Corporate Governance Mechanism and the Applicable Legal Regimes in Nigeria

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A B S T R A C T
This paper examines the development of corporate governance (CG) mechanism in Nigeria. The CG code was developed by the Securities and Exchange Commission (SEC) and The Central Bank of Nigeria (CBN) to handle non-financial and financial companies in Nigeria respectively. The new SEC code is to address certain contemporary issues in financial reporting disclosure. The practical implications for board of directors and other stakeholders in the companies are discussed. It assesses corporate governance within the context of the tripartite legal framework of the Companies and Allied Matters Act, Investments and Securities Act and the Bank and Other Financial Institutions Act. It finally concludes that good laws and policies without the requisite will to conform will only remain sacred in papers and thus amounts to an exercise in futility. This paper is purely a theoretical review from published articles and corporate governance code and the applicable regulatory legal regime in Nigeria.

INTRODUCTION
The importance of corporate governance in guaranteeing that companies are managed to the best interest of the board of directors and to the benefit of the shareholders and other stakeholders in business cannot be overemphasized. Good corporate governance ensures that financial report are dependable because of the extent of disclosure and internal control framework which is the responsibility of board of directors through board committees such as audit committee, risk management committee, management committee and remuneration committee[1]. Corporate governance is thus defined in the following ways:[2] defines “corporate governance as the system by which business corporations are directed and controlled”;

[3] sees corporate governance as “the system by which companies are directed and controlled”. It is also defined as “a set of relationship between a company management, its board, its shareholders and other stakeholders”. (OECD Principles, 1998).

Therights and responsibilities among different players such as the board, managers, shareholders and other stakeholders, the rules and procedures for making decisions on corporate affairs in the corporation are spelt out in the corporate governance structure.

World corporate scandals and the failure of major corporate institutions around the world such as Adelphia, Enron, World Com, Commerce Bank XL Holidays and particularly in Nigeria such as Afri-Bank’s failure, Bank PHB nationalization, Intercontinental Bank problems, the Cadbury issue of overstatement and false financial reporting and delisting of some companies by the Nigerian Stock Exchange Market have risen doubt in the mind of investors and corporate governance practices in promoting transparency and accountability of dealings of managers. This has brought to the need for the practice of good corporate governance in Nigeria[4,5,6,2]. These factors have led to some crucial regulatory and legal regimes to strengthen the corporate governance code of best practice in Nigeria.

Literature Review:
Corporate Governance Practice in Nigeria:
The Organization for Economic Cooperation and Development (OECD) formation has made crucial contributions to the existence of CG. This is done through its surveys of accounting practices in countries with
OECD membership and its assessment of the diversity, conformity, adoption and compliance of such practices. Its Working Group on Accounting Standards supports efforts by regional, national, and global bodies promoting accounting harmonization. In 1998, the OECD issued "Principles of Corporate Governance" to improve the comparability of information between countries and support the development of high-quality, globally recognized standards that can serve as a medium of curtailting the excesses of the companies executive[7].

The campaign for the installation of good CG arises from the expectation that it will result in companies been directed carefully by the principal appointed to do business on behalf of principal. Afterward, in the United Kingdom, just as in Nigeria, firm’s legislation has led to the establishment of certain committees to look into CG weaknesses as a result, committees were set up in the UK and it generates series of reports, which include the following: the Greenbury Report, Cadbury Report, Turnbull Report and Hampel Report. These reports highlight the loopholes in the corporate governance mechanism and how to strengthen the corporate governance structure in an organization[8, 9].

In Nigeria, it is stated in the corporate governance code of best practices for the Nigerian firm that the failure and collapse of companies is as a result of poor corporate governance practices among the executive of company[10]. The corporate code of best practice was first launched in 2003 to take care of corporate weaknesses in Nigeria. It was further reviewed in 2008 by SEC committee to address the weakness of 2003 code and to improve accountability and enforceability[10]. The board of SEC believes that the new code will improve corporate governance and highest standard of transparency in company dealings and financial reporting. The code was further reviewed in 2011 to include Adoption of International Reporting Standard and whistle blowing. The code of best practice is categorized into eight parts;

a. Application of the code
b. The board of directors
c. Relationship with shareholders
d. Relationship with other stake holder
e. Accountability and reporting
f. Communication
g. Code of ethics
h. Interpretation.

SEC recommends that firm should disclose more than the statutory requirements to show the level of transparency. Also, the consolidation of the banking sector in Nigeria in 2005 led to renew of the existing corporate governance code and development of corporate governance code for banks in Nigeria in the year[11, 5].

