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**KWASUBPLJ Vol. 1, Issue 1, 2024**

## **EDITORIAL COMMENT**

The debut of KWASU Business and Private Law Journal (KWASUBPLJ) ISSN: 0795-7408 is a dream come true. It has always been in our plan as a department to publish a world-class intellectual journal as part of our contribution to knowledge. As we can see members of our advisory board cut across some major Nigerian Universities, Africa, and the globe.

This edition contains well-researched articles in diverse areas of law such as Revenue Law, Land Law, Law of Arbitration, Property Law, and International Law amongst others.

Contributions to this first edition of the journal came from different academia from different institutions within and outside Nigeria. We are proud to say that the Journal has an international spread.

The publication continues once annually as contributions are attended to on a roll-on basis. As we go to press with this first volume, preparations are in top gear to bring out another Call for Paper for the second volume which is scheduled to come out in the year 2025.

We use this opportunity to thank the contributors to this maiden edition on their pioneering effort. We look forward to more well-researched papers and encourage more contributions from seasoned academics, and members of the bar in subsequent editions. Submission should be e-mailed to [bplj@kwasu.edu.ng](mailto:bplj@kwasu.edu.ng).

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# THEORETICAL BACKGROUND OF CORPORATE GOVERNANCE IN NIGERIA

Adelowo Stephen Asonibare\*, G.L Umoru\*\* & J.N Nwazi\*\*

## Abstract

*This article delves into the theoretical foundations of corporate governance, focusing on the Nigerian context. It begins by defining corporate governance and discussing key theories, including Agency Theory and Stakeholder Theory, while acknowledging the importance of other theories. The evolution of corporate governance in Nigeria is highlighted through significant regulatory frameworks, notably the Companies and Allied Matters Act (CAMA) and the role of the Nigerian Securities and Exchange Commission (SEC). The article addresses critical challenges such as corruption, transparency, and the impact of the unitary board system, while evaluating recent reforms and improvements. By comparing Nigerian practices with international standards, it identifies areas of alignment and divergence. The conclusion synthesizes key findings, offering targeted recommendations for enhancing corporate governance in Nigeria and suggesting future research directions. This analysis serves as a valuable resource for policymakers, business leaders, and scholars interested in governance practices within emerging markets.*

**Keywords-** Corporate Governance, Agency Theory, Stakeholder Theory, CAMA 2020

## 1.0 Introduction

Corporations are the key players in the global economic environment; being the main source of a country's economic growth, and the most attractive business deal to invest in. To maintain and increase the profitability of corporations and enlarge the investment flows, it is crucial to ensure a total understanding of the owners', investors', and managers' interests and find a way to balance them. All this is about corporate governance and the ways in which investors assure themselves of getting a return on the finance.<sup>1</sup>

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<sup>1</sup> Alla Mostepaniuk, 'Corporate Governance' (2017), <<https://www.intechopen.com/>> <<https://www.researchgate.net/publication/319983192>> 4, accessed April 1 2024.

## 2.0 Overview of Governance Structure

It has been argued that corporations are a product and a part of the society. Thus, understanding corporations involves insights into the way in which the corporation is viewed as a social phenomenon. This may be discovered by investigating historical and theoretical foundations and forming a conception of the functioning of the corporation as a dynamic entity. The models of companies that have been adopted in various jurisdictions are shaped by the theories concerning the place of companies within society.<sup>2</sup>

Theory means a set of statements or principles devised to explain a group of facts or phenomena, especially one that has been repeatedly tested or is widely accepted and can be used to make predictions about natural phenomena.<sup>3</sup>

Looking at the notoriety which corporate governance has gained, several different theoretical frameworks have evolved to explain and analyse the governance process. A closer look would show that each of the frameworks approaches corporate governance in a slightly different way, using different terminology, and viewed it from different perspectives. To appreciate how theorists have tried to make sense of corporate governance issues, reference can be made to widely discussed theories or approaches commonly used to understand how corporations are governed and how the system of governance can be improved.<sup>4</sup>

Notoriety in this context refers to the increasing public attention and scrutiny that corporate governance has attracted, particularly considering numerous corporate scandals and failures. Over the past few decades, high-profile cases of financial mismanagement, corruption, and poor oversight have highlighted the vulnerabilities in corporate governance systems. These events have sparked debates about the effectiveness of existing governance structures and the need for reform, thereby making corporate governance a topic of both public concern and academic interest. As a result, corporate governance has become notorious not only for its visibility but also for the controversies surrounding its implementation and effectiveness across different industries and regions.

Different theories concerning the origin and purpose of corporations influence the model of company adopted and thus shape the relationship that companies have with all the participants

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<sup>2</sup> Janet Dine, 'Theoretical Underpinning of Companies and their Governance', Cambridge University Press, 052166070X-The governance of Corporate Groups, <[www.cambridge.org](http://www.cambridge.org)> 1accessed March 3 2024.

<sup>3</sup> Richard Adepeju, & Felix.Ojemhede Akahome, *Explaining and Understanding Corporate Governance in Banks and Other Financial Institution* ( 1<sup>st</sup> edn, Priceton & Associates Pub. Co. Ltd, 2021) 9.

<sup>4</sup> Robert Wearing, *Cases in Corporate Governance*, (1<sup>st</sup> edn. Sage Publications, 2005).5, cited in Olusola A. Akinpelu, *Corporate Governance framework in Nigeria: An International Review* (Bloomington: iUniverse, Inc., 2011), 58-59.

in their economic activity and with their regulators. Formulating a regulatory structure without such an enquiry invites incoherence. This explains the view of Bottomley that:

The broad and basic purpose of examining corporate theory is to develop a framework within which we can assess the values and assumptions that either unite or divide the plethora of cases, reform proposals, legislative amendments, and practices that constitute modern corporation law. This law has not sprung up overnight. We need some way of disentangling the different philosophical and political perspectives from which it has been constructed.<sup>5</sup>

### 3.0 Conceptual Clarification

Corporate governance is a concept that has no generally accepted definition, as most scholars and stakeholders in the field tend to examine the concept from their own perspectives.<sup>6</sup> The lack of consensus on the definition of the concept has created a sense of intellectual vertigo in the ever increasing debate over corporate governance.<sup>7</sup> Notwithstanding the inability of scholars to reach a consensus on what the concept connotes, it is not escapist not to attempt to provide few working definitions in this piece of work.

