

MONITORING GOOD CORPORATE GOVERNANCE IN DEVELOPING COUNTRIES: EVIDENCE FROM NIGERIA*

Abstract

The call for good corporate governance was as a result of the scandal and collapse of high profile companies such as Enron and the Mirror Group News International in the United States of America, the United Kingdom and other parts of the world. The collapses brought to the fore, the ills in the management of these companies. In Nigeria, the scandal in some sure-bet banks, Cadbury Nigeria and even the Nigerian Stock Exchange highlighted the failure in the internal control of companies to curb or restrain the excesses of management. This paper sought to monitor the development of good corporate governance globally and in Nigeria bearing in mind Nigeria's domestic institutional and cultural systems. The paper made recommendations that involve the participation of stakeholders in a company such as boards' independence, board appraisal, shareholder's activism and a review of the Companies and Allied Matters Act 1990 for more stringent penalties against directors. This paper made use of legislation, regulations (Codes of best practices) and literature of writers in textbooks and published articles to find recommendations to promote good corporate governance in Nigeria in the midst of Nigeria's weak institutions.

Key words: Good Corporate Governance; International Corporate Governance; Nigeria, and Public Companies.

1. Introduction

Whenever high profile companies suddenly collapse, there is usually the suspicion that the internal control system was ineffective.¹ Hence, governance changes to curb such collapses and maintenance of effective monitoring systems to ensure compliance with the governance changes. Corporate governance is a major part of risk reduction strategy for companies. Corporate governance also provides the structure through which the goals of companies are set, and the means of achieving those goals and monitoring performance are determined.² The international call for good corporate governance was in the wake of corporate governance failure in some high profile companies. This made governments, shareholders and other stakeholders develop interest in the discipline.³ The failure in these high profile companies brought about the enactment of the Sarbanes-Oxley Act 2002 in the United States of America.⁴ In the United Kingdom, the United Kingdom Corporate Governance Code was put in place in 1992.⁵ This Code is voluntary.

Corporate Governance as a discipline has developed steadily over the years. In the United Kingdom, companies of good repute like the Mirror Group News International, Polly Peck International and Barings Bank unexpectedly collapsed in the early 1990s.⁶ In the United States of America, a large number of organisations in the Savings and Thrift Industry had to be saved from failing in the 1980s.⁷ Even though corporate governance is evolving and is dynamic in nature, its underpinning framework

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¹ G D Carnegie & B T O'Connell, 'A Longitudinal Study of the Interplay of Corporate Collapse, Accounting Failure and Governance Change in Australia: Early 1890s to early 2000s' (2014) 25 *Critical Perspectives on Accounting*, 446; B Soltani, 'The Anatomy of Corporate Fraud: A Comparative Analysis of High Profile American and European Corporate Scandals' (2014) 120 *Journal of Business Ethics*, 257.

² J D Westphal & E J Zajac, 'A Behavioral Theory of Corporate Governance: Explicating the Mechanisms of Socially Situated and Socially Constituted Agency' (2013) 7 *The Academy of Management Annals*, 608; Financial Reporting Council, *The UK Corporate Governance Code 2014*, 1.

³ A A Afolabi, 'Examining Corporate Governance Practices in Nigerian and South African Firms' (2015) 3 *European Journal of Accounting Auditing and Finance Research*, 10-11.

⁴ *ibid.*

⁵ J Solomon, *Corporate Governance and Accountability* (3rd ED, West Sussex: John Wiley & Sons Ltd, 2010) p.5.

⁶ B Coyle, *Corporate Governance* (study text, 6th ED, London: ICSA Information & Training Ltd, 2009) p.10.

⁷ *ibid.*

dates back in time.⁸ The framework will be highlighted in subsequent sections of the paper. The pressure for good⁹ corporate governance practices was also borne in Nigeria as a result of some financial and accounting scandals faced by some banks and public traded companies.¹⁰ Hence in 2001, the Securities and Exchange Commission (SEC) of Nigeria inaugurated a committee that came up with a Code of Best Practices for Public Companies in Nigeria (“the Code”) which came into effect in 2003 and updated in 2011.¹¹ The Central Bank of Nigeria also introduced the Code of Corporate Governance for Banks in Nigeria which became effective in 2006.¹² Be that as it may, it is no news that Nigeria is plagued with corruption in her institutions that hinders her economy growth.