Corporate Governance and Firm Performance:

"Corporate governance is a system through which companies are directed and controlled"[3]. The empirical studies show that a lot of studies try to evaluate CG mechanism and performance of businesses. Some studies on CG and company performance reveal mixed result such as[7, 12, 13, 14, 15, 16, 17, 18]. Researches reveals that firm with excellent corporate governance have higher firm performance [19]. In the context of Africa continent, CG issues are often discussed in relation to corruption, which has been serious problem to the overall development of the continent. These problems are social, economic and political development. African corporate and capital markets regulators sees good corporate governance and accountability is one of the most effective tools to minimize corporate corruption[20]. The adoption of the Security and Exchange code of best practices and disclosure of material fact beyond the recommendation of SEC will lead to higher firm performance.

Corporate Governance and Disclosure:

Globalization and internationalization of capital market has been the focus of many nations. Hence the need for harmonization of financial reporting procedure and single set of high quality financial reporting standards has gained wide spread acceptance among policymakers, those with responsibility of setting standard and those with the responsibility of preparing the financial statement[21].International Financial Reporting Standards (IFRS) as a result for the need for high quality and uniformity in the preparation and presentation of financial statements and disclosure of material fact in the annual report[21, 22]. The reporting of the any firm determines how transparent they are. Better quality CG practices is dependent on higher the level of transparency displayed by the executive[23]. However, past corporate scandals and governance failures were as a result of absence of transparency and disclosure by firm. This led to the confidencepublicto be adversely affected in the corporate and financial reporting reliability [23, 24].
Legal Regimes in Corporate Governance in Nigeria:

Corporate Governance is underpinned in Nigeria by tripartite legal order to wit; Companies and Allied Matters Act (CAMA, 2004), Investment and Securities Act (ISA, 2007) and Bank and Other Financial Institutions Act (BOFIA, 1991).

CAMA remains the mandatory legal instrument for all incorporated companies in Nigeria as it specifies the duties and functions of directors, shareholders, and audit committee as the key players in corporate administration of companies. It also provided for disclosures and financial statements, board control by the shareholders through the instrumentality of mandatory annual general meeting which must be held in Nigeria. The Act also frowns at any attempt to circumvent the legislative authority vested in the meeting by board of directors.

The ISA re-affirmed the continued leading regulatory role of the Securities and Exchange Commission (SEC) on capital market investments in Nigeria. SEC ensures that investors are protected against fraudulent dealings through the maintenance of fair, efficient and transparent market and reduction of systematic risk. In order to properly ground protection beyond mere stipulation, the Act made adequate statutory safeguards in ensuring that businesses must be registered in accordance with the provisions of the Act in order to forestall sharp practices as a way of promoting transparency and accountability. The responsibility for ensuring the integrity of financing controls and reporting is squarely placed on the shoulders of the Board of Directors under the Act. Auditors who prepares such financial reports upon which disclosures is anchored are also required to be registered with the commission under the Act.

The Act imposes strict penalties for contravention of the provisions by institutionalizing prosecution through the Investment and Securities Tribunal (IST), as avenue for quick resolutions of disputes under the Act. This is in addition to the duties placed on companies dealing in securities in Nigeria to comply with CAMA, Nigerian Accounting Standard Board (NASB) and the mandatory requirement of filing of audited financial statements.

Under BOFIA, the Central Bank of Nigeria (CBN) as the apex statutory regulator of banks and other financial institutions in Nigeria charged with the uphill responsibilities of supervising and monitoring their activities. The CBN under BOFIA has the powers to make subordinate legislation and regulations as this is how corporate governance became entrenched practices especially in the face of incessant banks failures in Nigeria owing to sharp practices such as insider trading among several others [25].

In order to curtail this excesses on the part of those saddled with the responsibility of managing financial companies in Nigeria, the Act provides for the prosecution of any directors who contravenes the provision of the Act. The Act also provides for the keeping and maintenance of books of account in consonance with extant accounting standards as may be prescribed by the Bankor other legislation from time to time. Appointment of auditors must have the blessing and approval of the apex bank.

It is in the exercise of the foregoing powers and responsibilities that the CBN drafted the Mandatory Code of Corporate Governance for Banks in Nigeria.

Framework and Methodology:

The framework for this study is developed to address the convergence and adoption CG code in Nigeria and legal regimes in the context of the transformation of activities of Board of Directors. The approach adopted for this paper is review approach. The research presented here holds on an analysis of review of relevant articles in journal, reports and textbook in this research area. The Corporate code of best practice in Nigeria was also reviewed. This paper is purely a conceptual review [26].

Fig. 1.1: Conceptual Framework.

The framework above explains the interrelationship between corporate governance, legal regimes and firm performance.
Conclusion:
Even though the legal and institutional framework for engendering effective corporate governance in Nigeria is well settled, it cannot attain the utopia owing to some inherent weakness such as slow judicial process which erodes the confidence of shareholders and other stakeholders in the capital market operations and inefficient monitoring of compliance among others. Good corporate governance is the yardstick for measuring firm performance and thus it is also the spring board that mirrors a stable capital market by promoting investors’ confidence.

REFERENCES