Coyle defined corporate governance as the way in which companies are governed and to what purpose.<sup>8</sup> It also refers to the way the power of a corporation is exercised in the stewardship of the corporation's total portfolio of assets and resources with the objective of maintaining and increasing shareholder value and satisfaction of other stakeholders in the context of its corporate mission. It then implies that companies not only maximise shareholders wealth, but also balance the interests of shareholders with those of other stakeholders, employees, customers, suppliers, and investors to achieve long-term sustainable value. From a public policy perspective, corporate governance is about managing an enterprise while ensuring accountability in the exercise of power and patronage by firms.<sup>9</sup>

From the plethora of definitions above, corporate governance can be defined as ways by which a company is governed through effective mechanisms (sets of rules and practices). It defines the roles and relationships between the company's management, the board, shareholders, and

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<sup>5</sup> Dine (n 2), 1.

<sup>6</sup> Dominic Asada .(2006) 'Effective Corporate Governance and Management in Nigeria: An Analysis'. M. Phil. Thesis. Faculty of Law, University of Jos. <[http://www.dspace.unijos.edu.ng/bitstream/10485/901/1/corporate\\_governance.mgti\\_nigeria.pdf](http://www.dspace.unijos.edu.ng/bitstream/10485/901/1/corporate_governance.mgti_nigeria.pdf)> 187, accessed Jan 15 2024.

<sup>7</sup> See Turnbull, 'Corporate Governance Theories, Challenges and Paradigms', cited in Vera Ekundayo, 'An Introduction on Corporate Governance: Its Meaning From Diverse Perspectives' [2012] 1 No. 2.B.U.S.L.J.) *Babcock University Socio-Legal Journal*, 97.

<sup>8</sup> Coyle Brian, *Corporate Governance Principles* (5th Ed, Study Text: ICSA International & Training Ltd, 2007) 3.

<sup>9</sup> Charles C Okeahalam, and Oludele A Akinboade, 'A Review of Corporate Governance In Africa: Literature, Issues and Challenges' [2003], *The Global Corporate Governance Forum*.<<http://www.aercafrica.org/documents/rp149.pdf>>1-34, 3.accessed 22 January 2024.

other stakeholders, and the aims for which a corporation is governed. It is premised on the above that Umoru identified the main actors as the Chief Executive Officer (CEO), the board of directors, and the shareholders. Additionally, other key participants that influence this framework include staff, suppliers, customers, creditors, government entities, and communities.<sup>10</sup>

#### **4.0 Theoretical Perspectives on Governance in Nigeria**

Corporate governance theories offer various frameworks for addressing governance challenges within organizations and across the globe. These include agency theory, which focuses on aligning the interests of shareholders and executives; Stewardship theory, which views managers as inherently motivated to act in shareholders' best interests; Stakeholder theory, emphasizing the consideration of all stakeholders; Resource dependency theory, examining how external resource dependencies influence governance; Transaction cost Theory, assessing the costs associated with transactions; Political theory, exploring the impact of political processes on governance; and several Ethics-Related theories such as Business ethics, Virtue ethics, Feminist ethics, Discourse theory, and Postmodernism ethics.<sup>11</sup>

In Nigeria, governance framework primarily adopts agency theory, reflecting a focus on aligning managerial actions with shareholder interests through mechanisms like supremacy and control, board structure, disclosure and transparency, appointment and functions, shareholders' rights, Auditor's independence. However, elements of stakeholder theory are also present, addressing the rights and engagement of various stakeholders and promoting Corporate Social Responsibility (CSR). This integration highlights a broader approach to governance that balances shareholder interests with those of other stakeholders.

To better understand this comprehensive approach, it is essential to delve into the core principles of agency theory and stakeholder theory and explore how the specific mechanisms mentioned are employed in the Nigerian context to address governance challenges and foster a more inclusive approach to corporate management. However, before examining these theories, it is imperative to trace the historical evolution of corporate governance in Nigeria, as this

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<sup>10</sup> Godwin Luke Umoru, *Corporate Citizenship in Law: Nigerian and Comparative Perspective* (Malthouse Law Books, Lagos, Nigeria, 2017), 209.

<sup>11</sup> Haslinda Abdullah & Benedict Valentine, 'Fundamental and Ethics Theories of Corporate Governance' (2009), Issue 4, 88-96, *Middle Eastern Finance and Economic* <<http://www.eurojournals.com/MEFE.thm>>, 88, accessed 20 March 2024.

provides essential context for understanding why certain practices emerged and how they have been adopted. In Nigeria, historical factors such as colonial legacies, economic changes, and legal developments have significantly influenced corporate governance practices. Tracing this background helps illuminate the specific challenges and dynamics of the nation's governance practices, as well as the relevance of various theories in addressing those issues.

#### 4.1. Historical Development of Governance Practices in Nigeria

Adepeju and Akahome note that governance is closely linked to company law in Nigeria,<sup>12</sup> with key issues of regulation and control found within company legislation. This legal framework originates from Nigeria's colonial history, as the country inherited many British regulations upon independence.<sup>13</sup> Ofo describes the historical development of governance concepts in Nigeria as somewhat distorted and confusing, prompting a discussion of its emergence in identifiable phases.<sup>14</sup>

In 1912, the first local companies' legislation was promulgated as the Companies Ordinance which was based on the U.K. Companies Act, 1908. It was applied only to the Colony of Lagos but amended in 1917 and extended to the whole country. However, the two Ordinances were repealed and replaced with the Companies Ordinance of 1922 which was subsequently amended in 1929, 1941 and 1954. The Companies (Amendment) Ordinance, 1941 was re-designated as the Companies Act in 1963, later repealed by the Companies Act 1968.<sup>15</sup>

The companies Act of 1968 was a local adaptation of the English Companies of 1948. This is why Orojo concluded that "legislative activism in Nigeria while always internally stimulated, is nearly always characterized by too early a resort to external examples and procedures".<sup>16</sup> Nonetheless the above, the 1968 Companies Act was a remarkable improvement on the previous laws. For example, it made mandatory provisions for accounts and advocated for accountability of directors and more effective participation of shareholders in the affairs of the company.<sup>17</sup> However, according to Umoru, the 1968 Act was not without its legions of

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<sup>12</sup> Adepeju & Akahome (n 3) 37.

<sup>13</sup> Elewechi.N.M Okike, 'Corporate Governance in Nigeria: The Status Quo' [2007] *Corporate Governance Journal*: Vol 15, Issue 2, 173-193 < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=972517](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=972517)>- accessed on March 30, 2024.

<sup>14</sup> Nat Ofo, Historical Development of Corporate Governance in Nigeria <http://www.thecorporateprof.com> 1-12, accessed July 3 2024; Umoru (n 10) 211.