Thus, this paper seeks to answer the following questions: How can good corporate governance be observed in countries like Nigeria with weak or ineffective institutions to monitor companies especially as the market for corporate control and or institutional shareholders is equally ineffective or non-existence? How can companies in the midst of weak institutions promote good corporate governance? This paper seeks to provide information which may improve good corporate governance in Nigeria and hence prevent corporate scandals in companies in the face of weak institutions. The system of corporate governance studied in this research is the system applicable in Nigeria and the United Kingdom. The next section studies the theoretical development of corporate governance. This is centred on the agency theory, the relationship with its actors and the problems arising from such relationship in a developed market context. Thereafter, the third section examines the development of corporate governance in Nigeria. This also discusses some scandals in Nigeria and the update of some ongoing scandals as at the time of printing this paper. The fourth section discusses the role of the board of directors in a company being the custodian of good corporate governance mechanisms and leadership in a company. The section also looks at the role of the audit committee of the board of directors and the expertise needed by its members to perform their function. The last section puts into perspective the contexts of weaknesses in companies and concludes with recommendations.

2. Theoretical Development of Corporate Governance

The dominant theory on which corporate governance is built is the agency theory.¹³ Agency theory is primarily linked to developed Anglo-Saxon markets where shareholders are dispersed. Agency relationship results from the contract between principals (shareholders) and their agents (managers) to perform some service on the shareholders’ behalf, involving the delegation of taking risks and decision making authority to the managers.¹⁴ Agency theory is the study of this relationship and conflicts between the shareholders and their managers due to the self-behavioural tendencies of the managers given the separation of ownership and control.¹⁵ Agency theory thus recommends how shareholders can

⁸ J Solomon (n. 5) p. 12; C A Mallin, *Corporate Governance* (4th ED, New York: Oxford University Press, 2013) p.7.

⁹ Good depicts actions which maximise the company’s value. See J D Raelin & K Bondy, ‘Putting the Good back in Good Corporate Governance: The Presence and problems of Double-Layered Agency Theory’ (2013) 21 *Corporate Governance: An International Review*, 420.

¹⁰ C Ogbechie & D Koufopoulos, Corporate Governance Practices in Nigeria in S O Idowu & R Schmidpeter (1st ed), *Corporate Governance in Emerging Markets* (Springer Berlin Heidelberg, 2014) p.373-374. Examples include the bad corporate governance practices in some Banks in 2008/2009; Cadbury Nigeria 2006; African Petroleum and Unilever Nigeria in the late 1990s.

¹¹ Securities and Exchange Commission, *Code of Corporate Governance for Public Companies in Nigeria* 2011 4

¹² Central Bank of Nigeria, ‘Code of Corporate Governance for Banks in Nigeria Post Consolidation’ (3 April 2006) <<http://www.cenbank.org/OUT/PUBLICATIONS/BSG/2006/CORPGOV-POSTCONSO.PDF>> accessed on 30 January 2016.

¹³ J D Raelin & K Bondy (n. 9) 421; J Joseph, W Ocasio & M-H McDonnell, ‘The Structural Elaboration of Board Independence: Executive Power, Institutional Logics, and The Adoption of CEO-Only Board Structures in U.S. Corporate Governance’ (2014) 57 *Academy of Management Journal*, 1834.

¹⁴ E F Fama & M C Jensen, ‘Separation of Ownership and Control’ (1983) XXVI *Journal of Law and Economics*, 1-2.

¹⁵ I Filatotchev, G Jackson and C Nakajima, ‘Corporate governance and national institutions: A review and emerging research agenda’ (2013) 30 *Asia Pacific Journal of Management*, 965-966.

maximise and protect their wealth by putting in place good corporate governance structure.¹⁶ These structures seek to align the interest of both the shareholders and managers.

It is important to state that there is no globally accepted definition of corporate governance especially as the concept is evolving and dynamic. Solomon defined corporate governance as "... the system by which companies are directed and controlled".¹⁷ The OECD defines Corporate Governance as a set of relationships between a company's management, its shareholders, its board and other stakeholders. It further states that corporate governance provides the mechanism through which the objectives of a company are set, together with the means of attaining those objectives, and monitoring performance are determined.¹⁸ Hence, corporate governance takes care of the company's systems, its development, strategic management, as well as other areas.

