Corporate Governance in Nigeria: Where We Are and What We Need

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Abstract

This paper reviews corporate governance issues in Nigeria from both its regulatory and compliance viewpoints. It explores whether rules and regulations as contained in corporate governance codes can adequately address the issue of poor corporate governance and the resultant business failures. It reviews the existing codes of corporate governance to determine whether the implicit interrelationship which should exist between corporate governance and ethics are clearly articulated. The paper finds that while the Nigerian code of corporate governance contains elements of international best practices as specified in OECD, CACG and IOD documents, a number of peculiar institutional weaknesses hinder the achievement of regulatory and judicial remedies open to stakeholders who are wronged as a result of poor corporate governance. The paper thus advocates for measures that instil high ethical and moral standards in boards and management as panacea to doing what is right as well review some codes.
Keywords: *Corporate Governance, GCG*

1. Introduction

In recent years, there has been a global concern for corporate good governance in public service particularly in Africa and other developing world. This is informed by the need to avoid the damage done to the society due to the absence of good governance that contributes to effective management which facilitates the attainment of the desired socio-economic growth of society and the upliftment of the general wellbeing of the citizenry.

Corporate governance is the principles and values that guide a company in the conduct of its day-to-day business and how stakeholders interrelate among themselves.

There has been renewed interest in corporate governance practices globally and its clamour has become even louder, given the high-profile collapses of a number of large US firms, such as Enron Corporation and MCI Inc. (formerly WorldCom). In 2002, the US federal government passed the Sarbanes-Oxley Act, with the aim of restoring public confidence in corporate governance by requiring public liability com-

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panies to adopt and report on compliance to the Act. In Nigeria, corporate governance is relatively a new concept and despite all efforts by stakeholders to institute sound corporate governance practices, Nigeria has continuously fared poorly in this regard. Hence this paper aims to critically examine the implementation of good corporate governance in Nigeria.

2. Nigerian Public Service At A Glance

The regulatory framework of corporate governance is a global phenomenon. But while there are universal codes for regulating the practice of corporate governance, there also exists national codes based on local needs and the unique characteristic of each country. However, regardless of whether the code is global or national, the regulatory framework of corporate governance can be viewed from two broad perspectives; voluntary and mandatory.

Wilson (2006) observed, in Nigeria, as in most developed countries, observance of the principles of corporate governance has been secured through a combination of voluntary and mandatory mechanisms. In 2003, the Artedo Peterside committee set up by the Securities and Exchange Commission (SEC) developed a code of best practice of public companies in Nigeria. The code is voluntary and is designed to entrench good business practices and standard for board of directors, auditors, CEOs, etc. of listed companies including banks. Mandatory corporate government provisions are contained in companies and allied matters act, banks and other financial institution act, investment and securities act, and the security and exchange act.

Drawing from the trio of Organisation for Economic Cooperation and Development (OECD), Commonwealth Association for Corporate Governance (CACG), and Institute of Directors (IOD)s codes, Nigeria has developed codes for the practice of good corporate governance which reflect some of the elements of OECD and other global codes. These include;

1. Separating the roles of the CEO from those of the board chairman
2. Prescription of non-executive and executive directors on the board
3. Improving the quality and performance of board membership
4. Introducing merit on criteria to hold top management position
5. Introduction of transparency, due process and disclosure requirements.
6. Transparency on financial and non-financial reporting
7. Protection of shareholders rights and privileges
8. Defining the composition, roles and duties of the audit committee. (Wilson) cited above.

3. Shortcomings Of Model Of Corporate Governance Relying On Rules And Regulations

It has become evident, not only in Nigeria, but worldwide that there have been various challenges in the process of implementing these codes. The Nigerian experience was aptly summarized by the Central Bank of Nigeria in its code of corporate governance for banks in Nigeria. Post consolidation (CBN, 2006). The challenges identified are not limited to banking sector but cut across other financial institutions and business corporations in general. They include

1. Technical incompetence of board and management
2. Boardroom squabbles and relationship among director
3. Squabbles arising from knowledge gaps and relationship between management and staff
4. Increased level of risks
5. Ineffective integration of entities
6. Poor integration and development of ICT system
7. Inadequate management capacity
8. Insider dealings
9. Rendition of false returns
10. Continued concealments
11. Ineffective board/statutory audit committee.
12. Inadequate operational and financial controls
13. Absence of robust risk management system
14. Discriminatory disposal of surplus asset.
15. Non transparent and inadequate disclosure of information

The various acts and codes meant to strengthen corporate governance provide judicial remedies for breach of directors duties. These remedies include.