<sup>15</sup> J.Olakunle Orojo, *Company Law and Practice in Nigeria* (5<sup>th</sup> edn, United Kingdom: Lexis and Nexis Butterworths, 2008), 15; S.C. Udemezue,, A Compendium of the Historical, Legal and Institutional Framework for the Practice of Company Law and Corporate Governance in Nigeria, [2021], NAU.JCPL Vol. 8 (2), *Nnamdi Aizkwe University, Journal of Commercial and Property Law*, p. NLPJ Vol. 13, 66-84, 67. Also available at <https://ssrn/abstract=3849221>.

<sup>16</sup> Deji Sasegbon, *Nigerian Company Law & Practice* (1<sup>st</sup> edn, Lagos, Deji Sasegbon & Co), cxv.

<sup>17</sup> Orojo (n 15)15.

limitations,<sup>18</sup> as it was not comprehensive enough to accommodate emerging development in business activities. Against the background of the developments at that time, the overhauling of the 1968 Act became expedient.<sup>19</sup>

The Companies Act, 1968 notwithstanding its lapses was in force for 22 years before it was repealed and replaced by the Companies and Allied Matters Decree (CAMD) 1990. The 1990 Decree was later redesigned as Companies and Allied Matters Act 1990 (CAMA). Expectedly, while the 1968 Companies Act was largely predicated on the English Companies Act 1948; the 1990 Act also drew substantial inspiration from the English Companies Act 1985 and English Companies (Amendment) Act 1987.<sup>20</sup>

The 1990 Act serves as the primary statutory framework for company law in Nigeria, described by Orojo as the result of careful consideration and extensive consultation, reflecting the consensus of its users.<sup>21</sup> Its comprehensiveness includes significant innovations, laying the groundwork for corporate governance practices<sup>22</sup> even though corporate governance had not yet emerged as a distinct subject at the time of its enactment. Consequently, the principles of corporate governance in Nigeria can be largely traced back to CAMA 1990.<sup>23</sup> However, after the commencement of CAMA 1990, some corporate challenges erupted around the world which brought the issue of corporate governance to the front burner. Specifically, the collapse of Enron, WorldCom, and other notable incorporations in the early 2000s brought about global consideration of corporate governance.<sup>24</sup> Consequently, several countries began the review of their governance practices. Just like other countries in the world, Nigeria also witnessed a very high incidences of corporate failure and distress ranging from Unilever Plc, Cadbury Nigeria Plc, up to the banking sector.

Consequent upon the above, the 1990 CAMA was amended first in 1990 by the Companies & Allied Matters (Amendment) Decree No 32, 1990. Then again in 1991 by the Companies &

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<sup>18</sup> Umore (n 10), 211.

<sup>19</sup> Chris Wigwe, *Introduction to Company Law and Practice* (2<sup>nd</sup> edn, Princeton & Associates Publishing, Ikeja: Lagos, 2022), 4.

<sup>20</sup> Jacob Abiodun Dada, *Principles of Nigerian Company Law* (4<sup>th</sup> edn, Wusen Publishers, Calabar, 2023) 3.

<sup>21</sup> Orojo (n 15), 18.

<sup>22</sup> Dada (n 20) 4.

<sup>23</sup> Adepeju & Akahome (n 3) 37. Some of the innovations in CAMA 1990 include, establishment of a Corporate Affairs Commission (CAC), requirement for a minimum authorized share capital and minimum subscription, prohibition of non-voting shares and of weighted shares, abolition of the common law rules of constructive notice of filed documents, the reform and enactment of the indoor management rule, abolition of common law rules on pre-incorporation contracts and provision for ratification and adoption of such contract, introduction of specialized subjects like unit trust, merger and acquisitions, business name, incorporated trustees, and stronger and closer control over directors and companies accounts (See generally Part ix of CAMA 1990.).

<sup>24</sup> Umore (n 10) 211.

Allied Matters (Amendment) Decree No 46, 1991; and later in 1992 by the Companies & Allied Matters (Amendment) Decree, No 46 1992. Later, the Investment & Securities Act (ISA) 1999<sup>25</sup> repealed sections 541 to 623 of CAMA and re-enacted the same sections as sections 1 to 148 of the ISA, 1999.<sup>26</sup> For example, provisions of the original Act (CAMA) dealing with Unit Trusts, Insider Trading, mergers & Take Overs, public offer and sale of securities, and related matters have been omitted from the Act and now contained in the Investment & Securities Act.<sup>27</sup> The Investment & Securities Act (ISA) 1999 was itself repealed and replaced by the Investment & Securities Act (ISA), 2007, which was later amended by the Investment & Securities (Amendment) Act, 2011<sup>28</sup>.

Recently, CAMA 1990 was repealed and replaced by CAMA 2020,<sup>29</sup> which aims at providing a robust framework for reforming identified onerous legal, regulatory, and administrative bottlenecks which, for three decades, have made doing business in Nigeria substantially difficult (particularly for Micro, Small and Medium Enterprises- MSMEs), and impeded investments into Nigeria.<sup>30</sup>

The repealed Act imposed significant challenges on doing business in Nigeria, particularly for Micro, Small, and Medium Enterprises (MSMEs). One major hurdle was the mandatory requirement for multiple shareholders in private companies, which forced entrepreneurs to seek partners merely to meet this criterion, often leading them to choose less advantageous business structures. Additionally, the high registration fees and complex compliance procedures created financial burdens that discouraged entrepreneurship and delayed business operations. The lack of provisions for electronic transactions further hampered businesses, as they were unable to leverage modern technology for efficiency and security.

In contrast, the recently enacted CAMA 2020 addresses these issues by introducing more flexible regulations that reduce barriers to entry. The new law allows for single-member companies, significantly easing the incorporation process for individual entrepreneurs. It also lowers registration costs and simplifies compliance requirements, making it easier for MSMEs to operate. Furthermore, CAMA 2020 incorporates modern technological solutions such as

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<sup>25</sup> No 46, 1999; Cap I24, LFN, 2004

<sup>26</sup> Udemezue (n 15) 67.

<sup>27</sup> Cap I24, LFN, 2004, repealed by ISA, 2007, as amended.

<sup>28</sup> The 2011 amendment relates to sections 20, 21, 23 & 26 of the 2007 Act.

<sup>29</sup> Signed into law on August 07, 2020. available at <<https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMANOTE-BOOK-FULL-VERSION.pdf>> accessed February 10, 2024.

<sup>30</sup> Banwo and Ighodalo, 'Companies and Allied Matters Act: Reforming Provisions that Impact the Nigerian Business Community' <https://www.banwoighodalo.com/grey> accessed February 14 2024.

electronic signatures and digital filing systems, aligning Nigerian business practices with global standards and fostering a more conducive environment for investment and growth.

