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Corporate Governance in Nigeria

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Abstract

In recent years, the poor returns and inefficiencies of the state-owned enterprises (SOEs), globalization and international economic pressures, induced the Nigerian policymakers to adopt economic liberalization and deregulation programs. Advocates of these reforms, including the International Monetary Funds (IMF) tout this route as the only and the most potent route for generating greater economic growth, but also for contributing to more responsible corporate governance. Recent occurrences such as the COVID-19 epidemic exacerbate the rot in the corporate sector and the importance of corporate governance in Nigeria. This chapter provides an account of the nature of corporate governance in Nigeria and investigates the prospects for recent reforms contributing to more responsible governance and development.

Keywords: corporate governance, corporate law, Covid-19, directors, tax, stakeholder theories.

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Introduction

Corporations, particularly multinational corporations, are important to the economic development and regeneration in any country, including Nigeria. Corporations, much like governments, provide jobs, products and services, pay wages and salaries, which dovetail into payment of taxes and provision of social amenities for both the residents and the citizens of Nigeria.[1] Corporate governance has attracted the interests of many researchers in different fields, such as economics, finance, law, management and accounting because good corporate governance maximizes shareholders' value through enhanced quality of corporate decision-making, enhances the outflow of foreign and domestic investments.[2] Thus, there is a positive relationship between good corporate governance and corporate performance, as the weak points of most corporations were exposed due to the unprecedented COVID-19 epidemic.[3] However, Kells presented the COVID-19 crisis as a unique but not unprecedented event comparable with disasters such as floods, bush-fires, terrorism, Global Financial Crises and

[1] R.J. Gilson, 'From Corporate Law to Corporate Governance' European Corporate Governance Institute Working Paper Series in Law (15-09-2016) 26 https://ssrn.com/abstract=2819128 (accessed 23-07-2023); M.A. Lateef & A.O. Akinsulore 'Covid-19: Implications for Corporate Governance and Corporate Social Responsibility (CSR) in Africa' [2020](12) *Beijing Law Review* 139-141; The World Bank 'Doing Business Measuring Business Regulations' (28-02-2017) https://www.doingbusiness.org/en/data/exploretopics/ paying-taxes/why-matters accessed 11 July 2023; C.O. Nwabachili, 'Critique of Company Income Tax Act and its Impact on Investments in Nigeria' [2020] *NAUJILJ* 34-35.

[2] A. Faizabad, M. Refakar & C. Champagne, Corporate Governance: Theories, Mechanisms and the Case of Oil and Gas Exporting Developing Countries [2021] 18(3) *Corporate Ownership & Control*,86-103. <https://doi.org/10.22495/cocv18i3art8> accessed 9 September 2023.

[3] Oyesola Animashaun and Howard Chitimira 'Is COVID-19 Pandemic Rewriting the Rules of Corporate Governance in Nigeria?' [2022] 11 (4) *Perspectives of Law and Public Administration*, 545-565.

the Great Depression.[4] This chapter posits that unlike the other disasters cited by Kells above, the impact of COVID-19 is more profound as it affected (and still affects) every country and the global economy in diverse ways, such that every business had to make far reaching adjustments, explore new opportunities and unexpected exigencies in order to survive.[5] Many corporations in Nigeria are "zombie firms" which are businesses that are not viable without access to cheap funds or government support, are especially vulnerable,[6] which led to the sudden and intensified importance of good corporate governance. Due to COVID-19 pandemic, many of the otherwise financially vibrant Nigerian companies were forced to dip into their reserves and deplete their accumulated profits which may render those hitherto financially vibrant companies financially vulnerable and potentially in financial distress.[7]

Similarly, businesses in Nigeria were operating at 43 percent

[4] S. Kells 'Impacts of COVID-19 on Corporate Governance and Assurance, International Finance and Economics, and Non-Fiction Book Publishing: Some Personal Reflections' [2020] *Journal of Accounting and Organizational Change* 629.

[5] Ibid; I.A. Onuka 'Microcredit and Poverty Alleviation in Nigeria in COVID-19 Pandemic' [2021] 7 *Asia Pacific Journ of Rural Devt* 7-11; Oyesola Animashaun and Howard Chitimira 'The Reliance on Lifestyle Audits for Public Officials to Curb Corruption and Tax Evasion in Nigeria'[2021] 24 *PER/PELJ* 1; A. Koutoupis, P. Kyriakogkonas, P. Pazarskis and L. Davidopoulos, 'Corporate Governance and COVID-19: A Literature Review', [2021] 21(6) *Corporate Governance International Journal of Business in Society,* 969; J. Okolie-Osemene, 'Nigeria's Security Governance Dilemmas During the Covid-19 Crisis', [2021] 48(2) *Politikon- South African Journal of Political Studies* 260; L. Brozus, 'The Difficulty of Anticipating Global Challenges: The Lessons of COVID-19' in Bernes *et al Challenges of Global Governance Amid the COVID-19 Pandemic* (New York, Council on Foreign Relations, 2020) 6-9.

[6] Ibid.

[7] P.C. Ozili, 'Covid-19 Pandemic and Economic Crisis: The Nigerian Experience and Structural Causes' [2020] *Munich Personal RePEc Archive* 1, 6-9; Kells,(n 4) 634-635; G. Castrillón, and M. Alfonso, 'The Concept of Corporate Governance', [2021] 25(2) *Revista Científica Visión de Futuro,* 178; Y. Turianskyi, S. Gruzd, E. Sidiropoulos, and N. Grobbelaar, 'COVID-19 Responses Expose Gaps in Global Governance'in Bernes *et al Challenges of Global Governance amid the COVID-19 Pandemic* (New York, Council on Foreign Relations, 2020) 23-24.

capacity before the outbreak of COVID-19 pandemic and some of these businesses are currently insolvent.[8] Top challenges reported by Nigerian businesses to researchers and organizations such as the Nigeria Employers' Consultative Association (NECA) and the International Labor Organization (ILO) include inflation, reduced demand for goods and services, and decline in workers' productivity which constitute threats to the financial system, economic growth and corporate survival.[9] The advent of COVID-19 however unmasked various corporate governance oversight and failures, such as excessive executive compensation which were hitherto ignored. Thus, the COVID-19 crisis did not create but has heightened the importance of good corporate governance and flexible corporate management in Nigeria. Moreover, corporate governance challenges usually become a topical issue and the main focus of corporate players and policymakers during crises. For example, the collapse of the Enron Corporation in the United States, in 2001, global financial crisis in 2008 and the 1997 Asian Financial crisis and the operational integration of capital markets.[10]

This paper is divided into seven sections. The first is the introductory section. The second discusses the similarities and differences between corporate law and corporate governance. The third and the fourth sections discuss the corporate governance theories and the corporate governance crises which led to the introduction and tightening of corporate laws, corporate governance regulations and codes in Nigeria

[8] Lateef & Akinsulore, (n 1) 152.

[9] Ibid; Nigeria Employers' Consultative Association & International Labour Organisation *Research on Assessing the Needs of Enterprises Resulting from Covid-19: Experience of Nigeria Companies* (Lagos, NECA/ILO, 2020) 5.

[10] T. Afza, and M.S. Nazir, 'Theoretical Perspective of Corporate Governance: A Review', [2014] 119(2) *European Journal of Scientific Research* 255-264.

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respectively. Section 5 espouses the effect of COVID-19 on corporate governance in Nigeria. In the sixth and the seventh parts, the author made recommendations and concluding remarks respectively.

Distinguishing Corporate Law from Corporate Governance

In this paper, the terms 'corporation' and 'company' will be used interchangeably. Corporate law which refers to the body of laws regulating businesses or governing the operation of corporations in Nigeria[11] is primarily the Companies and Allied Matters Act (CAMA) 2020. Corporate law generally addresses the corporation hallmark features of the investiture of legal personality, limited liability, transferable shares and the divorce of ownership from management.[12] In addition, CAMA 2020 regulates the formation and operation of different corporate entities in Nigeria. These entities include unlimited companies, limited liability companies and companies limited by guarantee;[13] business names,[14] limited partnership,[15] limited liability partnership[16] and incorporated trustee.[17] Another statute that regulates corporations is the Investment and Securities Act 2007 (ISA),[18] although the provisions of this Act affect only public companies, listed on the Nigerian Stock Exchange (NSE). All corporate entities registered with the Corporate Affairs Commission (CAC) are subject to the

11 Part B of CAMA 2020 deals with the incorporation and regulation of companies limited by shares.

12 J. Armour, H. Hansmann and R. Kraakman,, 'The Essential Elements of Corporate Law: What is Corporate Law?' (2009). http://www.law.harvard.edu/programs/olin_center/papers/pdf/Kraakman_643.pdf/ accessed 12 May 2023.

13 Part B of CAMA 2020 deals with the incorporation and regulation of companies limited by guarantee.

14 Part E of CAMA 2020 provides for registration of business names.

Part D of CAMA 2020 provides for Limited Partnership.

Part C of CAMA 2020 deals with Limited Liability Partnership.

