

Does corporate governance matter? Issues and challenges of the code of best practices in Nigeria

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Keywords

Issues, Challenges, Corporate Governance, Code of Best Practices

Abstract

The review on the previous study indicates that the focus was on the specific code of best practice, not on the multiplicity of the code that is causing difficulty in the implementation and compliance in the flow of regulatory agencies in Nigeria. This paper intends to fill the conceptual gap that currently exists. This paper aims to investigate the issues and challenges of corporate governance and how the duplication and proliferation of codes have affected the practice of CG within individual specific agencies and policy maker that is causing havoc and a bottleneck in the practices, implementation and compliance process. The issues and the challenges of the code of best practices have been a subject of scholastic research in many years with more emphasis on the emerging and developed economies nations. In line with the called by recent studies, this paper aims to add to the Africa, researchers to the energetic stream of studies. This paper adopts an informative and explanatory methodology approach in reviewing the codes of best practices that were issued by different sectors in Nigeria for many years ago. The paper showed that CG has been an essential issue of worry in the eyes of policy marker and shareholders in Nigeria since the collapses of many firms as well as other financial institutions in the country. The paper has also identified that application of the code of best practices by individual agencies has made the codes very difficult and challenges for both the firms and the monitors. This paper found that recent literature works are on the lack of single harmonised codes having been a major obstacle to the corporate governance practice in Nigeria. This is the most comprehensive paper to have recommended the key area of CG mechanisms that need and demand immediate solutions in the Nigerian context.

1.1 Introduction

The global financial crisis has revealed that compliance with the letter of the law with respect to governance rules did not guarantee good governance in practice (Adetula, 2015). In some sudden collapse of high-profile corporate failures in the US, UK, Germany, France, Italy and other developed economy in the world (Lehman Brother; Citigroup; Northern Rock; Parmalat; Ahold; Enron and WorldCom; Bank of Credit and Commerce International; Peck International; Maxwell Communication), governance that looked good on paper did nothing more than provide cover for weak board oversight, incompetence and fraud (Adetula, 2015; Nuhu and Ahmad, 2016; Nordberg, 2011). In America, the Enron and WorldCom, are the largest and most respected companies became synonymous with corporate greed, arrogance, fraud and deception (Nordberg, 2011). The level of implied censure on UK companies which do not adhere to the Code has both varied over time, but the basic 'comply or explain' principle has endured over the intervening years and become the cornerstone of UK corporate governance practice (Cadbury report, 1992).

In Nigeria, corporate governance has become the debating topic in public discourse after witnessing many collapsed of various firms, especially in the banking sector in early 2000 to late 2015. Consequently, industry regulators and key players evolved corporate governance codes or mechanisms to prevent another round of corporate scandals (Adetula, 2015; Lawal, 2016; SEC, 2011). Adetula (2015) argued that corporate governance is a subject of greater importance for all public limited liability firms or companies because they nurture and raise capital from the stock market and

while both individual and institutional investors and creditors hold vast portfolios of many shares and investments in public companies.

The issues and challenges of corporate governance have become so pervasive in recent years, and the lessons learned from experiences in dealing with them are so important. In promoting Corporate Governance: Issues and Challenges have become relevant and timely. Moreover, it is paramount important to recognize and realized that the economic performance of any country, nation or organization both in developing and emerging economy is shaped largely by the quality, uniqueness, efficiency and effectiveness of the nation's CG. Therefore, a sound corporate governance has become a major concern not only to business enterprises but also to the Nigeria governments at large (Ameer, 2013; Marshall, 2015; Sanusi, 2012).

The objective of this paper is to investigate the issue and challenges faced in the recent corporate governance practice in Nigeria, particularly in the area of codes of CG and others. The paper is structured as follows: Introduction, CG concept, a code of best practice and its challenges in Nigeria, other challenges of poor corporate governance practices in Nigeria. Follow by discussion and recommendations for policy maker as well as a limitation and future research directions.