Today CAMA 2020 is the principal legislation while there are other specific legislations such as Investment and Securities Act 2007, The Nigerian Investment Promotion Commission Act of 1995, Banks and other Financial Institutions (BOFIA) Act 2020, Federal Competition and Consumer Protection Act (FCCPA) 2019, and the more recent Financial Reporting Council of Nigeria (Amendment) Act 2023.<sup>31</sup> There is also Nigerian Code of Corporate Governance 2018 (“The Code”)<sup>32</sup> issued by the Financial Reporting Council of Nigeria (FRCN),<sup>32</sup> which aimed at resolving the challenges of applying the preceding multiple codes<sup>33</sup> by providing a set of corporate governance standards applicable to both private and public companies (whether listed or not). While applying the Code, each sector is permitted to make guidelines in line with and peculiar to its mode of operation.

To ensure effective regulation and enforcement of corporate governance principles, various laws and codes have established key institutions in Nigeria. The Companies and Allied Matters Act created the Corporate Affairs Commission (CAC), responsible for overseeing the formation and dissolution of companies.<sup>34</sup> The Investment and Securities Act established the Securities and Exchange Commission (SEC), which regulates the capital market, securities investments, and mergers and acquisitions.<sup>35</sup> Additionally, the Financial Reporting Council of Nigeria (FRCN) was formed to develop and publish accounting and financial reporting standards for public entities.<sup>36</sup> Thus, Nigeria's approach to corporate governance encompasses legal, institutional, and regulatory frameworks.

## **4.2 Understanding Agency Theory and Stakeholder Theory**

### **4.2.1 Agency Theory**

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<sup>31</sup>Prior to this amendment, the Financial Reporting Council of Nigeria Act 2011 CAP. 216, Laws of the Federation of Nigeria (LFN), 2010 was the legislation in force, but the Act witnessed a change when about twenty-four (24) of its section were recently amended, thus paving way for the current FRCN (Amendment) Act 2023.

<sup>32</sup>Pursuant to Sections 50 and 52 of the FRCN (amendment) Act 2023.

<sup>33</sup> There were various sectoral codes applicable to only the affected regulated industries prior to the introduction of the Nigerian Code of Corporate Governance 2018, such as the SEC Code (2003) for public companies, the CBN Code (2014) for banks and discount houses, PENCOM Code (2008) for licensed pension fund operators, the NAICOM Code (2009) for the insurance industry.

<sup>34</sup> Section 1 (1) & 8 (1) (a). Hereinafter referred to as CAC.

<sup>35</sup> Hereinafter referred to as ‘the Commission’

<sup>36</sup> Hereinafter referred to as ‘the Council’. It formulated a uniform Code which is expected to be applicable to all Industries (Hereinafter referred to as NCCG 2018).

Agency theory is defined as the relationship between the principals, such as shareholders and agents, the company executives, and managers. Jensen and Meckling explained it as a contract under which one or more persons (the principal(s)) engage another person (the agent) to perform some services on their behalf which involve delegating some decision-making authority to the agent.<sup>37</sup>

It is one of the major theories that show organization relationship with ownership.<sup>38</sup> The managers act as agents of the corporation. The owners or directors set the central objectives of the corporation. Managers are responsible for carrying out these objectives in day-to-day work of the company. In this regard, the owners are the principals, who may not probably have knowledge or skill for getting the objectives of the company executed consequent upon which they authorize the managers to act as “agents”. By this, a contract between principal and agent is made.

The agent is expected to represent the best interests of the principal without regard for self-interest. However, the self-seeking nature of individuals has made the best situation usually impossible to attain because the managers, in managing the company on behalf of the shareholders, make decisions which affect their personal welfare as well as the welfare of the shareholders.<sup>39</sup> The capability of the managers to make unsupervised decisions may lead them to take decisions in their personal best interest but not the best interests of the owners. Company managers may prefer to pursue personal objectives at the detriment of the company. Such as aiming to gain the highest bonuses possible to supplement their salaries whether the company's profit is sufficient to sustain it or as company managers, they may require the use of the company's property or car and holiday packages by virtue of their status in the company.<sup>40</sup> However, Jensen and Meckling explained the problem of this theory as agency cost. He classified as monitoring loss, bonding loss, and residual loss of principal, which if not taken care of might affect shareholders' interest.<sup>41</sup>

Historically, the term 'corporate governance' emerged about forty years ago and is derived from the Latin words 'gubarnare' and 'gubernator,' which mean 'to steer the ship' and 'the helmsman

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<sup>37</sup> Michael C. Jensen & William H. Meckling, 'Theory of the firm, Managerial Behaviour, Agency Costs and Ownership Structure', (1976) Vol. 3, No. 4, *Journal of Financial Economics*, 305-360 (October), 5 <<http://ssrn.com/abstract=94043>> accessed 21 March 2024.

<sup>38</sup> Adepeju, & Akahome (n 3) 10.

<sup>39</sup> Brian (n 6) 6.

<sup>40</sup> *ibid.*

<sup>41</sup> Jensen & Meckling, (n 37) 6.

or captain of the ship,' respectively.<sup>42</sup> It evolved as a mechanism to address the agency problem. Most of the literature reviewed by the authors, at that point in time, focused on what is known as the Anglo-Saxon model that is largely prevalent in the UK and the USA where firms are more akin to the Berle and Means view of the world.<sup>43</sup> Corporate governance principles that have evolved have reflected what was considered as the best practice in the UK and USA and require listed companies to have unitary boards, independent outside directors, and board committees. In line with the underlying assumptions of the agency theory, these principles primarily focused on enhancing shareholder value and, in the process, richly reward top executives and have been the principal basis for governance codes around the world.<sup>44</sup>

#### **4.2.2 Stakeholder Theory**

Stakeholder theory is a perspective in organizational management and business ethics that highlights the need for businesses to consider the interests of all groups impacted by their actions, rather than focusing solely on shareholders. It asserts that companies have a broader responsibility to create value for a range of stakeholders thereby encouraging ethical practices and promoting corporate social responsibility.<sup>45</sup> The OECD argues that there is a public policy perspective towards corporate governance as well as a corporate perspective, thus:

From the public policy perspective, corporate governance is about nurturing enterprise while ensuring accountability in the exercise of power and patronage by firms. The role of public policy is to provide firms with incentives and discipline to minimize the divergence between private and social returns and to protect the interests of shareholders<sup>46</sup>

A stakeholder is any group or individual who can affect or is affected by the achievement or objectives of the firm, and they include Government, Investors/Shareholders, Suppliers Trade Associations, Customers, Local Communities, Creditors and Employees<sup>47</sup>. Freeman and Reed distinguish two senses of stakeholder to wit, the narrow definition which includes those groups

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<sup>42</sup> Godwin O Demaki 'Proliferation of Codes of Corporate Governance in Nigeria and Economic Development', [2011] Vol.1 (6), *Business and Management Review*, 1-7.