Part F of CAMA 2020 deals with Incorporated Trustees.

ISA No. 29 of 2007.

provisions of CAMA 2020, there are, however, sector-specific statutes which limit the application of CAMA 2020, such as the CBN Act[19] and the Banks and other Financial Institutions Act 2020 (BOFIA).[20] For instance section 53 of BOFIA provides that the provisions of BOFIA shall apply notwithstanding the provisions of CAMA.[21] The implication of the said section 53 of BOFIA is that where there is any conflict between the provisions of CAMA and BOFIA concerning any bank or financial institution in Nigeria, the provisions of BOFIA prevails.

Then is corporate law the same thing as corporate governance? Scholars have expressed divergent views on the meaning and relative importance of both subjects.[22] Gilson lamented that corporate law is transforming into corporate governance because legal rules standing alone have been overtaken by legal rules interacting with non-legal processes and institutions, as the latter seems more responsive to changes in the increasingly complex and dynamic corporate world than the former.[23] However, other scholars such as Amupitan hold an entirely different view, that corporate law enclosed in the statute books is superior to

19 Sections 1-61 of CBN Act No. 7 of 2007.

20 Sections 1-132 of BOFIA No.5 of 2020.

21 Similarly, section 55 of the CBN Act also provides that the provisions of the CAMA or any amendments thereto shall not apply to the Banks.

22 Lateef, and Akinsulore, (n 1) 139, 143; Urbanek, P., 'Corporate Governance in the Banking Sector:
Lessons from the Financial Crisis' in P. Urbanek (ed) *Corporate Governance and the Stability of the Financial Sector*, (Lodz, Faculty of Economics and Sociology, University of Łódź, 2012) 5-12.

23 Gilson, (n 1); M.T. Okorodudu, 'Legal Theory of Incorporation and the Concept of Industrial Democracy' [1985] (5) *Journal of Private and Property Law* 29; M.A. Lateef, N.K. Adegbite, and J. Farinde, 'Defining Corporate Governance and Understanding its Basic Underlying Theories' [2018] 4(1)*ABUAD J. of Public and International Law* 17; B. Manning, 'The Shareholders' Appraisal Remedy: An Essay for Frank Coker' [1962] 7(2) *Yale L.J.* 223, 245.

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corporate governance.[24] This chapter agrees with the latter proposition, and that at best, both corporate law and governance are complimentary concepts, with corporate law serving as the foundation for the development of corporate governance.

Moreover, corporate laws with its mandatory stance, is on a higher pedestal than corporate governance which is persuasive in most cases. In addition, corporate governance must not be at variance with corporate law. Since one of the underlying objectives of the company law is the achievement of good corporate governance, some of the codes of corporate governance have been incorporated into corporate law statutes. For instance, the CAMA 2020 prescribed that the position of chairman and managing director cannot be held by a single person in a public company, as prescribed in all the corporate codes in Nigeria.[25] Thus, corporate governance cannot be divorced from corporate law, as the former is just a part of the latter. For instance, the quality of financial collateral and the reliability of payments, depend in part on insolvency law.[26] While corporate law comprises of statutes and case law, corporate governance is the corporation's operating system, a combination of legal and non-legal rules.[27] For instance, Code of Corporate Governance for Licensed Pension Fund Operators 2008 (PENCOM code) issued by the National Pension Commission

[24] J.O. Amupitan, 'Nigerian Corporate Governance: from Concentrated Ownership to Dispersed Ownership Which Way Forward?' An Inaugural Lecture Delivered at the University of Jos (Jos, University of Jos Press, 2017) 1, 3-11.

[25] Section 265(6) CAMA 2020; sections 5.2.1 of the CBN code and 4.1.8 of the Code of Corporate Governance for Licensed Pension Fund Operators 2008 (PENCOM Code).

[25] Section 265(6) CAMA 2020; sections 5.2.1 of the CBN Code and 4.1.8 of the PENCOM Code.

[5] Kells, (n 4) 629.

[7] Ibid; Armour, Hansmann, and Kraakman, (n 12); Gilson, (n 1).

are prescriptive codes and documents on corporate governance which is widely accepted by the stakeholders in the Nigeria pension industry.

In contradistinction with corporate law, corporate governance is a multi-disciplinary subject, comprising of law, economics, accounting, theology, psychology, sociology and political science. The concept of corporate governance has evolved to encourage the active participation of shareholders and other stakeholders, such as creditors, auditors and regulators in corporate decision-making processes.[28] The United Kingdom's Cadbury Report defined corporate governance as "the system by which businesses are directed and controlled." This narrow definition of corporate governance, merely reiterates the relationship between the board of directors and management, would not be an adequate definition for our purpose here. A broader definition provides that corporate governance means all the internal relationships of the company including for example relationships with financial markets and attending to issues raised by the conduct of shareholders. These definitions approach the question of governance from a theoretical perspective.

From a practical perspective, corporate governance concerns, how managers can take stakeholders' welfare into account in their actions of managing the companies' day-to-day

[26] S. Claessens and B. Yurtoglu, *Corporate Governance and Development: An Update* (2012) https://www.ifc.org/wps/wcm/connect/15fae179-97e0-48ea-a123-abc07deabd36/Focus10_CG%26 Development.pdf?MOD=AJPERES&CVID=jtCwukM/ accessed 26 August 2023; N. Hermes, T.J.B.M. Postma, and O. Zivkov, [2006] 2(4) *International Journal of Managerial Finance* 280-281; Cadbury Committee Report., *The Committee on the Financial Aspects of Corporate Governance: Report with Code of Best Practice* (London, Gee Publishing, 1992) 13.

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activities.[29] For instance, the board of directors is responsible for governing the company in terms of hiring and firing executives, deciding on compensation policies and approving management's actions. Effective corporate governance consists of transparency and disclosure of relevant information, protection of the rights of shareholders, and of independent directors who are able to make effective and successful decisions.[30]

Corporate governance is, thus, defined as the system of rules, practices and processes by which a firm is directed and controlled, which involve balancing the interests of the corporation's various stakeholder.[31] These corporate stakeholders include the company's shareholders, directors, employees, customers, suppliers, financiers, the government

[29] Sanni Markkanen, Corporate Governance in Africa: Comparative (Master's Degree Dissertation, Aalto University, 2015) 5-11.

[30] Ibid; *R.V. Aguilera*, I. Filatotchev, H. Gospel. and G. Jackson, An Organizational Approach to Comparative Corporate Governance: Costs, Contingencies, and Complementarities. [2008] 19(3) *Organization Science* 475-492.

[31] M.A. Arslan, and A. Alqatan, 'Role of Institutions in Shaping Corporate Governance System: Evidence from Emerging Economy', [2020] (6)1, *Heliyon* 1-14; K. Padachi, V. Ramsurrun, and M. Ramen, 'Corporate Governance and Firms' Performance of Mauritian Listed Companies' [2017] 10(1) *International Journal of Humanities and Social Sciences* 55; P.K. Sharma, *Governance Practices in India* (London, Palgrave Macmillan, 2015) 28-32; H. Musaa, Z. Musova, and L. Debnrov, 'Responsibility in the Corporate Governance Framework and Financial Decision Making Process,[2015] 23(1) *Procedia Economics and Finance* 1023-1025; B.M. L'Huillier, 'What does 'Corporate Governance' Actually Mean?' *Corporate Governance* 300; World Bank, *Who's Running the Company? A Guide to Reporting on Corporate Governance* (Washington DC, International Finance Corporation, 2012) 9; H. Khan, 'A Literature Review of Corporate Governance', [2011] (25) *International Conference on E-business, Management and Economics* 1; Hermes, Postma, and Zivkov, (n 26) 280-281; K. Vagneur, *Corporate Governance Issues, Concepts and Domain* (Edinburgh, Heriot-Watt University Press, 2004) 1-2; G. O'Donovan, 'A Board Culture of Corporate Governance', [2003] 6(3) *Corporate Governance International Journal* 28; J. Chen, 'Ownership Structure as Corporate Governance Mechanism: Evidence from Chinese Listed Companies', [2001] (34) *Economics of Planning* 53; A. Cadbury, The Corporate Governance Agenda', [2020] 8(1) *Corporate Governance: An International Review* 7, 18.

and the host community.[32] Corporate governance facilitates effective, efficient and prudent management that can deliver long-term success for the company.[33] This suggests that the ultimate purpose of corporate governance is to provide the appropriate governance measures and processes that focus on long term and sustainable development of the corporation rather than on short term or transient gains.[34] The importance of good corporate governance in Nigeria is heightened by the advent of the COVID-19 pandemic which has led to the liquidation of many companies and the loss of shareholders' funds.

Theories of Corporate Governance

Many theories have emerged over the years on how to manage corporations efficiently and effectively in order to achieve the corporate goals. The proponents of the different theories however have different ideas as to who should be the major beneficiary of the enterprise. There are overlaps in these theories, while the agency and stakeholder theories are the major theories of corporate governance, other theories explain, complement or supplement either of these major theories.[35] The chapter therefore focuses on the main

[32] Chen, (n 31). 53.