2.1 Corporate Governance Concept

Corporate governance is a concept that represents the entire system by which companies are directed and controlled by the board (Lawal 2012; Nuhu & Ahmad, 2016). Therefore, in the area of finance and management terminology, corporate governance is designed to solve what is called the problem of the agency or agency problem that has been existing between principal and agent, or between the owner (stockholders or shareholders) and managers. Thus, that is what corporate governance is designed to resolve by ensuring that the investors get their investment (money) back, given that somebody else (managers or agents) will make sure that all the decisions making process about how their investment or money will be managed in returned (Akinkoye & Olanmi, 2014; Lawal, 2012). Good Corporate Governance promotes and stimulates the efficient and effective use of the wealth or capital within the company or firms and their return on their capital or resources (Tai, 2015). Despite the importance of corporate governance concept that was designed to mitigate unethical practices through the promotion of corporate transparency and accountability to improve, protects and strengthening the relationship between the agents (Managers) and principals (Shareholders).The issue and challenges of corporate governance remain a topic of discussions, both in developing, developed and emerging economy especially in Africa like Nigeria. Therefore, an evolution of CG will be highlighted or discuss in the next section.

3.1 The Issues and Challenges of Code of best practice in Nigeria

With the breakdown of a multinational company in the United State of America and the United Kingdom in the mid-2000s, the idea of corporate governance increases more extensive thought around the world. The development and trend of reforms of corporate governance have continued to be a synonymous focus both in developed and developing countries, particularly the UK, USA, Russia, Germany, China, and Malaysia among others. African countries are also part of the trend of CG reforms curtail the series of scandals that continue to manifest. Nigeria is the Africa largest economy that has witnessed a series of corporate scandals in its various agencies that contributed to the collapse of many industries, particularly the financial services sector (Nuhu & Ahmad, 2016). Since Nigeria independence in 1960, the law that governs the operation and conduct of businesses is the Companies & Allied Matters Act, (CAMA) in 1990. This CAMA, 1990 has been long overdue since revised and updated, due to some current corporate governance issues and challenges that need urgently to be addressed by the Act (Ibuakah, 2012; Lawal, 2016). CAMA 1990, only covering specific acts of companies such as insider dealing, fiduciary duties of directors (Nuhu & Ahmad, 2016; Ibuakah, 2012).

In addressing the CAMA, 1990 shortcoming, similar to what has happened in the United Kingdom, United State of America and other developed countries, the Nigerian government, through its various agencies, had issued a series of law and guidelines aimed at imparting stability into its business activities that are conducted in the country various sectors of the economy (Lawal, 2016; Okike, 2007). Nigeria corporate regulatory frameworks and structures have been put in place after CAMA (1990) to the BOFIA (1991), the Insurance Act 1997, others are the Pension Reform Act (PRA) 2004 and also the Investment and Securities Act (ISA) 2007 follow-up. Each of these corporate regulatory frameworks is backed by Nigeria-owned agencies that charged with the responsibility of overseeing the Acts in the various targeted sectors (Lawal, 2016). These agencies are Nigeria Security and Exchange Commission (SEC), Central Bank of Nigeria (CBN), the National Insurance Commission (NAICOM) National Communication Commission (NCC) and Pension Commission (PENCOM). Hence, all these agencies share a communal objective by ensuring their corporate activities are being explored and carry out within the corporate regulatory framework that is guided by the boundaries of international standard (Nuhu & Ahmad, 2016; Lawal, 2016).

However, the activities of these agencies were primarily focusing on the administration of the acts governing establishments and their scope of oversight that deal with the operational issues instead of issues of corporate governance practices (Lawal, 2016). The corporate scandals as discussed earlier above between 1994 to late 2014 have affected many entities covered by these corporate legislations provoked and prompted the regulator body to introduce the first code of corporate governance in Nigeria, the first ever code was introduced, launch and issued by Securities & Exchange Commission (SEC) in 2003 which were titled "Code of CG for Public Companies" (SEC, 2003). Being the first step and attempt taken towards the entrenchment of CG, a certain amount of shortcoming and inadequacies were observed in the 2003 SEC Code. This 2003 SEC Code was revised and a new version was issued and launched in 2011 that as well maintain the same title (Demaki, 2011; Lawal, 2016; Marshall, 2015; SEC, 2011). Although compliance with the provisions and requirements of the SEC guideline is voluntary and corporate analysts believed it was the right decision and inventiveness that would promote corporate integrity, probity and accountability in the public firms (Lawal, 2016; Peterside, 2009). Despite the shortcoming and challenges of the SEC Codes and no attempt by the SEC to amend its code to curtail series of collapse and corporate scandal in the various firms, particularly in the financial service sector prompted another round of reforms in the banking industry, insurance, pension commission, telecommunication among others.