The United Kingdom pioneered the call for good corporate governance following corporate scandals in some sure-bet companies to foster investors' trust in their companies.¹⁹ Better corporate governance mechanisms have been developed for quoted companies worldwide from the 1990s onwards. As a result, directors of quoted companies are now better informed about corporate governance, more aware of conflicts of interest, and much more focussed on risk management. It is argued that good corporate governance will influence and aid the board of directors publish standard financial reporting which will in turn aid investors and potential investors' judgment and confidence in the company.²⁰ It is important to state that there is empirical evidence to show that the usual mechanisms of corporate governance as practiced in Anglo-Saxon markets cannot be copied by other markets without salient misalignment.²¹ For example, in the United Kingdom and United States of America, ownership is dominantly diffused, but in Nigeria, ownership is dominated majorly by individuals, families and government.²²

3. Corporate Governance in Nigeria

In Nigeria, corporate governance development began with founding families of companies who most times, retained control in their companies' management and board. Often times, the corporate strategic direction of the company lies on them.²³ The accounting scandal that rocked the banking sector in Nigeria in 2009 and the scandal of some public quoted companies like Cadbury Nigeria between 2003-2006, Unilever Brothers, African Petroleum and even the Nigerian Stock Exchange in 2010 made the Federal Government of Nigeria with regards to the arguments of good corporate governance, through some of her agencies, come up with institutional structures to protect investors of their investments from corrupt directors.²⁴

It is relevant to state that studies on the effectiveness of family ownership in corporate governance are largely inconclusive.²⁵ Some evidence posit that because the current generation are obliged to preserve wealth for the next generation, the shareholders/directors will make decisions that will affect the company sustenance in the long run.²⁶ This situation was not the case in Oceanic Bank Nigeria, a family owned bank where the Managing Director/Chief Executive Officer, Cecilia Ibru, was found by the court

¹⁶ *ibid* 966.

¹⁷ J Solomon (n. 5) p.5. This definition is the first definition of the United Kingdom Corporate Governance Code produced by the Cadbury Committee in 1992. See also, Financial Reporting Council (n. 2) p.1.

¹⁸ Organisation for Economic Co-operation and Development, *Principles of Corporate Governance* (OECD 2004).

¹⁹ A Chambers, 'The Global Financial Crisis: A Failure of Corporate Governance?' in G Aras and D Crowther, *Business Strategy and Sustainability* (Bingley, U.K. : Emerald, 2012) p.23.

²⁰ O M Uadiale, 'Earnings Management and Corporate Governance in Nigeria' (2012) 3 *Research Journal of Finance and Accounting*, 1.

²¹ I Filatotchev, G Jackson and C Nakajima (n. 15) p.971 and 972; E Adegbite, 'Good corporate governance in Nigeria: Antecedents, propositions and peculiarities' (2015) 24 *International Business Review*, 320.

²² I Filatotchev, G Jackson and C Nakajima (n. 15) p. 974.

²³ E Adegbite (n. 21) p.320.

²⁴ O M Uadiale (n. 20) p.3.

²⁵ Filatotchev et al. (n. 15) p.975.

²⁶ *ibid*.

to have given out loans without meeting the conditions for such actions to fronts and questionable organisations and corruptly amassed wealth, and hence the bank was low on cash reserves.²⁷ The now defunct Intercontinental Bank is no different. The bank was formed by its then MD, Erastus Akingbola and 3 other friends.²⁸ He was found guilty of fraudulent and sharp activities while he was the MD of the bank by a High Court, Queens Bench Division in London, United Kingdom, and hence ordered to pay the sum of £654 Million.²⁹ A Federal High Court in Nigeria however ruled that the judgement by the High Court in London was not enforceable in Nigeria.³⁰ In a separate case filed at the Federal High Court by the Economic and Financial Crimes Commission (EFCC) against Mr. Erastus Akingbola for offences bothering on obtaining money by false pretences and stealing depositors' money while he was MD of his bank, the Federal High Court Judge dismissed the charges against Mr. Akingbola for want of diligent prosecution by the Commission. This judgement was overturned by the Court of Appeal, Lagos Division.³¹ Mr. Akingbola has approached the Supreme Court to overturn the judgment of the Court of Appeal. As at the time of writing this paper, the Supreme Court was yet to deliver its judgment.

