Committees and Firm Financial Performance", [online] <http://ssrn.com/abstract=972763>, Retrieved June 23, 2009.
- Central Bank of Nigeria (2000), *The Changing Structure of the Nigerian Economy and Implications for Development*, Lagos: Realm Communications Ltd.
- Bosner, K. and Fisher, J. (2007), "Board Composition, Structure, and Financial Performance: An Update", *Journal of Applied Business Research*, 23(4), 27-36.
- Byron, J.H. (2007), "Examining the Relationship Between Diversity and Firm Performance", *Journal of Diversity Management*, 2(2), 51-60.
- Egwuonwu, R. (1997), *Interlocking Directorates and Corporate Governance*, Lagos: Strides Associates Ltd.
- Ejiofor, P.N.O. (1981), *Management in Nigeria: Theories and Issues*, Onitsha: Africana Educational Publishers.
- Ezeoha, A.E. (2007), "Impact of Major Firm Characteristics on the Financial Leverage of Quoted Companies in Nigeria" *A Ph.D Thesis Submitted to the Department of Banking and Finance, University of Nigeria, Enugu Campus.*
- Fama, E. F. (1980), "Agency Problems and the Theory of the Firm" *Journal of Political Economy*, 88(2), 288 – 307.
- France, M. and Carney, D. (2002), "Why Corporate Crooks Are Tough To Nail" *Business Week*, 37-40.
- Gillan, S.L. and Starks, L.T. (1998), "A Survey of Shareholder Activism: Motivation and Empirical Evidence, *Contemporary Finance Digest* 2(3), 12-23.
- Hagendorff, J. and Keasy, K. (2008), "The Value of Board Diversity in Banking: Evidence from the Market for Corporate Control", *Leeds University Business School Working Paper*, 1-31.
- Healy, J. (2003), *Corporate Governance & Shareholder Value: Challenges Facing New Zealand*, Palmerston North: Dunmore.
- Iskander, R.M. and Chamblou, N. (2000), *Corporate Governance: A Frame Work for Implementation*, Washington D.C.: World Bank Group.
- Jensen, M. C. (1993), "The Modern Industrial Revolution, Exit and the Failure of Internal Control Systems" *Journal of Finance*, 48(3), 831-880.
- Lipton, M. and Lorsch, J. W. (1992), "A Modest Proposal for Improved Corporate Governance" *Business Lawyer*, 1(1). 59-77.
- Moeller, (2004), *Sarbanes-Oxley and the New Internal Auditing Rules*. New Jersey: John Wiley and sons, Inc.
- Nigerian Law Reform Commission (1991), *Report on the Reform of the Nigerian Company Law*, Lagos: Nigerian Law Reform.
- Nmehielle, V.O. and Nwauche, S.N. (2004), "External and Internal Standards in Corporate Governance in Nigeria" *The George Washington University Law School Public Law and Legal Theory Working Paper no. 115*, 1-39.
- Okonkwo, C.O. (2009), "Review of the Companies and Allied Matters Act, Cap C20, LFN 2004" *Nigerian Law Reform Journal*, 79-92.
- Rousseau, S. (2003), "Canadian Corporate Governance Reform: In Search of a Regulatory Role for Corporate Law", *Corporate Governance in Global Markets*, Ed: J. Sarra, Toronto: UBC Press.
- Shleifer, A. and Vishny, R. W. (1997), "A Survey of Corporate Governance" *Journal of Finance*, 52(2), 737-783.
- Uche, C.U. (2002), "Discount Houses in Nigeria: Origins, Problems and Prospects" *Journal of International Financial Markets*, 4(2), 59-67.

24. Uche, C.U. (2004), "Ethics in Nigerian Banking", *Journal of Money Laundering and Control*, 8(1): 66-74.
25. Ujunwa, A. (2011), "Corporate Board Characteristics and the Financial Performance of Nigerian Firms", *A Ph.D Thesis Submitted to the Department of Banking and Finance, University of Nigeria, Enugu Campus*.
26. Vaugirard, V. (2004), "Clientelism, Debt Service and Governance", *Advances in Financial Economies*, 9: 137- 160.