

A Review of Corporate Governance Codes and Best Practices in Nigeria

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Abstract

Nigeria is lacking behind in terms of development of its corporate governance, codes, policies and enabling laws, this is in contrast to the United Kingdom's regular review and updated corporate governance codes, principles and Best Practices. The UK is continuously reviewing and updating its corporate governance codes and policies. This paper examines the development of corporate governance mechanisms in the UK and Nigeria and further seeks to advocate for a review and update of Nigeria's corporate governance standards to meet global best practices.

Keywords: Corporate governance, Nigerian corporate governance codes, Role of regulators.

1. Introduction

The main impetus for better practices in corporate governance began in UK in the late 1980s and early 1990s¹, following various corporate scandals such as Pollypeck among others in the late 1980s. A committee was set up by the Financial Reporting Council, the London Stock Exchange and the Accounting profession in 1992, in response to the continuing concerns about standards of financial reporting and accountability² of Corporate Governance. The committee was chaired by Sir Adrian Cadbury. The report of the committee (Cadbury Report) served as a code of best practice consisting of 19 provisions and 14 notes dealing with the board of Directors, setting up of board committees structure, remuneration, financial reporting and relationship between the board and auditors³. It was described as 'a landmark in thinking on corporate governance'. UK listed companies were mandated to comply with the provisions.⁴

In January 1995, the greenbury committee headed by Sir Greenbury on director's remuneration was created; this was as a result of the alarming and unregulated remuneration being paid to the directors and senior executives. Its report (greenbury report) also issued a code of best practice on establishing remuneration committees for disclosure of much more important disclosures on the remuneration of directors. The code was adopted into the listing rules on comply or explain basis⁵. In the same year, a working group was set up to look into the relationship between companies and institutional investors. It was headed by Sir Paul Myners and produced the Myners report, which made a number of recommendations about how the relationship between institutional investors and company management should be conducted. The importance of this report is that it urged institutional investors to reassess their role as shareholders, their responsibilities for ensuring good corporate governance and the success of the companies in which they invest. When the company performs badly, they should try to salvage the situation, instead of selling off their shares and washing their hands off the company.

Another committee was set up to review the Cadbury and Greenbury reports. This committee was chaired by Sir Roland Hampel and produced the Hampel report in 1998. The report covered a number of governance issues, such as the composition of the board and role of directors, directors remuneration, the role of shareholders (particularly institutional investors), communication between the company and its shareholders, and financial reporting, auditing and internal controls. The report recommended a combined code, which led to the birthing of the 1998 UK Combined Code on Corporate Governance applying to all UK listed companies.

In 2003, the Higgs report was commissioned by the UK government which considered the role and effectiveness of Non Executive Directors (NEDs). In that same year, the Financial Reporting Council (FRC), commissioned the Smith Committee which produced the Smith Report which was to provide guidance for audit committees. The FRC was saddled with the responsibility of reviewing the 1998 Combined code and incorporating the two new codes. The outcome of the review was 2003 revised Combined Code on Corporate Governance.

It is noteworthy that the UK Combined Code is voluntary in nature. There is a requirement in the UK

¹ Smerdon R, 2007. A practical guide to corporate governance. 3rd ed. London; Sweet and Maxwell . page 3.

² Cadbury report .1992) www.icaew.com. (accessed on the 25th July 2013)

³ Aina, K .2013. The Board of Directors and Corporate Governance In Nigeria. *International journal of business and finance management from www.bluepenjournals.org/ijbfmr* . 1:21

⁴ Coyle.B 2010. Corporate Governance. London; ICSA Publishing .page 24-26

⁵ Aina,K.op.cit.page 22, Greenbury report 1995.

Listing rules for listed companies to disclose the extent of their compliance of the code and explain any non compliance. This is also known as the “comply or explain rule”.

The FRC has constantly reviewed the Combined code . In , 2010, it revised the Combined code to produce the 2012 C Code. Consequent upon the 2007/2008 banking crises in the UK and US¹, Sir David Walker was commissioned to review the cause of the crises, his recommendations were compiled into the Walker report of 2009, some of these recommendations have been incorporated by the FRC into the UK Combined code.

In 2010, the UK Stewardship code was published ,which is exclusive for Institutional Investors². This code is also the responsibility of the FRC and it aims to enhance the quality of engagement between institutional investors and companies ,so that they contribute positively to the governance of the companies in which they invest. Also in 2010, a Corporate Governance Code and guidance for unlisted companies was created for non listed companies by the IoD³ as the governance issues facing them are different from listed companies⁴.