It is noteworthy that amongst 177 countries in the world, Transparency International in 2015 ranked Nigeria, the 32nd most corrupt country. This study ranked countries on the scale of 0-100. 0 being the most corrupt country, while 100 being the least corrupt country.³² Also, the World Bank Group report on the Observance of Standards and Codes in 2004 reported that, auditing and accounting practices in Nigeria suffer from institutional gaps in regulation, compliance and enforcement of rules and standards.³³ The neighbouring country of Ghana however has had her 2004 report reviewed in 2014 to assess the degree to which the country implemented its 2004 recommendations. The 2014 report found that Ghana has improved in strengthening her pillars of financial reporting even though more needs to be done.³⁴

Corporate governance is important because it is salient to well-managed companies. It strives to make safe that companies are managed in the best interests of the shareholders and stakeholders;³⁵ it aids companies operate appropriate and adequate systems of controls to ensure companies' assets are not misappropriated and transactions are properly recorded; it prevents any single individual from having too much influence in a company; it encourages accountability and transparency³⁶ which investors are constantly looking out for in corporate management and corporate performance to aid their decision to invest.

²⁷ E J Nwagwu, 'An Appraisal of Economic and Financial Crimes Commission (EFCC) and the War against Corruption in Nigeria (1999 – 2007)' (2011) 3 *International Journal of Research in Arts and Social Sciences*, 186.

²⁸ African Success: People Changing the face of Africa, 'Biography of Erastus Bankole Oladipo Akingbola' (1 January 2009) <<http://www.africansuccess.org/visuFiche.php?lang=en&id=541>> accessed 9 February 2016.

²⁹ I Anaba, 'Intercontinental Bank: Court rejects ruling of London Court', Vanguard, November 18, 2014, <<http://www.vanguardngr.com/2014/11/intercontinental-bank-court-rejects-ruling-london-court/>> accessed 9 February 2016.

³⁰ *ibid.*

³¹ A Kuponiyi, 'Akingbola's last battle', The News, March 6, 2015 <<http://thenewsnigeria.com.ng/2015/03/akingbolas-last-battle/>> accessed 9 February 2016.

³² Transparency International, 'Corruption Perceptions Index 2015' <<http://www.transparency.org/cpi2015/#results-table>> accessed 31 January 2016.

³³ The World Bank Group reports on the Observance of Standards and Codes, 'Report on the Observance of Standards and Codes (RosC) Nigeria' (Accounting and Auditing, 17 June 2004) <http://www.worldbank.org/ifa/rosc_aa_nga.pdf> accessed 31 January 2016.

³⁴ The World Bank Group reports on the Observance of Standards and Codes, 'Report on the Observance of Standards and Codes (RosC) Ghana' (Accounting and Auditing, December 2014) <<http://www.worldbank.org/ifa/2015/GhanaROSC-A&A2014.pdf>> accessed 31 January 2016.

³⁵ C Mallin (n. 8) p.7.

³⁶ C X Chen, H Lu & T Sougiannis, 'The Agency Problem, Corporate Governance, and the Asymmetrical Behavior of Selling, General, and Administrative Costs' (2012) 29 *Contemporary Accounting Research* 279. The study made use of four variables, namely, Free Cash Flow (FCF); Chief Executive Officer (CEO) horizon; tenure, and compensation structure to test managers' empire building incentives arising from the agency problem. The study also examined financial and governance data over the period 1996–2005.