The CBN is the first sector to commence urgent reforms to strengthen banking performance through transparency and accountability with the consolidation program in 2005 that necessitated the need to strengthen the corporate governance practices (CBN, 2006). The aim of the policy was to grow the banking sector and position them to play important and pivotal roles in driving growth and development across the sectors of the Nigerian economy. During this reform, banks were consolidated through mergers and acquisitions, by raising the capital base from previous N2 billion to a new minimum capital base of N25 billion, these reduced the number of banks from 89 to 25 banks in 2005 and later to 24 banks (CBN, 2005). The main objective of the reforms is to revise and update the relevant laws for efficient and effective corporate governance practices in the banks by ensuring greater transparency and accountability in the implementation of laws and regulations by enforcement of corporate governance principles in the sectors. In Nigeria, a research conducted by the Securities and Exchange Commission (SEC) reported in the report (published) in April 2003, confirmed that corporate governance was at an elementary (rudimentary) stage, as just around 40% of listed firms, including banks, had practices codes of corporate governance set up. Particularly for the financial service industry, poor corporate governance was recognised as one of the main factors in for all intents that course's pain in the nation (Marshall, 2015).

The introduction of individual new code in their specific industry has become issued and challenged, especially at the time of compliance. The challenges are not only on sufficient grounds

but rather by the multiplier or proliferation of codes that has created bottlenecks for implementation and monitoring for firms adhering and the enforcement agencies (Lawal, 2016; Marshall, 2015). Presently, the key agencies (SEC; NCC; PENCOM; CBN; NAICOM) are confused in the jurisdiction or rule battle that has left many firms disorganised and chaotic on which of the codes to comply or takes more precedent over the other to followed (Lawal, 2016). This generated confusion and conflict of jurisdiction or rule that has further dampened down the effectiveness of the codes which reduced the importance stakeholders attach to the governing principle (Lawal, 2016). Corporate governance (CG) codes in Nigeria today, have become a subject that is abuse which many firms regard compliance as a mere formality and a requirement to a fulfillment of corporate righteousness that is not necessarily embracing the ethics behind the code principles.

Table 1: Summary of CG Code Recommendations in Nigeria

Some CG Mechanism	SEC Code	CBN Code	NAICOM Code	PENCOM Code	NCC Code
Auditors Body (local or Int'l)	Both	Int'l only	Both	Both	Both
Separation of CEO from Chairman (CEO Duality)	Yes (Separation)	Yes (Separation)	Yes (Separation)	Yes (Separation)	Yes (Separation)
Board Size	Minimum =5	Maximum= 20	Min=7; Max=15	No Limit	No Limit
Board Terms/Tenures	No Limit	Min=4years ; Max=8years	No Limit	No Limit	No Limit
Board of Director Composition	Mixed	More Non-Exec	Exec. Dir. < = 40%	Equal Ratio	Mixed
No. of Independent Directors	≥1	≥ 2	≥ 1	≥ 1	≥ 1
Gender Diversity	Nil	Nil	Nil	Nil	Mixed
N0 of Committees	Min=3	Min=5	Min=5	Min=4	Min=4
Code Compliance	Voluntary	Mandatory	Voluntary	Mandatory	Mandatory

Sources: Lawal, 2016, Marshall, 2015, SEC, 2011, NCC, 2014, CBN, 2014, NAICOM, 2009, PENCOM, 2011