In 2011, a government-commissioned report by Lord Davies on “Women on Boards” was published⁵. The Davies report made a strong case for greater diversity on boards (including sex, race etc), and recommended in particular that there should be a greater proportion of women on the boards of FTSE 350 companies. Its general argument in favour of greater diversity was that diverse and balanced boards are more likely to be effective boards, better able to understand their customers⁶ and stakeholders, and to benefit fresh perspectives, vigorous challenge, and board experience. These in turn lead to better decision making. This report on diversity on the board has been included by the FRC⁷ into the 2012 UK Corporate Governance Combined Code⁸.

The major changes in the UK Corporate Governance Code 2012 included: that boards should confirm that the annual report and accounts taken as a whole are fair, balanced and understandable; that audit committees should report more fully on their activities; that FTSE 350 companies should put the external audit contract out to tender at least every ten years; and that companies should report on their boardroom diversity policies⁹.

It is important to note that the Higgs report and Smith report were reviewed by the Institute of Chartered Secretaries and Administrators UK on behalf of the FRC in 2011, and they are now known as FRC GUIDANCE ON BOARD EFFECTIVENESS 2011 and FRC GUIDANCE ON AUDIT COMMITTEES 2011 respectively.

Also the Turnbull report/guidance on the responsibilities of the board for the systems of risk management and internal control in the company is also under review by the FRC and may possibly be re-named¹⁰.

Other unique features of the UK Corporate Governance regime is the adaptation of best practices guidelines by various groups (such as association of pension funds, remuneration consultants etc) to complement the code. For instance the best practice guidelines for remuneration consultants which is titled Voluntary Code of Conduct in relation to Executive Remuneration Consulting in the United Kingdom 2009 just to mention a few. Also provisions from the European Union Commission and Directives have been incorporated in the UK regime¹¹. It is worthy of note that the Corporate Governance codes, best practices and guidelines complement the Companies Act 2006.

It is noteworthy that the FRC in 2013 stated its intentions to make changes to the UK corporate governance code particularly in the areas of “risk management and reporting, remuneration and work of the audit committees as a consequence of the major reviews carried out by the Sharman panel, the Government and the Competition Commission respectively, and is consulting on its proposals”. According to the FRC, “once any changes that it concludes are necessary have being incorporated, the FRC’s intention is to focus primarily on helping companies to implement the best practices already set out in the code more effectively, and to monitor

¹ In the US, Lehman Brothers collapsed and other banks and brokerage firms were taken over to prevent their collapse. In the UK, Northern Rock bank collapsed in 2007 and in 2008 Royal Bank of Scotland was virtually nationalised and the government acquired a major stake in Lloyds TSB Bank after Lloyd had agreed to take over another ailing bank, HBOS.

² These are shareowners or organisations that manage shareholdings for other financial institutions such as Pension funds.

³ Institute of Directors

⁴ Coyle, B. op cit. pg 24-25

⁵ Davies report 2011: Women on Boards commissioned by Lord Davies ;Coyle, B. op cit page 103-104

⁶ As women are responsible for a majority of purchasing decisions by households. Women on boards may therefore be more aware of customer needs and more responsive to these needs.

⁷ Financial reporting council is responsible for promoting high quality corporate governance and reporting to foster investment in the UK among other roles.

⁸ Section B of the UK code 2014

⁹ 2013 FRC Developments in Corporate Governance 2013. The Impact and Implementation of the UK Corporate Governance and Stewardship Codes pg 6

¹⁰ Coyle, B. op cit. page 43

¹¹ Aina, K. op cit .page 23

whether they are doing so”¹. Consequently the FRC released the UK Corporate Governance Code 2014.

2. Corporate Governance In Nigeria

The concept of corporate governance is not alien to the Nigerian financial system. In the 1990s, the Nigerian Banking sector experienced numerous financial scandals and setbacks as a result of poor corporate governance. Consequently, many banks, financial houses, mortgage banks liquated leading to the loss of investor’s capital and other negative effects.

Various corporate governance codes have evolved in Nigeria most of which are industry specific. These codes include; code of best practises on corporate governance in Nigeria 2003 - issued by SEC, Code of Corporate Governance for Banks in Nigeria post consolidation 2006 issued by the Central Bank of Nigeria, the Code of Corporate Governance for Licensed Pensions Operators 2008 issued the Pension Commission, Code of corporate Governance for Insurance Industry in Nigeria 2009 issued by the National Insurance Commission.² Corporate accountability gained importance in the post structural adjustment program (SAP) era in Nigeria. This era noted the growth of privately owned corporations and financial institutions. In Nigeria, the informal nature of most business and the high level of government ownership enterprises pose challenges to the practice of corporate governance. As a result of this weak corporate culture in these institutions, Nigeria witnesses a very high incidence of corporate failures. The Securities Exchange Commission Code (SEC CODE) and other codes are complimentary to Companies and allied Matters Act 2004. (CAMA)³.