[33] Arslan, and Alqatan, (n 31) 1; World Bank, (n 31) 9; Claessens and Yurtoglu (n 26) 5-50; Khan, (n 31) 1; A. Cadbury (n 31) 8.

[34] Arslan, and Alqatan, (n 31) 1; World Bank (n 31) 9-12; O.O. Amao, and K. Amaeshi, 'Galvanising Shareholder Activism: A Prerequisite for Effective Corporate Governance and Accountability in Nigeria', [2008] 82(1) *Journal of Business Ethics* 119-120; P.C. Aka, 'Corporate Governance in South Africa: Analyzing the Dynamics of Corporate Governance Reforms in the Rainbow Nation', [2007] 33(2) *North Carolina Journal of International Law and Commercial Regulation* 219; J.M. Holcomb, 'Corporate Governance: Sarbanes-Oxley Act, Related Legal Issues and Global Comparisons', [2004] 32(2) *Denv. J. of Inter. Law & Policy* 175.

[35] M. Eton , F. Mwosi, A. Sunday, and S.G. Poro, 'Corporate Governance and Firm's Financial Performance amongst Private Business Enterprises in Uganda: A Perspective from Lira City', [2021] 15(9) *African Journal of Business Management* 219; R. Wearing, *Cases in Corporate Governance* (London, SAGE Publication, 2005) 5.

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theories of corporate governance and the adherence or deviation of Nigerian corporations to or from the different theories.

1. Agency Theory

The major role of corporate governance is to ameliorate the concerns arising from separation of ownership and control, and the relationship between board diversity and board efficacy.[36] Agency theory postulates that directors and managers are agents of the shareholders who are the owners of corporations.[37] Accordingly, the owners as the principal, may not have the knowledge, time or expertise for realizing the objectives of the company, the principal then contracts with the directors and the managers to act on its behalf as agent.[38] The agent is expected to act in good faith towards its principal and make decisions in the best interest of principal.[39] However, the agent may succumb to self-interest, opportunistic behaviour that falls short of the expectations of the principal, especially if the agent does not own any share in the company or if his remuneration is not tied to the company's share value or profit.[40] The theory prescribes that

[36] A.O. Akinpelu, *Corporate Governance Framework in Nigeria: An International Review* (Bloomington, iUniverse, Inc., 2011) 62; K. Udayasankar, 'The Foundations of Governance Theory: Case for the Resource-Dependence Perspective' [2008] 5(4) *Corporate Ownership & Control* 164-165; B. Schwartz and A.L. Goodman, *Corporate Governance: Law and Practice*, 6ed. (Johannesburg, Lexis Nexis Matthew Bender, 2014) 2; A. Shleifer and R.W. Vishny, 'A Survey of Corporate Governance', [1997] 52(2) *The Journal of Finance* 737-738.

[37] A. Abdullah, and B. Valentine, 'Fundamental and Ethics Theories of Corporate Governance', [2009] (4) *Middle Eastern Finance and Economics* 88-89; D.M. Branson, 'Corporate Governance 'Reform' and the New Corporate Social Responsibility' [2001] (61) *University of Pittsburgh Law Review* 605-606.

[38] Abdullah, and Valentine (n 37) 605-606; A. Keay, [2017] 59(6) *International Journal of Law and Management* 1294;. Akinpelu (n 36) 62.

[39] B. Glinkowska, and B. Kaczmarek, 'Classical and Modern Concepts of Corporate Governance (Stewardship Theory and Agency Theory)', *Management* [2015] 19(2) 84, 87-90; W.F.W. Yusoff, and I.A. Alhaji, 'Insight of Corporate Governance Theories', [2012] 1(1) *Journal of Business & Management* 52; H. Khan, (n 31) 1.

[40] Akinpelu (n 36) 62.

employees are held accountable in their tasks and responsibilities, through a regime of rewards and punishments.[41]

Some problems however crop up in agency relationship. The first problem appears when there is conflict between the interests of the principal and the agent.[42] The second problem occurs as a result of the inability of the principal to validate the activities of the agent, hence the necessity of creating a monitoring mechanism designed to protect the shareholders' interest.[43] This monitoring mechanism creates an agency cost which emphasizes the role of accounting in reducing the cost.[44] Early perspectives on Chief Executive Officer (CEO)/directors (fiduciary relationship) formed the basis of agency theory.[45] Third, there is the principal-principal problem or majority-minority shareholders conflicts,[46] which may arise as a result of the overbearing nature of the majority in decision making process and the retention of earnings. [47] There is also the principal-creditor problem or debt holders-equity holders' conflict.[48] This problem is related to the claims of both stakeholders to the company's limited earnings. Both

[41] G. Abid, B. Khan, Z. Rafiq, and A. Ahmad,'Theoretical Perspective of Corporate Governance' [2014] 3(4) *Bulletin of Business and Economics* 166.

[42] E. Klepczarek, 'Corporate Governance Theories in the New Institutional Economics Perspective the Classification of Theoretical Concepts', [2017] *Studia Prawno-ekonomiczne* 243, 248.

[43] M.S. Madiwalar, 'Theoretical Perspectives of Corporate Governance', [2015] 3(1) *International Journal of Creative Research Thoughts* 953; Yusoff, and. Alhaji, (n 39) 52.

[44] Udayasankar, (n 36)164, 166; Akinpelu (n 36) 63.

[45] Abid, et al (n 41)166, 170.

[46] O. Animashaun, and H. Chitimira, 'A Legal Analysis of the Protection of Minority Shareholders under the Nigerian Companies Act' [2021] 10 *Interdisciplinary Journal of Economics and Business Law* 178.

[47] Ibid; B. Panda, and N.M. Leepsa, 'Agency Theory: Review of Theory and Evidence on Problems and Perspectives', [2017] 10(1) *Indian Journal of Corporate Governance* 74.

[48] Faizabad, Refakar, and Champagne, (n 2) 86, 88; S.C. Myers, 'Capital Structure', [2001] 15(2) *Journal of Economic Perspectives* 81.

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managers and creditors compete with each other for the firm's limited earnings for compensation and loan interest purposes respectively.[49] In addition, managers, shareholders, and creditors have different approaches and perceptions to risk. Accordingly, managers may be interested in improving the value of shareholders assets by increasing the company's debt portfolio due to the collapse in debt value during inflation.[50] Agency cost may be reduced by the followings - fair and adequate financial disclosures, appointment of independent directors and credible independent auditors, and formation of audit committees.[51]

Shareholders primacy, which is the main concern of agency theory, was initially observable in the corporate governance structure of the United States and United Kingdom,[52] however stakeholder principle and corporate social responsibility (CSR) is widely accepted especially from the 1970's till date.[53] The Nigeria corporations also endorsed shareholders primacy, although since the late 1980's it started making effort at supporting host communities through CSR. Corporations operating in Nigeria were disciples of Milton Friedman who believed that the responsibility of corporations did not

[49] Ibid.

[50] Ibid; B. Panda, and N.M. Leepsa, *Indian Journal of Corporate Governance* (2017) 10(1) 74.

[51] A.O. Oluwadayisi, *A Synopsis of Corporate Law, Property Practice and Law-in-Practice* (Ikeja, Princeton, 2016) 234-236; I.O. Bolodeoku,'Corporate Governance: The Law's Response to Agency Costs in Nigeria', *Brooklyn Journal of International Law* [2007] 32(2) 467-470.

[52] P.M. Vasudev, 'The Stakeholder Principle, Corporate Governance, and Theory: Evidence from the Field and the Path Onward', [2012] 41(2) *Hofstra Law Rev.* 399-406

[53] Ibid.

transcend paying of the requisite taxes, levies and fees.[54] The position of Friedman who maintained that CSR is an unfair taxation was condemned by many scholars such as Mulligan, who opined that CSR is in the best interest of the companies because it is a combination of public relations, crisis management and political lobbying kits.[55] It took the agitation and resistance of the host communities and activists for Nigerian corporations to earnestly embark on and embrace CSR.[56]

[54] T. Mulligan, 'A Critique of Milton Friedman's Essay 'The Social Responsibility of Business is to Increase its Profits', *Journal of Business Ethics* [1986] 5(4) 265, 269; M. Friedman 'A Friedman Doctrine-The Social Responsibility of Business is to Increase its Profit' (1970) https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html accessed 6 May 2023, 1-2; M. Friedman, *Capitalism and Freedom* (Chicago, University of Chicago Press, 1962) 133.

[55] Mulligan, (n 54) 265, 269; M. Friedman (1970) https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html accessed 6 May 2021, p. 1-2; M. Friedman, (1962), p. 133; R. Knuutinen, 'Corporate Social Responsibility, Taxation and Aggressive Tax Planning', *Nordic Tax Journal* [2014] 14(1) 36; T. Tepper,. 'Milton Friedman on the Social Responsibility of Business, 50 Years Later', (2020) https://www.forbes. com/advisor/investing /milton-friedman-social-responsibility-of-business/ accessed 11 May 2023; D. Ng, 'Corporate Social Responsibility and Milton Friedman: Has Business Turned its back on Profit?', (2017) https://media4.manhattan-institute.org/sites/as/files/ Milstein. Essay%20 Winner. 2017.pdf accessed 4 July-2023; M.A. Gulzar, J. Cherian, M.S. Sial, A. Badulescu, P.A. Thu, and N.V. Khong, 'Does Corporate Social Responsibility Influence Corporate Tax Avoidance of Chinese Listed Companies?' *Sustainability* [2018] (10) 1.