However, the application, implementations, and monitoring of this individuals-specific code have posed more challenges to virtually all industries that are subject to multiple regulations, especially companies or firms in the financial services, Pension and telecommunication sectors that are listed on the NSE (Alayande, 2010; Lawal, 2016). For example, the compliance with SEC and NAICOM codes appears to be voluntary, while the CBN, NCC and PENCOM codes are mandatory/compulsory for all commercial banks, telecommunication operators and pension administrators in the country. Lack of agreeing to one consensus on the level of code compliance, implementation and sanctions or punishment for non-compliance to the rule or standard, have remains a major and greater issued and challenge to the codes enforcement in the country (Demaki, 2011; Lawal, 2016). These discrepancies in the level of code compliance with the various regulators have given firms various opportunities for the subject to abuse and misused.

Hence, despite Nigeria faces a range of issues and challenges, Nigeria government have set up an Economic and Financial Crime Commission (EFCC) to combat the scandal and financial malpractice by various sectors. On top of that, part of the immediate response from government saw to the introduction of a code of corporate governance for listed companies and other four specialised codes in the areas of Telecommunication, banking, insurance and pension administration (Lawal, 2016; Marshall, 2015; Nuhu & Ahmad, 2016). Therefore, the ongoing corporate governance reforms in Nigeria to harmonized five existing codes will be structured in a manner that is consistent with

the dynamics of the country's institutional environment. The demonstration by Nigeria government appetite for change and effort can help to slowly change misconceptions and preconceptions for public, policy-maker, listed firms and stakeholders.

Table 2: Summary of Issues & Challenges of Poor CG in Nigeria

Companies/Operators	Regulators	Stakeholders - shareholders, media, depositors, etc.
Concentration of board power	Capacity of Staff - competence and number	Ignorance and Lack of awareness of rights
'Tone at the Top' - commitment to establishing best practices	Compliance vs. Best practice - capacity and costs	Social culture - complacency, "herd mentality"
Competence: Inexperienced/unskilled members on the board	Monitoring - methodology & tools	Level of knowledge of corporate governance
Inadequacy of relevant information	The scope of Powers - laws, regulations or judicial precedents?	Availability/Scope of information provided by companies
Inadequate Succession: "Key Man" Risk	Inadequacy of Existing regulatory/legislative framework	Insufficient shareholder activism - institutional and individual
Resistance to change: culture & practices	Conflicting provisions in codes	Medium for redress - courts, arbitration
Conflicts of Interest: S. 280 (5) CAMA	Adequacy of information provided by companies	Ignorance of company's practices
Reporting: levels of delegation	Enforcement mechanisms	General- the overall challenge of aligning all interests in the CG framework
Poor Risk Management policies - NPL's, RPT's	Time constraints	Appointment of board members
Role of Company secretary	Irregularity-corruptions	Appointment of Auditors
Inadequate Minority Shareholder protection	Conflict of interest among the regulators	Family interference
Lack of Enthusiasm & Mistrust - 'whistle-blowing'	Balancing stakeholder interest with regulators	Loans Sharing among stakeholders without paying back
Independence	Government policies	Environmental/social

Sources: CBN (2016), NSE (2015), Ibuaka, (2012)

4.0 Discussion and Recommendations

4.1 Discussion

This paper discussed the issues and challenges of corporate governance that are facing the Nigerian firms and agencies given the ongoing global financial meltdown and recent economic recession that cripple virtually the activities of many organisation in the nation. Corporate governance has been a major issue and subject of discussions, topics and debate within Nigeria private and public sectors since the inception of the collapses of many industries particularly financial services since the country gain his independence. The renewed emphasis on CG improvement in Nigeria in line with the international standard principles of the code of best practices in both developed and emerging economy has shown no any improvement since the global financial crisis. Hence, the economy turmoil which was over boiling and scandals across the sectors severely affected many companies in Nigeria. The most respected firms in Nigeria found guilty of

committing scandals, fraud and financial malpractices on the area of overstatement and manipulation of financial statements, insider loans given to family member without paying back, corruptions in all levels of sectors among others are found to be major concerned.