2.1. The SEC code

The need to develop and promote good corporate governance in Nigeria led to the Securities and Exchange Commission setting up the Atedo Peterside committee in 2003 whose report yielded the first comprehensive code of best practises for public companies in Nigeria. This was an attempt to regain the confidence of the public. It emphasised the role of the board of Directors and management, shareholder rights and privileges and the audit committee.⁴

The CAMA 2004 and other company laws provide very limited protection to shareholders and other stakeholders against poor corporate governance. As a result the Securities and Exchange Commission (SEC) in order to fill this lacuna inaugurated a national committee in September 2008 for the review of the 2003 code of corporate governance for public companies in Nigeria to tackle its shortcomings and develop the system for its implementation. The committee headed by Mahmoud Abubakar Balarabe (SAN) was saddled with the following responsibilities:

- i. To identify the weaknesses in the current corporate practices in Nigeria with respect to public companies
- ii. To examine practices in other jurisdictions with a view to adopt international best practices in corporate governance in Nigeria
- iii. To examine and recommend ways of effecting greater compliance
- iv. To identify and advise on other issues that are relevant to promoting good corporate governance practices by public companies in Nigeria.

The committee highlighted the shortcomings in the Nigerian corporate governance practises as regards public companies after benchmarking with the practices in other jurisdictions. Upon submission of its report together with a draft revised code of corporate governance, the Securities and Exchange Commission reviewed the draft code, introduced some amendments and created the Corporate Governance code for public companies April 2011.⁵ Notwithstanding the fact that the 2011 code applies only to public companies, the Securities Exchange Commission has encouraged private companies to adopt its principles in the conduct of their affairs. The code is anchored on five main principles which include: leadership, effectiveness, accountability, remuneration and relations with shareholders.⁶

2.2 The CBN Code

Due to so much distress in the banking sector in Nigeria, consolidation was made to lead to enhanced services

¹ 2013 FRC Developments in Corporate Governance 2013. The Impact and Implementation of the UK Corporate Governance and Stewardship Codes pg 4

² Ofo. N. ,corporate governance in Nigeria: prospects and problems (as accessed 14th June 2013) from http://ssrn.com/abstract=1618600.papers.ssrn.com/so13/papers.cfm?abstract_id=1618600&download=yes

³ Adekoya, A. A. op cit. page39

⁴ Okpara, J.O.2010.Perspectives on Corporate Governance Challenges in a sub-saha-African economy. *Journal of Business and policy research*.5.1:110-122.

⁵ Guardian newspaper 30th September 2009 page 47

⁶ Uwazie. C. *Nigeria ;corporate governance for public companies* . (accessed on the 24th July 2013)from www.iflr.com/corporate...

and deepening of financial intermediation on the part of the banks. On July 6th 2004, the Central Bank of Nigeria reformed the financial system by increasing the capital base of banks to N25Billion, the reform led to various improvements in the banking sector particularly the creation of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006¹. This was made to complement and enhance the effectiveness of other policies in the Nigerian Banking Sector². This code was introduced to ensure the accountability of bank CEOs. It describes board composition and the qualifications of non executive directors. It specifies the accountability structure within the organisation. It specifies fines and penalties including jail terms for erring CEOs, and risk management measures within the organisation emphasising on the roles and qualifications of corporations' internal auditor³.

2.3 The Naicom Code

The NAICOM Code for insurance companies in Nigeria was created in 2009 for insurance companies. It was created to promote the quality and efficiency of insurance industries due to the need for countries to have an efficient insurance regulatory system to supervise the activities of the insurance industry. The concept of an insurance regulatory system was first embraced by Nigeria, on the modest scale in 1961 under the provisions of the Insurance Act of that year. With the expansion and increased sophistication of insurance business in Nigeria, a regulatory agency under the name of the National Insurance Commission (NAICOM), was created to perform this service as well as other services embodied in the enabling Act.

The then leadership of NAICOM embarked on some positive steps in order to promote the quality and efficiency of the insurance industry, for the benefit of Insurance consumers and the national economy. Consequently, the code of Business Ethics and principles on Corporate Governance for the Insurance Industry was created. It contained vital principles and practices designed for its promotion. It sets out and recommends various structures and control systems, designed to ensure efficiency and accountability by both the Board and Management of Insurance companies, as well as measures that will eliminate fraudulent and self serving practices among members of staff, the management and boards of insurance Institutions, in line with modern trends⁴. The code is to complement the SEC code.

2.4 The Pencom Code

The PENCOM code (Code of Corporate Governance for Licensed Pension Operators) was created in June 2008 by the National Pension commission⁵. The code was created to set out rules based on best practices to guide Pension fund administrators among others on the structures and processes to be used towards achieving optimal governance set up. It is based on internally accepted principles of good corporate governance and its requirements are consistent with the provisions of Pension Reform Act 2004, rules, regulations and guidelines issued by the Commission.