<sup>43</sup> Santosh Pande, 'The theoretical Framework for Corporate Governance' (2011) (October)< <http://ssrn.com/abstract=1949615>>.2accessed April, 1, 2024.

<sup>44</sup> Ibid, 3.

<sup>45</sup> Akinpelu (n 4) 63.

<sup>46</sup> OECD Principles of Corporate Governance, 2004.

<sup>47</sup> Adepeju, & Akahome (n 3) 11.

which are vital to the survival and success of the corporation and the wide definition includes any group or individual who can affect or is affected by the corporation.<sup>48</sup>

The argument of the stakeholder theorists is that the principal-agent model appears to focus exclusively on the interests of shareholders and that it may happen that managers are over-concerned with shareholders who are interested only in short term profits and consequently managers neglect the long term.<sup>49</sup> The role of companies in society has received increasing attention over time, with their impacts on employees, the environment, local communities, as well as their shareholders, becoming the focus of debate. Social and environmental lobby groups have gathered information on business activities and have targeted companies that have treated their stakeholders in an unethical manner.<sup>50</sup>

Today, the theory has infiltrated many disciplines in some useful ways.<sup>51</sup> There are critical mass of scholarly works that use the theory in strategic management, finance, accounting, human resources management, production, information technology, marketing, law, health care, public policy, business ethics and corporate social responsibility.<sup>52</sup> Although, their review is barely half a decade old, the stakeholder literature has at least doubled since it was published. An increasing number of executives and companies are also embracing the theory and applying its concepts.<sup>53</sup>

#### **4.3 Integration of Agency and Stakeholder Theories in CAMA 2020 Governance Mechanisms**

- a. **Division and Exercise of Power (Supremacy and Control):** At the core of organizational governance is the division of powers among a company's various organs. Under common law, this distribution primarily relies on the memorandum and articles of association. The question of whether the general meeting or the board of directors holds controlling power has been a contentious issue in Nigeria and other Commonwealth countries, resulting in various judicial interpretations since the 19th century.<sup>54</sup> It is commonly assumed that the general meeting

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<sup>48</sup> R.Edward Freeman,'Stakeholder Theory on Modern Corporation', *General Issues in Business Ethics*,< <https://academic.udayton.edu/lawrenceulrich/Stakeholder%20Theory.pdf>>, 42, accessed April 1, 2024.

<sup>49</sup>Akinpelu (n 4). 63.

<sup>50</sup> ibid.

<sup>51</sup> Jeffrey S Harrison, *et al* 'Stakeholder Theory as an Ethical Approach to Effective Management: Applying the theory of Multiple Contexts, (2015) Vol. 17, No 55, (August), *Review of Business Management, Sao Paulo*<<http://www.researchgate.net/publication/283194075>> 860, accessed March 18 2024.

<sup>52</sup> Bobby Parmar, and others, 'Stakeholder Theory: The state of the Art' (2010) *The Academy of Management Annals*< <http://www.researchgate.net/publication/235458104>>6-7.

<sup>53</sup> Harrison, *et al* (n 51) 860.

<sup>54</sup> Akinpelu (n 4).217.

members are the supreme authority in a company, with the board of directors acting as their agents.<sup>55</sup> However, recent decisions indicate that members cannot interfere with directors' decisions unless those decisions contradict the provisions of CAMA or the articles of association.<sup>56</sup>

The common law position is reflected in sections 87(2) to (4) of CAMA 2020. Subsection (2) states that the articles of association determine the distribution of powers between the general meeting and the board of directors, unless specified otherwise in the Act. Section 87(3) allows the board to manage the company even if the articles are silent, meaning they handle day-to-day operations<sup>57</sup> However, the authority granted to members in section 87(4) can be seen as largely ineffective, as it permits the board to disregard members' directions unless the articles specify otherwise or the board acts without good faith and due diligence. Unfortunately, CAMA does not define "good faith" or "due diligence," creating ambiguity.<sup>58</sup>

The significant power granted to directors has led to potential abuse and poses a challenge to corporate governance in Nigeria. This has allowed the board to act as "corporate monsters," diminishing shareholders' roles and placing them in a subordinate position within corporate administration.<sup>59</sup>

- b. **Board Structure & Functions:** Board size is perceived as a corporate governance issue as an international best practice standard. An ideal board size and composition of a corporate board has been a subject of debate for so long, It is required that a board should be of sufficient size to be able to perform its duties and carry out its responsibilities effectively.<sup>60</sup>

By the adoption of unitary board system in Nigeria like every other jurisdiction such as the UK, USA, Australia and South Africa, the board consist of both the executive and non-executive directors with different responsibilities. While the executive directors are overseeing day-to-

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<sup>55</sup>. *Isle of Wright Railway v Tahourdin* [1883] 25 Ch.D, 320.

<sup>56</sup>. *Automatic Self- Cleansing Filter Syndicate Co v Cuningham* [1906] 2 Ch.D, 34; *Shaw & Sons (Salford) Ltd v Shaw* [1935] 2 KB, 113.

<sup>57</sup> G.C. Okara, 'Examining Corporate Governance in Nigeria Under The Companies and Allied Matters Act 2020 and The Nigerian Code of Corporate Governance 2018: The Way Forward', (2011) 184-197<<https://www.researchgate.net/publication/350192640>>, accessed 21 June, 2024.

<sup>58</sup>. M. O. Sofowora, 'Shareholders, Directors, Corporate Managers and the Balance of Power' [2000] 4, *Law and Business Quarterly*, 122, cited in Okara (ibid), 189.

<sup>59</sup> ibid.

<sup>60</sup> A S, Apeniga, 'Determining the Ideal Size of Board of Directors of a Public Company Under Nigerian Law', 1, <<http://www.researchgate.net/publication/362658001>> accessed 01 July, 2024.

day operation of the company with specific managerial portfolios in a full-time employment of the company, the non-executive directors are not.<sup>61</sup>

Apart from a small company, all other companies are mandated to have at least two directors.<sup>62</sup> The same statute provides further that a minimum of three independent directors for every public company. Aside the number of independent directors, neither CAMA nor the NCCG 2018 mentioned the number of executive and non- executive directors of board of public companies.<sup>63</sup> However, the latter recommends the factors to be considered in determining the requisite numbers when it states that ‘appropriate mix of Executive, Non-Executive and Independent Non-Executive Directors.’<sup>64</sup>

The aforementioned code justified the inclusion of the Independent Directors as persons tasked with the responsibility of providing independent and objective judgment in board deliberations and decision making process, thus bringing a high degree of objectivity to the board for sustaining stakeholders’ trust and confidence.<sup>65</sup> It is deducible from the above that board consists of three categories of directors, viz, the executive directors, non-executive directors and independent directors.<sup>66</sup>