[56] E.O. Ekhator, 'Corporate Social Responsibility and Chinese Oil Multinationals in the Oil and Gas Industry of Nigeria: An Appraisal', [2014] (28) *Cadernos de Estudos Africanos* 119; H. Ijaiya, 'Challenges of Corporate Social Responsibility in the Niger Delta Region of Nigeria', [2014] 3(1) *ABUAD Journ. of Sustainable Development Law and Policy* 60; F. Tuodolo, 'Corporate Social Responsibility: Between Civil Society and Oil Industry in the Developing World', *International E-Journal for Critical Geographies* [2009] 8(3) 530-531; O.O. Amao, 'Corporate Social Responsibility, Multi-National Corporations and the Law in Nigeria: Controlling Multinationals in Host States', *Journal of African Law* 89; U. Idemudia, and U.E. Ite, 'Corporate-Community Relations in Nigeria's Oil Industry: Challenges and Imperatives', [2008] 52(1) *Corp Soc. Resp. Environ Mgmt.* 194-195; J. Meehan, K. Mehan, and A. Richards, 'Corporate Social Responsibility: the 3C-SR Model', [2006] 33(5/6) *International Journal of Social Economics* 386; M. Blowfield, and J.G. Frynas, 'Setting New Agendas: Critical Perspective on

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Similarly, cases were instituted by the indigenes of Niger Delta area of Nigeria against corporations especially the oil companies operating in the region for focusing on shareholders' primacy to the detriment of the environment.[57] Such cases involved land, air, water and noise pollution, oil spillage, and environmental degradation.[58] Moreover, as recent as 2020, the management of Access Bank donated ₦1 billion and other materials like ambulances to the Federal Government of Nigeria, as its COVID-19 related CSR. Access Bank's management however decided to downsize staff by 75 percent shortly thereafter. It took an outcry by the public on the contradictions evinced by the huge donation *vis-à-vis* the redundancy policy for Access Bank's management to reverse its earlier decision and for the Central Bank of Nigeria, to prohibit all banks in Nigeria from retrenching their employees during the pandemic. Similarly, another Nigerian bank, UBA eventually lay-off over 2,000 employees while the compensation of the directors was enhanced in January

Corporate Social Responsibility in the Developing World', [2005] 81(3) *International Affairs* 499-500; Akinpelu (n 36) 66.

[57] A. Morocco-Clarke, 'Case of Gbemre v Shell as a Catalyst for Change in Environmental Pollution Litigation', [2021] 12(2) *NAUJILJ* 28, 44; J.G. Frynas., 'Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria', [1999] 43(2) *Journal of African Law* 121.

[58] *Shell Petroleum Development Co Nigeria Ltd v Ambah* 1999 3 NWLR (Part 593) 1; *Shell Petroleum Development Co. Nig. Ltd v Amaro* 2000 10 NWLR (Part 675) 248; *Gbemre v Shell Petroleum Development Company of Nigeria Limited* Suit No. FHC/CS/B/153/2005 (Unreported); *Ikechukwu Okpara v Shell Petroleum Development Company of Nigeria Limited* Suit No. FHC/PH/CS/518/2005 (Unreported) ;*ELF Nigeria v Sillo* 1994 6 NWLR (Part 350) 258; *Wadiaro v Shell Petroleum Development Company Nigeria Ltd* 1990 5 NWLR Part (150) 322; *Shell Petroleum Development Company Nigeria Ltd v Farah* 1995 NWLR (Part 382) 148; *Shell Petroleum Development Company, Nigeria Ltd v Ambah* 1991 3 NWLR (Pt. 593); *Shell Petroleum Development Company, Nigeria Ltd v Isaiah* 2001 11 NWLR (Part 723) 168; *Elf Nigeria Ltd v Opere Sillo* 1994 6 NWLR (Part 350) 258; *Shell Petroleum Development Company Nigeria Ltd v Tiebo VII* 2005 (3-4 SC); *Anthony Atubie v Shell BP Development Co. of Nigeria Ltd.* UCH/48/73 of 12th November 1974 (Unreported) & *Chinda v Shell B.P. Development Co. of Nigeria Ltd.* UCH/38/73 of15th September 1974 (Unreported).

2020;[59] the chapter thereby suggest that the donations to the Federal Government of Nigeria and state governments COVID-19 relief effort by Nigerian corporations may not be altruistic after all, as the donations are tax deductible.[60]

2. Stakeholder Theory

Stakeholder theory incorporates the accountability of management to a broad range of stakeholders, which include the shareholders, the suppliers, host community, employees and business partners.[61] It provides that the governance structure of corporations should be diverse and include different stakeholders.[62] This theory criticized the agency theory for focusing exclusively and being overly concerned about the shareholders.[63] Stakeholder theory focuses on managerial decision making in the interests of all stakeholders and no sets of interests is assumed to dominate the others. Thus, corporate governance is concerned with achieving corporate goals in tandem with individual and societal goals.[64]

Theory and empirical work often do not ensure which corporate governance structure would be most efficient

[59] F. Bako, 'Retrenchment Tsunami Hits UBA PLC as Over 3,000 Employees Lose Jobs' https://viewpointnigeria.org/retrenchment-tsunami-hits-uba-plc-as-over-3000-employees-lose-jobs/ accessed 13 June 2023.

[60] Sections 25 and 27 of Companies Income Tax Act, Chapter C21 LFN 2004.

[61] Madiwalar, (n 43) 953.

[62] Yusoff, and Alhaji, (n 39) 52-54.

[63] Akinpelu (n 36) 63; M.M. Blair, 'Ownership and Control: Rethinking Corporate Governance for the Twenty First Century' in T. Clarke (ed) *Theories of Corporate Governance: The Philosophical Foundations of Corporate Governance* (New York, Routledge, 1988) 174-185; T. Clarke, 'The Stakeholder Corporation: A Business Philosophy for the Information Age" in T. Clarke (ed) *Theories of Corporate Governance The Philosophical Foundations of Corporate Governance*, (New York, Routledge, 2004) 190-196.

[64] Akinpelu (n 36) 63; M.M. Blair (n 63) 174-185; Clarke (n 63) 190-196; T. Donaldson, and L. Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidences and Implications', [1995] 20(1) *Acad. of Mgt. Review* 65, 71.

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between agency and stakeholder's approach.[65] There is an argument that the stakeholder theory is narrow[66] because it identifies the shareholders as the main interest group of a corporate entity. However, the stakeholder theory is better in explaining the role of corporate governance than the agency theory by highlighting different constituents of a firm.[67]

Stakeholders are sub-divided into different categories. Con-substantial stakeholders are the stakeholders who are essential for the business' existence (shareholders, investors, strategic partners and employees).[68] Contractual stakeholders, are persons who have some kind of formal contractual relationship with the business (financial institutions, suppliers, subcontractors and customers). Lastly, contextual stakeholders are representatives of the social and political systems where the business operates (state institutions, host communities, professional bodies, societies, knowledge and opinion makers).[69] Stakeholder theory emphasizes the importance of CSR,[70] it may however be inefficient due to scrabbles among stakeholders.[71] This chapter suggests that while CAMA 2020 or other corporate statutes may not have adequately protected the interest of the stakeholders identified above, other aspects of law such as employment law, environmental law, commercial law, safety, factories and health laws and regulations protect these

[65] Abid, et al., (n 41) 166, 170; Akinpelu (n 36). 62.
[66] P.T. Coleman, A. Hacking, M. Stover, B. Fisher-Yoshida, and A. Nowak, 'Reconstructing Ripeness: A Study of Constructive Engagement in Protracted Social Conflicts', [2008] 26(1) *Conflict Resolution Quarterly* 1, 4; S. Subramanian, 'Stewardship Theory of Corporate Governance and Value System: The Case of a Family-owned Business Group in India', [2018] 11(1) *Indian Journal of Corporate Governance* 88-90.
[67] Ibid. .
[68] Yusoff, and Alhaji, (n 39), 52, 56.
[69] Ibid.
[70] Lateef and Akinsulore, (n 1) 139.
[71] Madiwalar, (n 43) 953.

stakeholders. Thus, it is pointless for company law or policy to repeat what was adequately covered under other areas of law.

3. Stewardship Theory

Steward theory is a variant and supplement of agency theory.[72] Stewardship reflects a sense of obligation or duty whereby the steward willingly subjugates his or her personal interests to act in protection of his principals' long-term welfare.[73] The steward theory states that stewards who are company executives and managers are predisposed to protect and maximize shareholders wealth.[74] The stewards are satisfied and motivated when organizational success is attained.