It should be noted that some aspects of corporate governance have been criticised. For instance some scholars have identified lack of or low evidence between corporate governance and a company's performance.³⁷ Also, some companies maintain that they are yet to claim the benefits of corporate governance despite complying with its recommendations. Nevertheless, investors and potential investors are likely to invest with companies they judge practice good corporate governance. Indigenous companies perceived to have good corporate governance are also likely to attract international investors than companies perceived to practice low standards. Also, companies that comply with best practice in corporate governance are more likely to achieve commercial success, as good governance and management and good leadership often go hand-in-hand.³⁸

The main legal framework for Corporate Governance in Nigeria is the Companies and Allied Matters Act 1990. All incorporated companies in Nigeria are required to have a Memorandum and Articles of Association. While the Memorandum of Association contains the core provisions of the company's constitution which is the companies' objectives, the Articles of Association regulates the rights and the manner in which the business of the company is conducted. These documents are required to be in the form similar to the specimen provided by the Companies and Allied Matters Act in Table A, Schedule 1.³⁹ It should be noted that the specimen of the Articles of Association provided in the Act does not deal with the everyday running of the company; neither does it contain direction on the structures in place to ensure the company is not defrauded. Corporate governance best practice does not deal with the operational day to day management of the company but aids the company board structure the values of the company and the responsibility of the board.⁴⁰

4. Board of Directors

A company's board of directors is the custodian of corporate governance in their companies. The board is the internal control system that monitors top management and safeguard shareholders' interest.⁴¹ It is also the board's duty to ensure the company's financial reports meet accounting standards and reflect the true financial position of the company.⁴² In Company Law, both executive and non-executive directors are treated the same.⁴³ The fundamental difference between executive and non-executive directors is that while the executive directors' information/knowledge is direct/primary and often times, ambiguous and incommunicable, non-executive directors on the other hand get their information from secondary sources, for example, reports, papers, presentations and hearsay.⁴⁴ Nonetheless, they are in the company to question, examine and assess the executive directors' management of their company by providing objective impartial views on the executive directors' decisions and strategies.⁴⁵

Directors are the agents of their shareholders and hence accountable to them on the management of the company. Non-executive directors are those supposedly trusted to protect shareholders interest by monitoring and examining how the company was managed by executive directors; but to carry out this task, they are often dependent on management for information on the company they are expected to assess, examine, oversee, not leaving out evaluate management's overall performance.⁴⁶ Thus,

³⁷ V F Misangyi & A G Acharya, 'Substitutes or Complements? A Configurational Examination of Corporate Governance Mechanisms' (2014) 57 *Academy of Management Journal* 1681.

³⁸ C Mallin (n. 8) p.8.

³⁹ Companies and Allied Matters Act 1990 CAP C20 Laws of the Federation of Nigeria 2004, s 34.

⁴⁰ Financial Reporting Council (n. 2) p.1.

⁴¹ Securities and Exchange Commission (n. 11) p.8; Financial Reporting Council (n 2) section A.

⁴² Securities and Exchange Commission (n. 11) p.9; Companies and Allied Matters Act 1990 (n. 39) s 334.

⁴³ Companies and Allied Matters Act 1990 (n. 39) s 244 and s 245; Companies Act 2006 (UK) s 154.

⁴⁴ N M Brennan, C E Kirwan & J Redmond, 'Accountability Processes in Boardrooms: A Conceptual Model of Manager-Non-Executive Director Information Asymmetry' (2015) *Accounting, Auditing & Accountability Journal* 13. < <http://ssrn.com/abstract=2343235>> accessed on 15 January 2016.

⁴⁵ E F Fama & M C Jensen, 'Separation of Ownership and Control' (1983) XXVI *Journal of Law and Economics* 1, 5; 11; 12; 14; 27; 28; 29 and 30.

⁴⁶ Financial Reporting Council (n. 2) A.4; R Sheaf, R Endacott, R Jones & Val Woodward, 'Interaction between non-executive and executive directors in English National Health Service trust boards: an observational study' (2015) 15 *BMC Health Services Research* 2 and 9.

executive and non-executive directors play different agency roles in the running of the company. Be that as it may, both are required to influence each other and cooperate with each other.⁴⁷ This poses the question of what will be the outcome where the executive directors refuse to share information or share incomplete information with the non-executive directors. One of the solutions recommended for this situation is for non-executive directors to be active in seeking out and improving on the information/knowledge they possess.⁴⁸ On one hand, it may be argued that if non-executive directors obtain information like their executive colleagues, it will compromise their objectivity/independence. On the other hand, best practice however suggests that for company's boards to be effective, all directors that join the board should be inducted and from time to time update and refresh their skills and knowledge; members of the board should be supplied information timely; all directors should allocate sufficient time to their companies and the board should annually evaluate its effectiveness.⁴⁹ Some studies have claimed the benefits of better financial reporting because of non-executive directors' presence on the board.⁵⁰ A common feature of Corporate Governance Codes around the globe is that they sought to promote good corporate governance through reporting standards and financial control requirements among other features.