To better protect minority shareholders, firms are prohibited from appointing the same person to both the roles of Chairman of the Board and Chief Executive Officer in a public company.<sup>67</sup> The concern with an individual holding both the roles of Chairman of the Board and Managing Director is that it can lead to an excessive concentration of power. This concentration of authority can undermine the board's ability to provide necessary oversight and balance in its governance functions.<sup>68</sup> This concern is reflected in CAMA's approach, which does not establish a distinct office for a chairman.<sup>69</sup> Instead, CAMA specifies that the chairman of the board of directors, if one is appointed, is responsible for presiding over general meetings. Despite this, the chairman still holds significant powers and duties.<sup>70</sup> Given the significant responsibilities of company directors, their method of appointment is crucial. Recognizing the

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<sup>61</sup> *ibid*, 3

<sup>62</sup> *ibid*, s 271(1).

<sup>63</sup> Apeniga (n 60) 3.

<sup>64</sup> Principle 2.3 (b), *ibid*.

<sup>65</sup> Principle 7, *ibid*.

<sup>66</sup> Apeniga (n 60)3.

<sup>67</sup>*ibid*, s256(1).

<sup>68</sup> G.C. Okara (n 57) 193.

<sup>69</sup> Joseph E.O Abugu, ‘Issues and Problems in Corporate Governance in Nigeria’ [2015] Vol. 6, No. 3: *The Gravitas Review of Business & Property Law*,1-15.

<sup>70</sup> *ibid*, s 256(3) CAMA 2020.

importance of this role, CAMA carefully regulates the appointment, functions, powers, and duties of company directors to ensure greater efficiency and effectiveness.<sup>71</sup>

The position of a director is so unique in corporate governance such that CAMA prescribes its duties which are generally divided into two, namely, the fiduciary duty and duty of care and skill. The essence is to serve as a watch dog or prevent abuse of powers and conflict of interest on the part of the directors in several areas of corporate governance.<sup>72</sup> Such as the issuing, transfer, and registration of shares, etc. He stands in a fiduciary relationship both to the company and the shareholders<sup>73</sup>. Some of his duties are as follows, duty to act in the best interest of the company,<sup>74</sup> duty to act for proper purpose, duty not to fetter discretion,<sup>75</sup> duty to avoid conflict of interest and make secret profit, and duty of care and skill.<sup>76</sup>

- c. **Transparency and Disclosure:** As a fundamental principle of corporate oversight, various mechanisms are in place to enhance transparency and disclosure in a company's operations. Under the CAMA 2020 and in accordance with international financial reporting standards, companies are required to prepare and present their financial statements transparently. Additionally, they must file their financial statements annually with the Corporate Affairs Commission (CAC).<sup>77</sup> This framework ensures that shareholders, regulators, and the general public have access to up-to-date financial information about the company.

Certain duties of disclosure are also mandated for directors. They must disclose any personal interests they have in transactions or arrangements entered into by the company to avoid conflicts of interest.<sup>78</sup> This requirement extends to proposed contracts with the company; whether the director is directly or indirectly interested, they must specify the particulars of their interest in writing.<sup>79</sup> Furthermore, the company must maintain a register of its members, which should be made available for inspection to foster transparency regarding share ownership.<sup>80</sup>

Secondly, when a person is proposed for appointment as a director, they are duty-bound to disclose any positions they hold as a director in other public companies during the meeting in

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<sup>71</sup> Akinpelu (n 4), 220.

<sup>72</sup> *ibid*, 225.

<sup>73</sup> s 305 CAMA 2020.

<sup>74</sup> *ibid*, s 305(3)

<sup>75</sup> *ibid*, s 305(6)

<sup>76</sup> *ibid*, s 308.

<sup>77</sup> *Ibid*, s 421(1).

<sup>78</sup> s. 301 (2), *ibid*.

<sup>79</sup> s. 303 (1), *ibid*

<sup>80</sup> ss. 109-113, *ibid*.

which their appointment is considered.<sup>81</sup> To promote effective governance practices, the rule now stipulates that a director may not hold more than five directorships in different public companies simultaneously.<sup>82</sup> This limitation helps reduce conflicts of interest and issues related to loyalty, encouraging better corporate governance practices.

- d. **The Shareholders's Rights and Protection:** Shareholders,<sup>83</sup> as members of a company, possess several entitlements outlined in the Act and the company's Articles of Association,<sup>84</sup> including the right to attend, speak, and vote at Annual General Meetings (AGMs),<sup>85</sup> receive dividends<sup>86</sup> obtain a copy of the memorandum for a fee<sup>87</sup> and the right to act as acknowledged under the Act. While they own the corporation and can vote on changes to the memorandum, elect or remove directors, and approve major changes like mergers, their rights are limited in that they cannot determine dividend amounts, make investment decisions, or appoint the company manager and set their salary.<sup>88</sup>

CAMA recognizes that minority shareholders may be side-lined in corporate decisions and provides protections for them. Generally, only the company can seek redress for wrongs, as established in *Foss v Harbottle*.<sup>89</sup> However, a member can now apply to the court for an injunction or declaration to restrain the company or its officers, known as member's direct action.<sup>90</sup> Additionally, CAMA offers various judicial remedies for breaches of directors' duties, including personal and representative actions,<sup>91</sup> derivative actions,<sup>92</sup> relief for unfairly prejudicial conduct,<sup>93</sup> investigations by the Corporate Affairs Commission (CAC), and winding up on just and equitable grounds.

In the case of private companies, the transfer of shares is governed by the company's articles of association. Currently, there are now some restrictions on the way shares may be transferred in relation to existing shareholder rights. Although the term "pre-emptive right of shareholders"

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<sup>81</sup> *ibid*, s 278(1). This ultimately reduces the incidences of conflicts of interests and issues with loyalty and encourages good corporate governance practices. This constitutes one of the major significant improvements in CAMA 2020 over previous principal legislation and other frameworks.

<sup>82</sup> s 307, *ibid*.

<sup>83</sup> Shareholders are often thought to be the same as members, but in companies with share capital, while all members are shareholders, not all shareholders are members.

<sup>84</sup> Dada (n 20). 335.

<sup>85</sup> s. 107, *ibid*.

<sup>86</sup> s. 426, *ibid*.

<sup>87</sup> s. 47, *ibid*.

<sup>88</sup> Akinpelu (n 4) 229.

<sup>89</sup> (1843) 2 Hare 461.