Steward theory emphasizes the position of employees or executives to act more autonomously so that shareholders' returns are maximized.[75] The employees take ownership of their jobs and work at it diligently.[76] Steward theory regards managers as assets of the company and proposes the fusion of the position of the CEO and chairman in order to reduce the agency cost and power struggle between the chairman and the CEO.[77] In the recent past in Nigeria, it was permitted for a single person to hold the position of the chairman and

[72] S.N.N. Htay, S.A. Salman and A.K.M. Meera, 'Let's Move to 'Universal Corporate Governance Theory' [2013] 15(7) *Middle-East J. Sci. Res.*1047-1048.
[73] Ibid; M. Hernandez, 'Toward an Understanding of the Psychology of Stewardship', *Academy of Management Review* [2012] 37(2) 172-174.
[74] Glinkowska, and Kaczmarek, (n 39) 84;.Yousuff and Alhaji, (n 39) 56, 57; J.H. Davis, F.D. Shoorman and L. Donaldson, 'Toward a Stewardship Theory of Management' in T. Clarke (ed) *Theories of Corporate Governance The Philosophical Foundations of Corporate Governance* (New York, Routledge, 2004) 118- 130.
[75] Castrillón and Alfonso, (n 7) 178; S. Subramanian, (n 66) 88.
[76] Madiwalar, (n 43) 953.
[77] Abdullah and Valentine, (n 37) 88.

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the CEO, however it is forbidden under the new CAMA 2020 and the different corporate governance codes.[78]

The focus of stewardship theory is on structures that facilitate and empower rather than monitor and control.[79] Steward theory is best at explaining the corporate governance structure in small companies and family owned businesses in recent time.[80]

4. Resource Dependency Theory

The resource dependency theory focuses on the role of board of directors in providing access to resources needed by the firm.[81] It further states that organizations are interdependent, but will compete for and exchange information and scarce resources. In addition, directors play an important role in providing or securing essential resources to an organization through their linkages to the external environment.[82] The provision of resources accessed through the assistance of directors enhances organizational functioning, performance and its survival.

Resource dependency theory emphasizes that the role of a firm's board is wider and it goes beyond the traditional control responsibility stipulated by the agency theory.[83] The resource dependence theory thus complements the agency theory by arguing that the board of directors may be used as a

[78] Sections 265(6) CAMA 2020, 5.2.1 of the CBN Code & 4.1.8 of the PENCOM Code.

[79] Sections 265(6) CAMA 2020, 5.2.1 of the CBN Code & 4.1.8 of the PENCOM Code.

[80] Subramanian, (n 66) 88.

[81] E.N. M'ithiria, D. Musyoki and K. Shawa, 'Corporate Governance, Board Structure and Firm Value: A Review of Literature', [2017] 4(4) *Journal of Business & Economic Policy* 72, 74-75; Abdullah and Valentine, (n 37), 88, 92; Udayasankar, (n 36) 164, 167.

[82] Madiwalar, (n 43) 953.

[83] M'ithiria, Musyoki, and Shawa, (n 81) 72, 74-75.

mechanism to curb managerial selfish behaviour.[84] Directors are selected based on a range of technical, interpersonal and conceptual skills, their motivation to manage, and their strong connections with the market, in particular, with the resources external to the organization such as customers, suppliers and financiers.[85] The directors bring resources to the firm, such as information, skills, access to key constituents such as suppliers, buyers, public policy makers, social groups as well as legitimacy. Directors can be classified into four categories of- insiders, business experts, support specialists and community influentials.[86] Hence, the board of directors may serve as a nexus between the internal environment and external environment, which may further synergize internal and external resources. Resource dependence theory advocates the presence of non-executive directors for their independent voice and ability to understand the customer's needs.[87]

5. Transaction Cost Theory

Transaction cost theory is a variant of agency theory; it states that a company has number of contracts within the company itself or with market through which it creates value for the company.[88] There is a cost associated with each contract with external party, such cost is called transaction cost. Unlike the agency theory, the transaction cost theory does not discuss the issues such as protection of shareholders' right, rather it

[84] Y. Li, A. Armstrong and A. Clarke, 'The Relationship Between Corporate Governance and Financial Performance of Small Corporations in Australia', [2014] 9(2) *Journal of Law and Governance*, 25; J. Du Plessis, A. Hargovan, and J. Harris, *Principles of Contemporary Corporate Governance*, 4ed (Cambridge, Cambridge University Press, 2018)10-15.

[85] Li, Armstrong, and Clarke, (n 84) 29-30; M.E. Archibald, 'Resource Dependency Theory' (n.d) https://www.britannica.com/topic/resource-dependency-theory accessed 12 August 2023.

[86] Yusoff, and Alhaji, (n 39) 52.

[87] Ibid.

[88] Afza and Nazir, (n 10) 255.

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emphasizes the effective and efficient completion of transaction by managers. Thus, transaction cost theory calls for corporate governance mechanisms whereby the manager for instance will look at the transaction costs of owing or renting a needed asset and will decide on the option with lesser cost. [89]

6. Political Theory

The major concern of the political theory is the decision making process of the shareholders, that is, how the quantum of shareholdings in a company may influence the decision making in the company and its corporate governance structure.[90] The political theory posited that the distribution of corporate powers, profits and privileges may be determined in part through governments' favour or interference in corporate decision making through its agencies. The government also makes laws for the protection of the public and the marginalized groups like the minority shareholders.

Political theory infers that companies are influential in molding the political, legal and regulatory system while the government also legislates and influences companies' decision making and corporate governance system.[91] The influence of the governments in Nigeria in setting the tone of corporate governance is indisputable, because it provides the legal, political and legislative framework. Similarly, corporations are influential in lobbying Nigerian governments. Furthermore, there are corporations that are wholly or partly owned by state or the federal government in Nigeria. Such

[89] Ibid.
[90] Ibid.
[91] S. Turnbull, 'Corporate Governance: Theories, Challenges and Paradigms', (2017) https://www.academia.edu/30782600/Corporate_Governance_Theories_Challenges_and_Paradigm accessed 2 June 2023, 1; S.N. Borlea, and M.V. Achim, 'Theories of Corporate Governance', [2013] 23(1) *Studia Universitatis Arad* 117.

corporations include the Nigerian Railway Corporation, Nigeria Television Authority, Federal Radio Corporation of Nigeria and others.

7. Sociological Theory

The sociological theory focuses on the composition and structure of corporate boards and the implications for power and wealth distribution in the society.[92] The theory enunciates the problems of multiple directorships in various organizations thereby concentrating corporate power in the hands of few privileged members of the society, casting aside social equity and economic progress of society. The sociological theory assumes that boards dominated by non-executive directors, transparent accounting disclosures and corporate accountability are effective and essential tools to promote impartiality and fairness in the society which are considered as the socio-economic objectives of a corporate firm.[93] Nigerian corporate codes and the CAMA is tilting towards this theory with regards to the restriction on the number of board that a person could sit on and emphasis on corporate disclosure.[94]

8. Other Theories

There are other theories such as class hegemony theory which utilizes the elite theory to explain that directors as an elite at top of the company recruit and appoints new directors as revolving elites. Similarly, managerial hegemony theory posited that the management of a company may effectively dominate the directors, as the latter is involved in the day-to-day running of the business.[95]

[92] Afza, and Nazir (n 10) 255, 262.
[93] Ibid.
[94] Sections 60 and 61-62 of ISA.
[95] Klepczarek, (n 42) 243.

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Corporate Governance Crisis in Nigeria

Nigeria is not strange to poor corporate governance which was responsible for grounding most of the public and private companies.[96] State-owned enterprises (SOE) had the monopoly of the Nigerian market from 1960 till the 1980s.[97] SOE were the machinery for the provision of goods, services and employment for Nigerians in different sectors of the Nigerian economy, such as agriculture, broadcasting, banking, manufacturing, refinery, real estate, housing and others. By the late 1980s, these SOE have grown too large and suffer from excessive bureaucratic controls, inappropriate technologies, gross incompetence and blatant corruption; and most of the SOE were technically insolvent.[98]

Thus, the decision of the Federal Government of Nigeria to privatize and commercialize hundreds of SOE was a reaction to the failure of corporate governance in these SOE.[99] Unfortunately, bad corporate governance and unethical behaviour was not limited to SOE or local corporations, multinational corporations such as Unilever (Lever Brothers Plc.) and Cadbury were involved. Both Unilever and Cadbury were involved in accounting manipulations resulting in the loss of over a hundred million dollars for each of the company.[100] The CEO, CFO and other senior officials, including the respective auditors were relieved of their appointment.[101]

[96] O.B. Akande, *Corporate Governance Issues in the Nigerian Banking Industry* (DBA-Thesis Walden University 2016), p. 1-14; Akinpelu, (n 36), p. 337-355.

[97] Ibid.

[98] Akinpelu, (n 36) 337; D.O. Adeyemo, 'Public Enterprises Reform in Nigeria: A Review', [2005] 10(3) *Journ. of Soc. Sci.* 223.