5. Discussion and Conclusion

This paper found from the study of empirical evidences that corruption is prevalent in the Nigerian private sector.⁵¹ At the company's level, it found 4 key repeated themes as the cause of corruption and the poor state of corporate governance in Nigeria. The 4 themes are: *Public-private corruption* which occurs when companies together with regulators do not obey regulations;⁵² *corporate (private) corruption* that happens when the board of directors collaborate with the company's managers especially against uniformed minority shareholders and other stakeholders. This gives room for unfair executive compensation structure which underscores corrupt corporation;⁵³ *weak board governance* which is a combination of lack of or insufficient independence, ability and heterogeneity in the board's composition, non-vigorous board evaluation and fraudulent board's reputation;⁵⁴ and *weak executive monitoring and accountability* that ensues because of the lack of active institutional shareholders and unethical shareholders activism by shareholders' association.⁵⁵

This paper also found that the penalties in the Companies and Allied Matters Act 1990 are not stringent enough to deter corrupt directors. For instance, Section 331⁵⁶ provides that every company is required to keep its accounting records in accordance with the section. Section 332⁵⁷ directs that the accounting records shall be kept at the registered office of the company or such other place in Nigeria as the directors think fit. It further mandates the company to make the accounting records available at all times

⁴⁷ R Boxer, L Perren & A Berry, 'SME Managing Director and Nonexecutive Director Trust Relations: The Dynamic Interplay between Structure and Agency' [2014] *International Small Business Journal* 2.

⁴⁸ N M Brennan, C E Kirwan & J Redmond (n. 44) p.5.

⁴⁹ Financial Reporting Council (n. 2) s B.

⁵⁰ Uadiale (n. 20) p.5.

⁵¹ Adegbite, (n. 17) p.322.

⁵² D E Agbiboa, 'Between Corruption and Development: The Political Economy of State Robbery in Nigeria' (2012) 108 *Journal of Business Ethics* 328; D Shapiro, 'Doing Business in Nigeria' (2014) 25 *The Journal of Corporate Accounting & Finance* 5.

⁵³ A A Adekunle & A Taiwo, 'An Empirical Investigation of the Financial Reporting Practices and Banks' Stability in Nigeria' (2013) 2 *Kuwait Chapter of Arabian Journal of Business and Management Review* 158; M A De Almeida & B Zagaris, 'Political Capture in the Petrobras Corruption Scandal: The Sad Tale of an Oil Giant' (2015) 39 *The Fletcher Forum of World Affairs* 90.

⁵⁴ R W Masulis & S Mobbs, 'Independent director incentives: Where do talented directors spend their limited time and energy?' (2014) 111 *Journal of Financial Economics* 406 and 407; A N Berger, T Kick & K Schaeck, 'Executive board composition and bank risk taking' (2014) 8 *Journal of Corporate Finance* 64.

⁵⁵ S O Abdulmalik & A C Ahmad, 'Corporate Governance and Financial Regulatory Framework in Nigeria: Issues and Challenges' (2016) 2 *Journal of Advanced Research in Business and Management Studies* 56.

⁵⁶ The Companies and Allied Matters Act 1990 (n. 39).

⁵⁷ *ibid.*

to its officers. Section 333⁵⁸ states that if a company fails to comply with Sections 331 or 332, every officer of the company in default shall be guilty of an offence, hence, liable to an imprisonment term not exceeding 6 Months or to a fine of N500. With regards to the Directors' Report, Section 342(6)⁵⁹ states that the consequences of failing to comply with any requirements of the Act, every person who was a director of the company during the period prescribed for laying and delivering financial statement shall be guilty of an offence, hence, liable to an imprisonment term of less than 6 Months on conviction or to a fine of N500. With regards to annual returns, Section 378(1)⁶⁰ provides that private companies that fail to comply with any of the provisions of Sections 370-376,⁶¹ the company, her directors and officers, who are in default, are liable to a fine of N100.