<sup>90</sup> Y.H .Bhadmus, '*Bhadmus on Corporate Law Practice* (5<sup>th</sup> edn, Enugu, Chenglo Ltd. 2021), 254.

<sup>91</sup> s. 344, CAMA 2020.

<sup>92</sup> *ibid*, s 346,

<sup>93</sup> *ibid* ss. 353(1) and 354, See also the case of *Ijade Properties Ltd v. Omololu-Mulele* (2000) FWLR (Pt. 5) 709

is not new within the context of Nigeria's corporate world, having been always left to a company's discretion.<sup>94</sup> This right has now been formalized by specifying that a company must offer shares to its current members in proportion to their existing ownership before selling them.<sup>95</sup> This means that when a public company plans to issue new shares, either through public or private placement, existing shareholders are given priority. This approach strengthens their protection against excessive dilution and ensures they are favoured over prospective new members.<sup>96</sup> From a broader perspective, this provision shields shareholders from unethical takeovers of the company through third-party agreements. Furthermore, CAMA 2020 mandates that a private company must secure the approval of all its members before executing any sale that surpasses 50% of the company's total asset value. However, this requirement can be modified by the company's articles of association. This measure protects shareholders from unscrupulous acquisitions and ensures that significant asset sales are subject to unanimous consent among members, though the articles of association can alter this provision<sup>97</sup>

- e. **Accounts:** Every company is required to keep three major accounts, namely, accounting records, annual accounts, and group accounts. Companies maintain accounting records in line with this section's requirements. These records must accurately detail the company's financial activities, providing a clear view of its financial status at any given time, and enabling directors to verify that financial statements meet legal standards for format and content. Specifically, the records should include daily entries of all money received and spent, including the reasons for these transactions, as well as a comprehensive account of the company's assets and liabilities.<sup>98</sup> As an innovative measure, all public companies are now required to post their audited accounts on their websites. This requirement aligns with the existing regulations set by the Nigerian Stock Exchange and the Securities and Exchange Commission for listed companies.
- f. **Appointment of Company's Auditor and Audit Committee:** Companies are mandated to establish audit systems that involve engaging external auditors, complemented by an audit committee.<sup>99</sup> Companies are mandated to establish audit systems that involve engaging external auditors, complemented by an audit committee.<sup>100</sup> CAMA elaborates on issues related

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<sup>94</sup>Joy Ayara, *Corporate Governance Under CAMA 2020*, < <https://simplylaw.com.ng/corporate-governance-under-cama-2020/>>accessed 25 July 2024, 4.

<sup>95</sup> s.142, *ibid*.

<sup>96</sup> Arara (n 94).

<sup>97</sup> *ibid*.

<sup>98</sup> s.347, *ibid*.

<sup>99</sup> Akinpelu (n) 240.

<sup>100</sup> s 401 CAMA 2020

to auditors' qualifications,<sup>101</sup> duties,<sup>102</sup> liabilities,<sup>103</sup> re-appointment, removal,<sup>104</sup> filling of vacancies, and audit report. Notably, every public company is required to constitute an Audit Committee, which primarily examines the auditor's report and makes recommendations to the AGM. The committee consists of five members, including three independent members and two non-executive directors.<sup>105</sup> To ensure the reliability of its reports, all members must be financially literate, with at least one member belonging to a professional accounting body in Nigeria.<sup>106</sup>

- g. **Stakeholders Rights and Engagements:** The decisions of a company are generally taken at the meeting of its members which constitutes the primary organ.<sup>107</sup> Meeting constitutes a major mechanism to ensure the protection of investors and their investments in any corporation. It also assists in monitoring the way the powers delegated to the board of directors are applied, while other officers of the company are placed under constant surveillance so as to make them accountable to the shareholders.<sup>108</sup>

There are three basic types of meeting, viz, statutory meetings, the annual general meetings, and extra-ordinary general meetings, each with its peculiarities and legal implications. More importantly is the annual general meeting (AGM) which is so important that it personifies the forum where the ultimate control of a company lies.<sup>109</sup> It provides a platform for members to interact with directors, discuss the company's prospects, and exercise their powers over the board, including issues like re-appointment.

Every company, except for small companies or those with a single shareholder, must hold an AGM each year, with no more than 15 months between AGMs. However, a company can delay its first AGM by up to 18 months from incorporation and may extend subsequent AGMs by up to three months if permitted by the commission.<sup>110</sup>

At annual general meetings, special business excludes routine matters like dividend declarations, financial statement presentations, director elections, auditor appointments, and

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<sup>101</sup> *ibid*, s 402 .

<sup>102</sup> *ibid*, s 406.

<sup>103</sup> *ibid*, s 415.

<sup>104</sup> *ibid*, s 409.

<sup>105</sup> *ibid*, s 404.

<sup>106</sup> *ibid*, s. 405.

<sup>107</sup> Orojo (n 15), 273.

<sup>108</sup> Akinpelu (n 4) 231.

<sup>109</sup> *ibid*.

<sup>110</sup> *ibid*, s. 237(1)(a-b)

managerial remuneration disclosures, which are considered ordinary business.<sup>111</sup> CAMA mandates strict rules for conducting meetings, including detailed notice requirements—such as timing, content, and clarity—to ensure effective corporate governance. Public companies must advertise meetings in at least two daily newspapers 21 days in advance.<sup>112</sup> Notices must provide clear, detailed information on the meeting's location, date, time, and business agenda to help members decide on attendance.<sup>113</sup> Among other stakeholders are creditors, whose rights of creditors are also protected during insolvency or restructuring processes, as they must be adequately informed about decisions that affect their interests.<sup>114</sup> However, it can be argued that the AGM does not provide a substantial opportunity for stakeholders, aside from shareholders, to exercise their rights. In the opinion of the writers, the regulations governing business meetings do not offer a mechanism for other stakeholders to attend or exercise their rights. Those legally permitted to attend meetings include shareholders, directors, the company secretary, and auditors. Among these, stakeholders can primarily be considered shareholders, with limited involvement beyond that role.

The underlying issue here is related to the theories adopted in corporate governance, which often prioritize the interests of shareholders over those of other stakeholders. This shareholder-centric approach can limit the effective participation and representation of other stakeholders in corporate decision-making processes. Moreover, the adoption of the unitary board system, as seen in countries like Germany and Austria, which allows for a supervisory board composed of employees elected by shareholders at the AGM,<sup>115</sup> further inhibits the engagement of other stakeholders at the board level.

- h. Corporate Social Responsibility (CSR):** It means the organization's commitment to operate in an economically and environmentally sustainable manner, while recognizing the interest of its stakeholders.<sup>116</sup> It is ways the society expects business entities to carry on their operations in a legal, economic, environmental, and ethical manner for the benefit of the business in a particular society in general in a voluntary manner. It therefore entails responding positively to emerging societal priorities and expectations; willingness to act beyond regulatory limitations and balancing of shareholders interest against the interests of the wider society in

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<sup>111</sup> Ibid. s 238.