[99] Schedules 1, 2 & 3 of Public Enterprises (Privatisation and Commercialisation) Act Chapter P38 LFN 2004; Adeyemo, (n 98) 223; World Bank., *Governance- The World Bank's Experience* (Washington DC., The International Bank for Reconstruction and Development/ The World Bank, 1994) 1-29.

[100] Akinpelu, (n 36),339-341.

[101] Ibid; *Cadbury Nig. Plc v Olubunmi Oni* 2012 LCN/5720 (CA).

There were also series of failure of banks in Nigeria. Bank failures were essentially disastrous as it did not only adversely affect the economy of the country, but the depositors assets which were spent on maintaining the luxurious lifestyle of bank executives, were lost.[102] In the 1950s, 21 out of the 25 indigenous banks folded up, while 60 out of the 115 banks in operation in Nigeria were distressed as at 1995.[103] Corporate governance infractions such as cases of excessive executive remuneration, fraud, insider trading, reckless spending by the management and non-performing loans were reported as the causative agents of the distress in the system.[104] Similarly, between 1989 and 1992 as much as £4137.63 million was lost to fraud and bad debt due to lending to directors and their associates without security.[105]

There was also a massive bank failure in 2009 when depositors' funds and shareholders' capital were dissipated through the unethical and unwholesome practices of the

[102] Akinpelu, (n 36) 341.

[103] O.O. Balogun, *A Review of the Central Bank's Role as Prudential Regulator in Nigeria: An Analysis of the Case for a Separate Supervisory Agency?* (LLM-Thesis, University of London, 2011) 40; S.O. Alashi, [2002]12 *NDIC Quarterly* 49, 61.

[104] L. LaBorde, 'Money-Then and Now Part XII: The 1933 Banking Crisis' (2005) www.silvertrading.net, accessed 24 May 2022; U.A. Ubom and U.B. Ubom, 'Financial Instability in Nigeria: A Review of Banking Crisis', (2007) <https://www.globalacademicgroup.com/journals/the%20nigerian%20acad emic%20forum/Uduak80.pdf> accessed 2 September 2023, 1-8; K. Adeyemi, 'Banking Sector Consolidation in Nigeria: Issues and Challenges' [2006] 9(3) *Union Digest* 32; B.B. Ebong, 'The Banking Industry and the Nigerian Economy Post Consolidation', [2006] 9(3) *Union Digest* (2006) 22-23; U.M. Ogubunka, [2005] 9(2) *Union Digest* 96-97; O.J. Nnanna, 'Today's Banking Risks and Current Regulatory and Supervisory Framework', [2003] 27(3) *Bullion* 30; S.O. Alashi, (n 103) 49-50.

[105] O.O. Animashaun, *Loan Disbursement and Recovery, Policies and Procedures: A Case Study of First Bank of Nigeria Plc.* (MBA Thesis, Obafemi Awolowo University, 1992) 29.

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directors and management of the banks.[106] In order to arrest the poor corporate governance pervading the Nigerian economy, legal measures and corporate governance codes were adopted. For instance, the Failed Banks (Recovery of Debts) and Financial Malpractices in Bank Act ("Failed Bank Act")[107] was enacted and it provides, among other provisions, that any officer or director of a bank who willfully or negligently or intends to fritter the assets of a bank is liable to punishment. Many bank directors and officials were convicted under the Failed Bank Act.[108]

In addition, licenses of many banks were revoked by the Central Bank of Nigeria, while mergers and consolidation of the existing banks were embarked on, in order to rescue ailing banks whose financial position were not irredeemable.[109] The CEOs of many of the distressed banks such as Cecilia Ibru of Oceanic Bank were removed, prosecuted and convicted for mismanagement, fraud, insider abuse and other corporate governance infractions[110] in the 2009 bank failure debacle.[111]

106 Akinpelu, (n 36) 341.

107 Sections 15 and 17 of the Failed Banks (Recovery of Debts) and Financial Malpractices in Bank Act Chapter F2 LFN 2004.

108 *Federal Republic of Nigeria v Ajayi* 1998 3 FBTLR 32; *Federal Republic of Nigeria v Abule* 1998 1FBTLR 62; *Federal Republic of Nigeria v Mohammed Sherrif* 1998 2 FBTLR 109; *Federal Republic of Nigeria v Murnai* 1998 2 FBTLR 196; *Federal Republic of Nigeria v Stephen Baba-Bangoji* 1999 1 FBTLR 178; *Federal Republic of Nigeria v Abiodun* 1999 2 FBTLR 116; *Federal Republic of Nigeria v Nwabia* 1998 4 FBTLR 196&*Federal Republic of Nigeria v Eze* 1998 4 FBTLR 178.

109 S 34(a) of the Nigerian Deposit Insurance Corporation Act Chapter N102 LFN 2004; section 42(1) of the Central Bank of Nigeria Act 2007; Akinpelu, (n 36) 342-345.

110 Akinpelu, (n 36) 341-344; O.O. Balogun, (2011), p. 38.

111 *Nigeria v Santolina Investment Company* 2007 EWHC 437 (Ch); *Access Bank v Akingbola* 2012 EWHC 2148 (Comm); *Okey Nwosu, Dayo Famoroti, Agnes Ebubedike and Danjuma Ocholi v Federal Republic of Nigeria* 2013 11 LLIR 1 (CA); *Ibru v State* 2011 17 NWLR Pt. 1275 6; *Ibru v Federal Republic of Nigeria* FHC/L/297C/2009; *Federal Republic of Nigeria v Yusuf* FHC/ABJCR/2009 (Unreported).

Similarly, codes of corporate governance were developed in Nigeria due to the failure of global brands ostensibly due to corporate governance infractions.[112] Other reasons for the development of corporate governance codes are the need to curb the excesses of the companies' directors and managers;[113] and the pervasive recklessness of the Nigerian directors. Some of these codes include the Financial Reporting Council of Nigeria Code of Corporate Governance, 2018 (FRCN code), the Securities and Exchange Commission Code of Corporate Governance for Listed Companies, 2011 (SEC code), Code of Corporate Governance for the Telecommunication Industry, 2016 issued by the Nigerian Communications Commission, Code of Best Practice for Banks and Discount Houses in Nigeria 2014, issued by the Central Bank of Nigeria (CBN code). Other codes of corporate governance are Code of Good Corporate Governance for Insurance Industry in Nigeria, 2009 issued by the National Insurance Commission (NAICOM code); and Code of Corporate Governance for Licensed Pension Fund Operators, 2008 issued by the National Pension Commission (PENCOM code). It is important to state that the SEC also has the 2007 SEC Code of Conduct for Shareholders' Associations (SEC Code for Shareholders).

The Codes of Corporate Governance mentioned above, set out the responsibilities, proceedings and structure of the board of directors of companies with the purpose of promoting

112 The liquidation of Multi-national Corporations and international consulting giants such as Enron, Arthur Andersen, Global Crossing, Aldephia Inc. and WorldCom (USA); Bank of Credit and Commerce Int., Polly Peck, Mirror Group (UK) etc. due to corporate governance infractions sent shock-waves around the world. The observed corporate governance challenges led to the creation of corporate governance regulations such as Sarbanes-Oxley Act in the US (sections 1-1102); Cadbury Committee Report., (n 28)1-90.

113 P. Coetzee and L.J. Erasmus, 'Driving Audit Committee Disclosure: Legislation Versus Best Practice' [2020] 8(1) *Business Perspectives and Research* 36.

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transparency, accountability and independence of directors for the benefit of the company. The CBN code, for instance, advocates the link of the executive directors' remuneration to their performance, in a bid to stem executive recklessness and excessive remuneration.[114] Similarly, principle 11.3 of FRCN code precludes executive directors from sitting on the remuneration and audit committees.

However, some of the recommendations of the different codes of corporate governance highlighted above are similar but the proliferation may make it difficult for total compliance by the participants who have multiple regulators in instances of conflicts between the codes. For instance, the publicly listed banks are expected to comply with the CBN, SEC, and the FRCN codes which sometimes have different provisions on a single issue. The different corporate codes issued by different Nigerian agencies have diverse provisions on the same issue. For instance, the FRCN Code did not provide for a specific number of board members, it only specifies that board members should possess appropriate balance of knowledge, skills, experience, diversity and independence to foster the effective management of the company.[115] However, what constitute "appropriate balance of knowledge, skills, experience, diversity and independence" may be subject to various interpretations. Similarly, the PENCOM code made no prescription as to the number of directors.[116]

The SEC, CBN and NAICOM Codes however, provides that the membership of the board of directors- should not be less

[114] Section 6.2. of the CBN Code 2006.
[115] Principle 2.2 of the Financial Reporting Council of Nigeria Code of Corporate Governance 2018 (FRCN Code)
[116] Section 4.0 of the Code of Corporate Governance for Licensed Pension Operators (PENCOM Code).

than five (5),[117] not be more twenty (20) members,[118] and be between seven (7) and fifteen (15) members respectively.[119] The CAMA 2020 however provides that a company not being a small company[120] must have at least two members,[121] although it made further provision that a public company must have at least three Independent Non-Executive Directors (INEDs).[122] Section 271 of CAMA 2020 further provides for a single director[123] for small companies[124] as against the provisions of the SEC, CBN and NAICOM Codes cited above. Apart from contradicting the provisions of CAMA 2020 it did not consider the financial burden of having many directors. Similarly, section 7.3 of the SEC code provides that all the other directors require 75 percent vote to override the dissension of the INEDs. This is contrary to section 289(2) of CAMA 2020 which provides that questions at board meetings shall be decided by a majority of votes of directors and in case of an equality of votes, the chairman has a second or casting vote.