Following from the preceding sections, this paper proposes the following suggestions to companies to aid minimise corruption in their companies and enhance good corporate governance.

Performance related executive package: in the bid to protect shareholders' interests, agency theory posits that the shareholders' managers' compensation package be directly related to the value of the company.⁶² It is argued that if this is not the case, managers may lack interest to maximise their shareholders' interest and ensure good governance.⁶³ Adebite posits that in Nigeria, performance related executive performance is at its threshold.⁶⁴ He advised that an express and unambiguous defined compensation package system is needed to inform good corporate governance in Nigeria.⁶⁵

Board heterogeneity: diversity with regards to gender, age, ethnic tribe and human capital are pertinent heterogeneity factors to be considered to promote good corporate governance in terms of cohesiveness and effectiveness.⁶⁶ Boards dominated with directors from different backgrounds are considered to have a better sense of belonging to their companies.⁶⁷

Board independence: this implies having fairness, objectivity to the evaluation of company's management. To maintain this stance is the reason why the role of the CEO and chairman of the board are split to avoid a single individual dominating the board and having unfettered power in the company.⁶⁸ A study on Nigeria's company board independence noted that most company CEOs upon retirement, move on to become their company's chairman thereby retaining power over their successors and the company's board.⁶⁹ The study found this situation to be so because many CEOs are strong minority or majority shareholders in their companies'.

Board (Directors) reputation: board members with good repute bring credibility and confidence in their company.⁷⁰

Audit committee: The Companies and Allied Matters Act 1990 directs public companies to have an audit committee consisting of an equal number of representatives of the shareholders of the company

⁵⁸ *ibid.*

⁵⁹ The Companies and Allied Matters Act 1990 (n. 39).

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² Securities and Exchange Commission (n. 11) s 14.

⁶³ P Gregg, S Jewell & I Tonks, 'Executive Pay and Performance: Did Bankers' Bonuses Cause the Crisis?' (2012) 12 *International Review of Finance* 117.

⁶⁴ Adebite (n. 21) P.325.

⁶⁵ *ibid.*

⁶⁶ Securities and Exchange Commission (n. 11) s 4.

⁶⁷ Adebite (n. 21) P.324.

⁶⁸ Securities and Exchange Commission (n. 11) 5.1. (a) and (b); Financial Reporting Council (n. 2) s A.

⁶⁹ Adebite (n. 21) P.323. For instance, Mr. Tony Elumelu, who was the former GMD/CEO of United Bank for Africa moved on from this position to become the Chairman of the bank. See United Bank for Africa, 'Media Centre: Executive Biographies' <<https://www.ubagroup.com/mc/bios>> accessed on 21 February 2016.

⁷⁰ Securities and Exchange Commission (n. 11) s 4.

and directors.⁷¹ One of the functions of the audit committee is to give credence to the annual financial statements of the company.⁷² Empirical studies show that the financial statements of companies with audit committees are usually credible as management earnings and other creative financial reporting from fraud or errors are reduced.⁷³ Due to the responsibility of audit committees of boards, good governance directs that the members of the committee possess knowledge of up-to-date accounting practices and financial competencies.⁷⁴ The United Kingdom Corporate Governance Code provides that the board of directors should satisfy itself that at least one member of its audit committee has relevant and recent financial experience.⁷⁵ Uadiale studied the usefulness of an audit committee in companies using the survey research methodology and found that the audit committee has the ability of increasing investors' and potential investors' confidence in the objectivity and probity of published financial statements. The presence of at least one audit member with relevant and recent financial experience would reduce the likelihood of the practice of earnings management in the company.⁷⁶ With regards to the relationship between companies' board composition, its audit committee and earnings management, he found that boards dominated by non-executive directors contribute more diverse experience to the company and are in a better position to monitor executive directors.⁷⁷

Board appraisal: Adegbite found this best practice to be a box ticking exercise by the consultants that carry out this exercise in companies in Nigeria as they rate every company board members optimum.⁷⁸ In recent times, however, Nigeria's shareholders employ the services of advisory groups comprised of retired board chairmen with vast experience and high repute in board processes and corporate governance. These personnel nominated by the shareholders guide, monitor and provide board appraisal.⁷⁹ It is important to state that the recommendations made by advisory groups are not binding on boards but the calibre and repute of the members of the advisory board make their recommendations of persuasive effect on boards given Nigeria's cultural system of adhering to the advice/recommendations of elders.⁸⁰ This paper is however of the view, that advisory boards duplicate the role of non-executive directors, hence costing shareholders a lot more to monitor the acts of their managers.