<sup>112</sup> Ibid, s 241.

<sup>113</sup> Akinpelu (n 4) 234.

<sup>114</sup> ibid, s. 441.

<sup>115</sup> Kunle Aina, 'Board of Directors and Corporate governance in Nigeria' [2013]1: *International Journal of Business and Finance Management Research*.21-34 <<http://www.bluepenjournals.org/ijbfmr>. accessed 2 June 2024.

<sup>116</sup> K. Amaeshi, et al., Corporate social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility, Clarifications, Exceptions and Implication', *Journal of Business Ethics*, vol 81, No.1, 223-234.

which the companies operate.<sup>117</sup> According to Umore, the need for companies whose major objective is to maximize profits for the benefit of their shareholders to be concerned about serving the interests of society at large are: First, business cannot succeed in a society that is failing. This, therefore, clearly establishes the stake of a business organization in the health and well-being of the society to which it belongs. Secondly, customers of any product or service are unlikely to feel satisfied buying from a company that is perceived to violate expectations of ethical and socially responsible behaviour, particularly in developed countries.<sup>118</sup>

The concept of CSR, as emphasized by stakeholder theory and partially acknowledged in Nigerian frameworks, currently lacks direct legislation. While there is no specific law mandating CSR, several existing regulations indirectly require corporations to undertake social obligations.<sup>119</sup> The combined reading of relevant provisions on CSR suggests that corporations are encouraged to engage in CSR activities on a voluntary and discretionary basis rather than as a mandatory obligation.<sup>120</sup> This means that companies have the freedom to pursue CSR initiatives at their own discretion rather than being legally required to do so.

Although directors are expected to act in the best interests of the company, considering the impact of their decisions on various stakeholders, including the community and environment—this indirect encouragement for CSR activities aligns with both shareholder theory and stakeholder theory. This approach reflects a broader consideration of social impacts within Nigerian legislation.

#### **4.4 Issues Arising from the Integration of Agency and Stakeholder Theories**

- i. The legislation addresses the division of powers between the general meeting and the board of directors, reflecting agency theory's focus on principal-agent relationships while highlighting tensions between shareholders and the board in line with stakeholder theory. However, ambiguities in terms like "good faith" and "due diligence" may leave room for director power abuse, indicating a need for clearer protections.
- ii. The importance of board structure in addressing agency problems and enhancing stakeholder trust is emphasized through distinctions between executive, non-executive, and independent directors, which support diverse governance perspectives. Prohibiting one

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<sup>117</sup> Umore (n 10) 156.

<sup>118</sup> *ibid*, 162

<sup>119</sup> *ibid*, 167.

<sup>120</sup> *ibid*.

individual from serving as both Chairman and CEO helps protect minority shareholders; yet clearer definitions of director roles and independence are necessary for improved governance.

- iii. The need to reduce information gaps between shareholders and directors is crucial for accountability. Requirements for directors to disclose personal interests and for companies to maintain financial transparency promote trust and align with both agency and stakeholder principles. While it establishes a strong framework, ongoing enforcement and clarity are vital.
- iv. The framework emphasizes shareholder rights and protections by addressing agency theory through judicial remedies for minority interests and incorporating stakeholder theory with provisions like pre-emptive rights. Its effectiveness hinges on robust enforcement and active shareholder engagement.
- v. Accountability is promoted through comprehensive accounting records and transparency, aligning with agency theory by protecting shareholder interests and enhancing stakeholder engagement. By requiring public companies to post audited accounts, trust is fostered, but continuous emphasis on enforcement is essential. The emphasis on external auditors and audit committees enhances accountability and transparency, protecting shareholder interests. However, issues like auditor independence and limited shareholder engagement may undermine the effectiveness of these measures for all stakeholders.
- vi. The role of meetings, especially AGMs, in protecting investors and holding the board accountable reflects agency theory. While AGMs enable shareholder engagement, they primarily benefit shareholders, limiting participation from other stakeholders like creditors, which can neglect the interests of those affected by corporate decisions.
- vii Finally, the framework highlights Corporate Social Responsibility (CSR) as a commitment to sustainability and stakeholder interests, aligning with stakeholder theory. However, the lack of direct legislation on CSR in Nigeria leads to voluntary engagement, which may result in inconsistent commitments to social responsibilities and potentially undermine broader stakeholder interests.

## **5.0 Recommendations**

- i. Agency theory often prioritizes shareholder interests over other stakeholders, undermining their rights. Adopting models that recognize all stakeholders is essential for creating equitable governance and enhancing corporate sustainability.
- ii. Current theories of corporate governance fail to capture the complexity and diversity of global business, as governance practices vary by cultural, political, and historical contexts. The view of Abdullah and Valentine are hereby upheld by the authors to the effect that ‘a single theory is insufficient; instead, a combination of approaches that integrates social relationships,

regulations, and enforcement is necessary. A holistic perspective that considers various theories and social sciences is essential for effective corporate governance'.<sup>121</sup>

- iii. The unitary board system in Nigeria often allows non-executive directors, chosen by shareholders, to be dominated by executives, undermining effective governance. Initially appearing independent, these directors can be swayed by perks like insider trading and gifts, compromising their autonomy and turning them into mere 'rubber stamps.' Therefore, a two-tier board structure is suggested, as proposed by Kunle Aina, to create a distinct separation between management and oversight, enhancing discipline and true supervision.<sup>122</sup>
- iv. It is recommended that the issue of Corporate Social Responsibility (CSR) be explicitly addressed in the principal legislation to ensure that companies have a clear legal framework guiding their social obligations and engagement with stakeholders.

## 6.0 Conclusion

Understanding the theoretical foundations of corporate governance is crucial for grasping its development and implementation, particularly within the Nigerian context. This article has explored the definition and historical progression of corporate governance, focusing on the key theories—agency and stakeholder—that inform governance frameworks. The integration of these theories in CAMA 2020 aims to reconcile the interests of shareholders and stakeholders, but it also exposes critical issues such as unclear regulatory definitions and the complexities of board structures. While this article provides valuable insights, it acknowledges that the myriad challenges surrounding corporate governance could not be exhaustively addressed. As Nigeria continues to evolve its corporate governance landscape, it is essential to tackle these challenges with a holistic and inclusive approach to promote accountability, build stakeholder confidence, and support sustainable business practices.

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<sup>121</sup> Abdullah & Valentine (n 11) 88.

<sup>122</sup> Aina (n 115) 32.