1. Action to recover secret profit
2. Action in damages and compensation
3. Restoration of companys property

   – Winding up proceedings on just and equitable grounds

- Relief on the ground that the affairs of the company are being conducted in an illegal or oppressive manner
- Application to Corporate Affairs Commission to investigate companys affairs.

A major obstacle in obtaining the above reliefs is that enforcing them lies with the courts. Nigerian courts remain slow and expensive and not effective in resolving commercial disputes. While the courts remain slow, inefficient and expensive, shareholders are hesitant to use the courts and as a result the directors continue to act with impunity.

Another remedy to prevent bad corporate governance is through the oversight function of regulatory authorities. Hence agencies such as US-SEC, the secretary of state in the UK and in Nigeria, Securities and Exchange Commission (SEC), and corporate affairs commission (CAC) and the Central Bank of Nigeria (CBN) are meant to perform such oversight. However, these bodies hardly launch any inquisitorial raids on corporate bodies. Where they do, the penalties usually meted out to companies found liable for any breach do not deter, hence directors can afford to risk non-compliance with relevant laws.

Beyond this, France et al (2002), point out that laws regulating companies are ambiguous, that juries have a hard time grasping abstract and sophisticated financial concepts, hence, well counselled executives have plenty of tricks for distancing themselves from responsibilities.

These shortcoming/challenges thus underscore the imperative of instilling ethical principles and standards in the boards, management and employees. As eminent psychologist Robert Sternberg (2012), aptly puts it, "*rules and regulations arent the answer, there is always a loophole to be found and the focus becomes navigating the system rather than doing what is right. We need leaders with strong moral compass*".

4. Summary, Conclusions And Recommendations

There is no doubt that issues of best practices in corporate governance will continue to dominate discourse in management literature for years to come. It is also important to appreciate that the principle of separate legal entity of corporation in law did not intend total extrication of the importance of human behaviour in the management of these entities. As Arjoon (2012), cautions, "*The tendency to over emphasise legal compliance mechanisms may result in an attempt to substitute accountability*" for "*responsibility*" and may also result in an attempt to legislate morality.

Hence, while efforts are continuously being made to strengthen laws and regulations about corporate governance, conscious efforts must also be made to instil high ethical standards corporate governance codes and ethics are both needed for enterprises development. Company executives can no longer afford to pretend that business is not bound by any ethics other than simply abiding by the law. The thinking that business should make as much profit within the framework of the legal system

cannot stand in the face of several business failures where directors are paying lip service to technical compliance with regulations. Also, in being specific, the following should be given keen attention:

1. There may be the need to review the Code of Corporate Governance Practices of 2003 with a view to giving it greater legal backing in order to engender enforcement.

2. There is the need for excellent relationship between the board, the management and the other stakeholders. This can be achieved by regular consultations and that all stakeholders are carried along.

3. The Federal Government and regulators should have zero tolerance to unacceptable corporate governance practices. Transparency, proper disclosure, controls and accountability in the system should be conscientiously encouraged, while there should be sanctions for non-compliance. It would therefore imply that the Code of Corporate Governance Practices should be legally binding on public companies in Nigeria.

4. Companies in Nigeria should have sound risk management frameworks, with responsibilities clearly delineated. The escalation system should also be effective in cases of breaches of provisions and standards.

5. The regulators, themselves, should be above board and should lead by example at all times. They should be firm, fair, equitable and transparent in their dealings, and policy initiation should always be by consensus.

6. The regulators should encourage whistle blowing system in companies. The whistle blowers should be adequately protected.

7. Effective internal controls systems should be encouraged to be put in place by corporate organisations.

8. There should be a system of independent sub-committees of the board, especially the finance and audit and remuneration committees of companies.

9. All stakeholders interests should be protected at all times, and encouraged to participate in the corporate governance process.

10. There should be compulsory induction training on Corporate Governance for new members of board of directors.

11. There should be regular structured training and attendance of seminars and workshops for senior management in order to strengthen leadership quality.

12. The regulators should insist on efficient performance measurement system for senior management and the board. They should also encourage efficient process and performance evaluation and reporting to stakeholders.

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