The FRCN, SEC and CBN codes also provide that the external audit firm shall be retained for no longer than ten (10)

[117] Section 4.2 of the SEC Code of Corporate Governance in Nigeria 2011(Applicable to Publicly Listed Companies).
[118] Section 5.3.5 of the Code of Corporate Governance for Banks in Nigeria Post-Consolidation 2006 (CBN Code).
[119] Section 5.04 of the NAICOM Code of Corporate Governance for the Insurance Industry in Nigeria 2009 (NAICOM Code).
[120] A small company was defined in 394 of CAMA 2020, as a private company with a net asset and turnover of not more than N 60 million and N120 million respectively or the amount that the Corporate Affairs Commission may fix from time to time; furthermore, none of the members of a small company must be an alien; a government, government corporation or agency or its nominee.
[121] Section 271(1) CAMA 2020.
[122] Section 275 CAMA 2020.
[123] Sections 18 and 271 CAMA 2020.
[124] Section 394 CAMA 2020.

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years,[125] the PENCOM code is silent on the tenure of external auditors while the NAICOM code prescribes a maximum of five (5) years of engagement.[126] Thus, these codes contain different, sometimes conflicting provisions on the same issue. It is apt to state here that the applicability of corporate codes to private companies was contended in *Eko Hotels Limited v Financial Reporting Council of Nigeria*[127] where it was held that the FRCN's power, as stated in its enabling Act, covers only public entities and that this does not extend to regulation of private companies.

The Inadvertent Exposure of Bad Corporate Governance in Nigeria by COVID-19 Pandemic

The import of good corporate governance came to the fore with the advent of COVID-19 pandemic, as companies that were treading on the borderline became either candidates of hostile corporate takeover or bankruptcy.[128] Since one of the objectives of corporate law is good corporate governance, many of the corporate governance codes are part of CAMA 2020 and other corporate laws such as ISA. For instance, section 60 of ISA ensures sound corporate governance by providing that, it is the corporate responsibility of public companies to ensure that the financial statements presented to the public represent the true position of the company verified by the CFO and CEO. Similarly, sections 62 and 63 of ISA provide that all auditors of public companies must be

[125] Principle 20.2 of the FRCN Code, sections 33.4 of the SEC Code, 8.2.2 and 8.2.3 of the CBN Code.

[126] Section 8.0 of the NAICOM Code.

[127] Suit No. FHC/L/CS/1430/2012 delivered on 21-03-2014 (Unreported).

[128] A. Idigbe and O. Kalu, 'Nigeria: COVID 19 the Global Game Changer: Impact on Restructuring of Insolvent Businesses in Nigeria' (2020) https://www.mondaq.com/nigeria/insolvencybankruptcy/910778/ covid-19-the-global-game-changer-impact-on-restructuring-of-insolvent-businesses-in-nigeria-/ accessed 28 May 2022; O.J. Olujobi, 'Combating Insolvency and Business Recovery Problems in the Oil Industry: Proposal for Improvement in Nigeria's Insolvency and Bankruptcy Legal Framework' [2021] 7(2) *Heliyon* 1-10.

registered with SEC and must confirm the presence and adequacy of internal control mechanism in their financial report on the company.

The CBN and PENCOM Codes provide that the responsibilities of the Chairman of the board of directors should be separated from that of the Managing Director/CEO and that no single individual shall be occupying the two position at the same time.[129] Departing from the position of CAMA 1990, CAMA 2020 has also provided that the position of MD and CEO should be held by different persons[130] in line with the stakeholder theory.

The CBN used its powers to tackle corporate governance infractions in a financial conglomerate in 2021. [131] Insider dealings and abuse of office were levied by the CBN against a former Chairman of First Bank of Nigeria Holdings (FBN Holdings), Oba Otudeko who had also served a term of ten years as the Chairman of the subsidiary First Bank of Nigeria (FBN) until 2010.[132] The board of FBN Holdings removed the CEO of the subsidiary, -FBN and appointed a replacement on the 28th of April 2021. This removal is contrary to section 47 of BOFIA, which provides that the appointment of any person as a director in any bank in Nigeria must be with the prior written approval of the CBN.[133] The CEO of FBN who was removed

[129] Sections 5.2.1 of the CBN code and 4.1.8 of the PENCOM code.

[130] Section 265(6) CAMA 2020.

[131] Sections 33 and 34 of BOFIA; *Danson Izedonmwen & Anor v Union Bank PLC* 2011 LCN/4919 (CA).

[132] A. Adu, A. Ayeku, and H. Aigbe, 'Nigeria: Removal of Directors of First Bank of Nigeria Limited: An Analysis of the Action Taken by the Central Bank of Nigeria', (2021) https://www.mondaq.com/nigeria/ shareholders/1070686/removal-of-directors-of-first-bank-of-nigeria-limited-an-analysis-of-the-action-taken -by-the-central-bank-of-nigeria/ accessed 4 August 2023.

[133] It is also contrary to section 288 of CAMA 2020; See also *Longe v First Bank of Nigeria* 2010 6 NWLR Pt.1189 1 para 5.

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by the FBN Holdings board of directors claimed that his removal was not unconnected with his insistence that the companies related to the chairman service its outstanding loans.[134] The CBN replaced the entire boards of FBN and FBN Holdings, reinstated the CEO and requested FBN to recover outstanding loans owed by companies related to the former directors and divest from its participation in non-permissible companies, which include stakes in the recently removed directors' companies.

Further, the erstwhile chairman of FBN Holdings was forced to sell his shares in a private company to repay the age long loan to FBN.[135] CBN also identifies potential corporate governance lapses at the FBN.[136] To foster good corporate governance, FBN Holdings, a holding company and a financial supermarket consisting of banks, registrar, insurance, pension fund custodian, trustee, discount house and others changed its registrar from First Registrar (its subsidiary) to Meristem.[137] This gesture is likely to reduce inbreeding and foster further disclosure because FBN Holdings hold no share in Meristem. The chapter further proposes that all public companies in Nigeria should disclose the percentage of shares held by the significant shareholders

[134] Proshare, 'FBN Holdings Plc Drops First Registrars, Appoints Meristem Registrars as Replacement' (2021), https://www.proshareng.com/news/Stock---Analyst-Updates/FBN-Holdings-Plc-Drops-First-Registrars/59651# accessed 1September 2023.

[135] Wall Street Journal, 'Oba Otudeko sells Honeywell for N 22bto repay age long loan to FBN Holding', (2022), https://thestreetjournal.org/oba-otudeko-sells-honeywell-for-n22bn-to-repay-age-long-loan-to-first- bank-of-nigeria-holding/ accessed 12 July 2023.

[136] Proshare., 'FBN Holdings Plc Drops First Registrars, Appoints Meristem Registrars as Replacement' (2021), https://www.proshareng.com/news/Stock---Analyst-Updates/FBN-Holdings-Plc-Drops-First- Registrars/59651# accessed 1 July 2023.

[137] Proshare., 'FBN Holdings Plc Drops First Registrars, Appoints Meristem Registrars as Replacement' (2021), https://www.proshareng.com/news/Stock---Analyst-Updates/FBN-Holdings-Plc-Drops-First-Registrars/59651# accessed 1 July 2023.

with at least 5% shares through direct or indirect shareholding and the time of acquisition of such significant shareholding. It is apparent that COVID-19 brought the corporate governance infraction to the fore, as the bank had to call in the outstanding loans due to the precarious risks that companies are exposed to due to the pandemic.

Similarly, in line with the lockdown and COVID-19 compliance rules, the Nigerian Stock Exchange (NSE) issued guidelines on how companies could hold valid virtual committee or board meetings, a condition that was unacceptable before the advent of COVID-19.[138] Similarly, NSE granted a 60-day moratorium for companies to submit their audited account due to COVID-19 epidemic in 2020. In addition, it seems that CAMA 2020 is more technologically savvy and COVID-19 compliant than the preceding CAMA 1990. For instance, section 240(2) CAMA 2020 allows private companies to conduct their AGM electronically. The chapter however suggests that CAMA should be amended to allow for the conduct of public company's AGM in a hybrid form, that is, by physical and electronic means.