Shareholder activism: in order to make dispersed, small and passive shareholders active in their companies, shareholders' association was recommended and promoted but the reality of the situation is that in Nigeria, executives hinder their activism by hoarding useful information of their companies.⁸¹ Nevertheless, shareholders' activism in Nigeria is of 2 types. On one side of divide is the activism by high calibre shareholders who have distinguished themselves in their individual capacities in sure bet companies. Adegbite refers to them as the reputable shareholders.⁸² These shareholders are capable of studying to understand the disclosure made to them, and hence at general meetings are able to constructively engage the company's executives and board. On the other side of the divide, is a type of shareholders referred to as sophisticated shareholders. This group does not necessarily belong to shareholders' associations and is comprised of mainly young and middle-aged professionals. They have

⁷¹ Companies and Allied Matters Act (n. 39) s 359 (3) (4); Securities and Exchange Commission (n. 11) 9.2.

⁷² Companies and Allied Matters Act (n. 39) s 359 (6) (a).

⁷³ M Allegrini & G Greco, 'Corporate boards, audit committees and voluntary disclosure: evidence from Italian Listed Companies' (2013) 17 *Journal of Management & Governance* 195 and 207; J R Cohen, U Hoitash, G Krishnamoorthy & A M Wright, 'The Effect of Audit Committee Industry Expertise on Monitoring the Financial Reporting Process' (2014) 89 *The Accounting Review* 245 and 270.

⁷⁴ J R Cohen, U Hoitash, G Krishnamoorthy & A M Wright (n. 73) p.270.

⁷⁵ Financial Reporting Council (n. 2) C.3.1.

⁷⁶ Uadiale (n. 20) p.6.

⁷⁷ *ibid.*

⁷⁸ Adegbite (n. 21) p.324.

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ Adegbite (n. 21) p.325.

⁸² *ibid.*

made themselves a force to reckon with by attending meetings and AGMs, and thus have developed themselves in examining their companies' disclosure, and so can ask important questions.⁸³

Institutional shareholders: because institutional shareholders usually hold large portfolios in the companies they are invested in, employing external monitoring costs is high, and hence they are encouraged to pay close attention to their companies.⁸⁴ Adegbite's study found that in Nigeria, both local and international institutional shareholders are not active in the corporate governance of their companies.⁸⁵

Companies and Allied Matters 1990: this paper calls for a review of the Act. The Act as it is, is to a great extent modelled after the United Kingdom Companies Act of 1948.⁸⁶

To conclude, this paper states that conforming blindly to accepted best international practice may not be good for Nigeria as this will result to adhering to international best practice only in letter to meet listing requirements and or attract foreign investment but lack in the spirit of complying with the best practice. The paper suggests that when practicing the recommendations of the Code in Nigeria, care should be taken to mirror the dominant ideological, cultural and political principles prevailing in Nigeria. This paper calls on the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other related Offences Commission (ICPC) to carry out their functions meticulously and only prosecute when they have their facts and other evidence needed to prosecute judiciously so as to avoid their cases thrown out of court for lack of diligent prosecution thereby letting would-be convicted criminals get away with their crime(s) that cause loss to the economy of Nigeria. In the event that companies are well governed, Nigeria may be able to achieve her vision 2020 goal, which is to be counted among the first 20 industrialised nations in the world by 2020.

⁸³ *ibid* 324

⁸⁴ B J Bushee, M E Carter & J Gerakos, 'Institutional Investor Preferences for Corporate Governance Mechanisms' (2014) 26 *Journal of Management Accounting Research* 123, 124.

⁸⁵ *ibid*.

⁸⁶ E Adegbite, K Amaeshi & C Nakajima, 'Multiple Influences on Corporate Governance Practice in Nigeria: Agents, Strategies and Implications' (2013) 22 *International Business Review* 527; C Ogbechie & D Koufopoulos (n. 10) p.377.