Despite the drastic and immediate measure taking by Nigeria federal government in response to malpractices that have been a way of life for many firms has prompted the country to take major reform. The first code of best practices for all quoted public companies was introduced and launch by SEC followed by the other specific codes launch by other agencies (CBN, NAICOM, NCC) to curtail malpractices that have become a bottleneck and confusion for implementation and compliance. There is no doubt saying the various existing corporate governance codes in Nigeria one way or the other did not contribute in ensuring sound corporate governance practices through either voluntary or mandatory provision by agencies. However, the existence of various codes by agencies is to improve corporate governance practices in Nigeria, but due to lack of enforcement, conflict of interest and compliance virtually remain major challenges and the negative aspect of corruption within the boardroom of corporate governance effectiveness is another difficulty. Therefore, absenteeism of transparency, monitoring, accountability, and disclosure continue to cast a bleak shadow on the main primary objectives and responsibility of the board of director who often collaborates with the manager/management to exploit on the financial illiteracy of the stakeholders/shareholders.

In a similar study Roberts (2014), contended that Three-quarters of women that are in the boardroom in the oil and gas sector in the UK say they feel welcome to the board. Robert argued in his survey that 45% of women on the board still don't believe they receive the same recognition as men in the boardroom. In addition, Robert (2014), in a similar study concluded in his findings taken from NES Global Talent Survey, which is based on responses from almost 300 female board members globally supported and encouraged gender diversity. There is "more work to be done" on gender balance in the various agencies (Roberts & Ridley, 2014). Roberts et al (2015) argued that there is still need to make progress in areas of equal pay and eliminating unconscious bias between the genders. Ridley concluded that women are still not getting the opportunities because the corporate manager and other stakeholders just aren't considering them equal opportunities. Firms with high female representation on the boards tend to perform better and have a strong CG spirit than those with few or no female on their board and also considering the needs of a wider range different stakeholders than that of male directors (Konrad and Kramer, 2006).

Similarly, these findings also consistent with the above trend. Credit (2012) contended that approximately 29% firms possess female board of director members in 2011 when compared to 12% in 2005 in emerging Asia countries. Credit argued that the figure is quite higher in developing nations, especially in the Europe and North America, where 85% of companies have more female in the boardrooms in 2011 compared to that of 48% and 73% respectively in 2005. The study concluded that there have many numbers of studies being carried and conducted in the female's presence on the boardroom, but claimed that a diversified board configuration is a key to performing better compared to the board that is not non-diversified.

4.2 Recommendations

In line with the main and major issues highlighted in the above, the study concludes that the future focus of CG research in Nigeria would be how relevance and progress regulatory reforms have made and the way forward. This paper come up with the following recommendations on the kind of reforms urgently needed in the area of corporate governance practices in Nigeria.

First, despite the efforts of the individual specific regulatory authorities, there is a fundamental need to harmonise the provisions of industry specific codes issued by the SEC, CBN, NCC, NAICOM and PENCOR for an urgent solution for healthier regulation. To align with the provisions of international best practices, it's important to amend CAMA that is long overdue, since being the principal law that regulates the activities of firms in Nigeria, especially sections 279-283

that deal with board of directors duties and responsibility, and also to ensure equal protection of all shareholders and stakeholders, amend sections 331-336. The above section dealing with disclosure requirements, accountability, transparency and committees to be established by the boards, penalties for inadequate and the process on the accounting records of the firm that will guarantee both local and international investment protection on their capital.

Secondly, this paper also recommended that the individual regulatory agencies should continue to effectively play its supervisory and regulatory role to enforce and ensure sound corporate governance in institutions under its purview, by ensuring that only fit and proper persons are appointed to boards and top management positions. Also, unprofessional conduct and unethical behaviour by both the directors and their managers should remain under sanction, penalties imposed should be punished. The proposed new harmonised code of CG should enforce its guidelines on the requirements for board and top management appointments aimed at enhancing managerial competence because of the commitment of the supervisory authority, the primary responsibility, and implementation for guaranteeing effective corporate governance repose with the directors and top management of every institution. Again, the annual directors meeting should be encouraged since it provides an appropriate forum for preaching the virtues of good and effective corporate governance compliance and its relevance to the survival of every institution in today's global economic environment.