CAMA 2020, in contradistinction to CAMA 1990, makes copious provisions for electronic correspondence, certificates and transfers. For instance, CAMA 2020 provides for electronic communication,[139] electronic signature by directors and secretaries to authenticate documents,[140] electronic transfer of shares,[141] and storage of corporation records by

[138] Aluko and Oyebode & Co., 'COVID-19: Corporate Governance and Regulatory Registry in Nigeria', (2020) AO-Bulletin-Corporate-Governance-and-Regulatory-Registries.pdf/ accessed 12 August 2023.

[139] Sections 31(1), 244(3) and 549 CAMA 2020.

[140] Section 101 CAMA 2020.

[141] Sections 175(1) and 176(1) CAMA 2020.

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electronic means.[142] It is suggested that these provisions are useful in curtailing the spread of COVID-19, although it was primarily enacted to increase the ease of doing business and transactions in Nigeria, since virtual transactions are real time transactions and less costly. However, since virtual transactions are more prone to fraud than face to face transactions, adequate measures must be put in place by the corporations, Nigerian governments and security agencies to curb fraud.

In addition, the author observed that the pandemic seems to make the job of the directors in Nigerian corporations more demanding especially with regards to risk management, safety, strategy, technology, safeguarding the supply chains, succession planning and prevention of fraud. Thus, the directors must frequently initiate ideas, coordinate and supervise management to ensure that the corporations have adequate and updated technology, foolproof processes capable of exposing fraud and a well-entrenched safety procedure. The directors must also be involved in formulating strategies to manage risks and safeguard their supply chains. In essence, the COVID-19 pandemic has mandated companies in Nigeria to take special interest in the stakeholders, especially the employees, customers and suppliers because the pandemic must be arrested. Nigerian companies that have failed in the past to provide personal protective equipment (PPE) to their staff, especially casual employees were forced by the pandemic to do so.[143] Thus,

[142] Sections 375(3) and 422(3) CAMA 2020.

[143] O.O. Adepoju and D.L. Opeyemi, 'Analyzing Nigeria's PPE Manufacturing Capacity and the Resultant Entrepreneurial Opportunities Due to COVID-19', in A.A. Eniola (ed.) *Entrepreneurship and Post-Pandemic Future* (Bingley, Emerald Publishing Limited, 2022) 117-142; O.O Animashaun 'Casualisation and Casual Employment in Nigeria: Beyond Contract' [2007] 11(4) *Nigerian Journal of Labour Law and Industrial Relations* 14-34.

the corporate governance system is forced to shift from th agency to the stakeholders' model in this instance.

Similarly, section 275 CAMA 2020 mandates all publi. companies to have at least three INEDs as advocated by most corporate governance codes.[144] Section 278 CAMA 2020, provides that suitable person for appointment as a director of a public company must disclose his directorships of other companies, while section 307(3) CAMA 2020 provides that a person shall not be a director in more than five public companies. The import of this is that it seems that the Nigerian corporate governance rules and corporate law is swinging away from observance of agency and steward theories to adherence with stakeholders' theory, as there are heightened expectations by the public for societal engagement from corporations in Nigeria.

Recommendations

The chapter concedes that corporate governance issues related to the composition, independence, and remuneration of the board of directors in Nigerian companies have received some attention under CAMA 2020 and the different corporate governance codes, but there are still rooms for reforms with regards to corporate law. To address the corporate governance challenges in Nigeria, there must be adequate legislative provisions and enforcement mechanism on issues related to disclosures, accountability and supervision.[145] For example, a weak enforcement mechanism, a corrupt or lax regulatory system may lead to the exploitation of the system by expedient corporations to advance unethical objectives.[146]

[144] For instance, section 7.3 of the SEC code.

[145] Lateef and Akinsulore, (n 1) 139, 154.

[146] Ibid.

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The chapter thus recommends the harmonization of the codes of corporate governance by the FRCN in concert with the regulatory agencies such as SEC, PENCOM, NAICOM and CBN. The harmonized code should have a general section applicable to all sectors of the economy in Nigeria while appropriate sections will address the peculiarities of the different sectors. The harmonized codes of corporate governance will take the provisions of CAMA 2020 into consideration, while also addressing the dissent in the different codes. Further, the duplication of effort by the different regulators will be addressed.

Based on the above-mentioned submission, the chapter further recommends that there is a need to enhance the Nigerian company's existing reporting and information systems to enable the board monitor and manage their potential risks in a proactive manner. Second, company's board should partner with the management on ways of mitigating the business risks, the workplace health and safety issues posed by COVID-19.[147] Third, there should be a disaster plan to address matters such as employee availability, functionality of IT systems, cyber-security, communication protocols and legal/regulatory compliance in case of resuscitation of COVID-19 or similar catastrophe.[148] Four, detailed board and management succession plans for Nigerian companies should be adopted. Five, long-term corporate strategy should be reassessed, as the COVID-19 pandemic has brought new and unique challenges and opportunities to most businesses. These challenges and opportunities include cultivating new alliances, innovative

[147] W. Kucera, J. Simala and A. Noreuil, 'COVID-19 and Corporate Governance: Key Issues for Public Company Directors', (2020) https://corpgov.law.harvard.edu/2020/04/29/covid-19-and-corporate-governance-key-issues-for-public-company-directors/ accessed 20 August 2023, 2-5.

[148] Ibid.

methods and technology, new ventures, acquisitions (or disposing of non-core assets or businesses), exploring lower cost financing structures, and developing new employee benefit plans.[149] Six, the COVID-19 pandemic magnifies the importance of liquidity and capitalization considerations in Nigerian corporations. Given that COVID-19 was unexpected, it is extremely rapid onset met many asset rich companies in a highly geared position.[150] Accordingly, such companies either go into liquidation or acquired at a fraction of its value by companies or individuals who are liquid. Hence, in this regard directors and management should review periodically updates with respect to the company's liquidity and capital issues. Issues such as the impact of the crisis on the company's cash flow and the upcoming maturities of outstanding debts should be addressed.[151] In addition, some companies may need to consider a reduction in the perquisite and executive compensation, which may lead to renegotiation of the existing contracts in order to keep the certain companies afloat.

Conclusion

The unexpected emergence of COVID-19 pandemic exposes deep-seated corporate governance infractions and financial fissures in Nigerian companies. Prior to the outbreak of the pandemic in Nigeria, the laxity in the observance of good corporate governance and inculcation of good corporate culture was responsible for most part, in mass corporate failure and insolvency such as the massive bank failure of 2009. The mass corporate failure threatened the Nigerian economy, and the global focus on corporate governance due

[149] Kucera, Simala and Noreuil, (n 147) 2-5; Koutoupis, et al., (n 5) 969.

[150] O.E.L. Amnim, P.C. Okeke and F.C. Obiorah, 'Impact of Covid-19 Pandemic on Liquidity and Profitability of Firms in Nigeria' [2021] 11(3) *International Journal of Academic Research in Business and Social Sciences* 1331.

[151] Ibid, 1331; Koutoupis, et al., (n 149) 969.

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to the failure of international firms such as Enron and Arthur Andersen, bring the issue of corporate governance to the fore. There emerged various regulations such as BOFIA and CAMA 2020; and multiple codes of corporate governance prescribed by the regulators in each industry to reduce corporate governance infractions in Nigeria.

The provisions of these corporate governance codes differ from one another and some of these codes are at variance with the CAMA, 2020. It is apt to state here too that the importance of good corporate governance made CAMA 2020 to- incorporate some of the provisions in the corporate governance codes in its provisions. Thus, it seems that the prevailing circumstances, the irresponsibility of the different levels of government, the agitation of the populace for improved living condition and the heightened expectations for societal engagement from corporations in Nigeria have changed and still changing the guiding principles of corporate governance from shareholders' primacy (agency theory) to stakeholder involvement (shareholder theory).

In addition, Nigerian corporations in their enlightened self-interest, especially in the oil and gas sector, have adopted a responsible position towards the stakeholders and the environment. This position will reduce global warming, the pervasive pollution and endear the Nigerian public to these responsible corporations so that the soft law of self-regulatory corporate governance principles will not crystallize into hard

law of corporate law.[152] Further, the MNC, adopting the home countries' templates, are using the international best practice to engage the stakeholders and the environment for sustainable development.

[152] A.O. Akinsulore, 'Effects of Legislation on Corporate Social Responsibility in the Minerals and Mines Sector of Nigeria', [2016] 7(1) *ABUAD Journal of Sustainable Development Law and Policy* 97; B. Ihugba, 'Compulsory Regulation of CSR: A Case Study of Nigeria', [2012] 5(2) *Journal of Politics and Law* 68; Ekhator, (n 56) 119; E. Emeseh, R. Ako, P.O. Obokoh, and L. Ogechukwu, 'Corporations, CSR and Self-Regulation: What Lessons from the Global Financial Crisis?', [2010] 11(2) *German Law Journal* 230; B. Nwete,'Corporate Social Responsibility and Transparency in the Development of Energy and Mining Projects in Emerging Markets; Is Soft Law the Answer?' [2007] 8(4) *German Law Journal* 311; Amao, (n 56) 89; Idemudia, and Ite, (n 56) 194; Ijaiya, (n 56) 60.

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