Finally, this paper also recommended that Nigeria needs to learn from recent encounters with financial crises, the recent global threat of economic recession that affects nation, lessons from the global events, especially from the Asian crisis and Latin American financial crisis of the 1990s, the more recent wave of corporate financial scandals both in developing and emerging economy and a slew of many others. The world has become a global village, thus Nigeria firms have no choice other than to imitate with international best practices. This can be achieved only by balancing stakeholder interests and embracing good corporate governance practices. Hence, the current debate issued by recent researchers on equal gender diversity, this paper recommends an increase of women on the board configuration since the survey show a very low representation compared to other emerging economy like Asian nations that are doing well and effectively in their board gender diversity configuration, in Nigeria regarding women's representation in boardrooms that are marginalised.

4.3 Limitation and Future Researchers

This paper was limited to only Nigeria listed firms and specific individual code of CG in Nigeria that led to bottlenecks in the implementation process. Other challenges this paper face, are very few studies was found that investigate the issue of compliance and implementation in Nigeria. It is important to emphasize that this research paper serves as the bedrock for further research to measure success and progressive elaboration of the development and implementation processes to reposition corporate governance in Nigeria in line with international best practice. This study, therefore, encourages the future studies to investigate the effect of gender diversity in boardrooms on firm performance and, specifically, to know whether gender diversity in boardrooms can provide an advantage and a loophole for firm performance. Therefore, based on mix results and findings by previous researchers that dominated one single methodology (secondary) constantly adopted by previous studies in investigating the gender diversity within the boardroom and firm performance, especially in emerging markets like Nigeria, this study has inspired future studies to further investigate the association between gender diversity and firm performance using a different methodology approach like primary survey (Questionnaires). Given the situation and problem associated with labour discrimination and gender inequality widespread in emerging economies in Africa, especially Nigeria, women found in boards is so few and insufficient and thus regarded as token or irrelevance by many firms.

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Existence of code of corporate governance (CODCGOV): codes of corporate governance are a best practice recommended sets, regarding the attitude and organization of the management team of a firm (Aquila et al, 2008). In analyzing the relationship between corporate governance and financial performance in Nigeria, the study made use of cross-sectional data derived from a total of five banks over the duration of 8 years from 2007-2014. Thus, the method of analysis adopted is the panel regression involving ordinary least square estimation techniques. Corporate Governance Issues & Challenges. By: Jayne Thompson. Updated July 31, 2018. The key principles of good corporate governance differ depending on the country, industry, regulator and stock exchange. However, most codes of governance include several major characteristics: Independent leadership: Companies should have an independent leadership to oversee and guide management, such as an independent chairperson or a lead independent director. She practiced in various "Big Law" firms before launching a career as a business writer. Her articles have appeared on numerous business sites including Typefinder, Women in Business, Startwire and Indeed.com. Start Your Business. are the Code of Best Practices on Corporate Governance in Nigeria 2003,2 which was issued by the Securities and Exchange Commission; the Code of Corporate Governance for Banks in Nigeria Post-Consolidation 2006,3 which was issued by the Central Bank of Nigeria; the Code of Corporate Governance for Licensed Pensions Operators 2008,4 which was issued by the Pension Commission; and the Code of Corporate Governance for Insurance Industry in Nigeria 2009,5 which was issued by the National Insurance Commission. The 2003 SEC's well-implemented corporate governance regime has tremendous benefits to all stakeholders. These benefits are the endearing attributes of corporate governance. In the first place, it is. The Code of Corporate Governance for banks in Nigerian post consolidation (2006) stated that the industry consolidation poses additional corporate governance challenges arising from integration processes, Information Technology and culture. The code further indicate that two-thirds of mergers world-wide failed due to inability to integrate personnel and systems and also as a result of the irreconcilable differences in corporate culture and management, resulting in Board of Management squabbles. Most importantly, the emergence of Mega banks in the post consolidation era is bound to task the ski...