It was developed with a view to establishing overall economic performance and market integrity as it creates incentives for the pension scheme to impact positively on the stakeholders. This is necessary in gaining the confidence of the stakeholders directly affected by the pension reform. The code was established to also promote the transparent and efficient implementation of the scheme by all the operators. And encourage self regulation by providing a common value system among the operators⁶.

3. THE FRCN ACT 2011⁷

The Financial Reporting Council of Nigeria Act 2011 establishes the Financial Reporting Council of Nigeria as a body corporate with perpetual succession and a common seal⁸. It is governed by a Board which has overall control of the council, and consists of a chairman⁹, two representatives from the Association of National Accountants of Nigeria, an executive secretary of the council and one representative from seventeen various federal institutions, some of which are: the Central Bank of Nigeria; Federal ministry of Finance; Federal ministry of Commerce, industries, mines and Agriculture; Federal inland Revenue service; Securities exchange

¹ Hereinafter referred to as the CBN CODE

² Nworji, D. I. and Olagunju, A. and Adeyanju, O. D. .2011 .Corporate Governance and Bank Failure in Nigeria: Issues, Challenges and Opportunities .*Research Journal of Finance and Accounting* ISSN 2222-1697 (paper) ISSN 2222-2847.3.2:1

³ Okpara. opcit. page110-122

⁴ Code of corporate governance for insurance companies in Nigeria NAICOM CODE 2009 page 1-2.

⁵ Code of corporate governance for pension operators in Nigeria PENCOM CODE RP/P & R/08/013. (as accessed on the 23rd July 2013) from www.pencom.gov.ng.

⁶ Ibid PENCOM CODE Page 2

⁷ 2011 Federal Republic of Nigeria Official Gazette.No 54,vol 98 Lagos

⁸ Section 1 FRCN Act

⁹ A professional accountant with considerable professional experience in accounting practices

commission; Nigerian stock exchange; National Pension Commission; National Insurance Commission; National institute of Estate Surveyors and valuers; Corporate affairs commission among others¹.

The Financial Reporting Council of Nigeria has the powers to establish directorates one of which is the Directorate of Corporate Governance². The directorate of corporate governance has the responsibility to develop principles and practices of corporate governance, promote the highest standards of corporate governance, on behalf of the council, act as the national coordinating body responsible for all matters pertaining to corporate governance in Nigeria.³

In other words the Financial Reporting Council through its Directorate of Corporate Governance has the responsible to ensure good corporate governance in Nigeria. It is suggested that the Directorate should overhaul the corporate governance framework in Nigeria. This is because the Nigerian framework is nothing compared in terms of standard, content, constant reviews to those in other countries like the United Kingdom, United states among others. The Directorate needs to make more pro active reforms.

4. Challenges Of Corporate Governance In Nigeria

1. *The Institutionalised Challenges*

The institutionalised challenges in Nigeria are corruption, poverty, unemployment⁴, weak regulatory framework (the ruling political elites are treated as 'the untouchables' and 'above the law')⁵. One of the challenges of the enforcement of corporate governance in Nigeria is the interwoven relationship the public regulators and the private sector. Public office holders use private companies to launder money stolen from the public sector (among other atrocities), thus influencing their independence in the enforcement of a strong regulatory framework. Offending companies are covered even when it is obvious they are defaulting. For there to be effective enforcement of corporate laws, sanctions should be imposed accordingly without prejudice.

2. *Poor Corporate Governance Culture*

This is another challenge facing Nigeria. In a study⁶, the following instance of bank failures to comply with corporate governance codes were stated. Spring Bank Plc and Wema Bank Plc were victims of poor corporate governance practices arising from the violation of the multiple provisions of the Bank and other financial institution Act (BOFIA) 1991, CBN Act 1991 and CBN Corporate Governance Code 2006. Consequent upon the mismanagement of the bank, the capital adequacy ratio dropped to an unacceptable negative ratio of 3.6% thus requiring capital injection of 23 billion naira. The liquidity ratio of the bank was below the required minimum of 40%. As a result, the Central Bank of Nigeria (CBN) current account has been consistently overdrawn to the tune of 30 billion from January 2008. The removal of 13 members of the board of Spring Bank Plc in 2008 with the approval of the CBN was the acknowledgement of the Bank liquidity problem and gradual erosion of its shareholders funds.

Also in 2009, the Nigerian Capital Market Report⁷ reported that because of poor corporate governance, the Nigerian Capital Market ranked among the worst in 2008. In Africa, apart from Egypt which lost 56.43%, Nigeria ranked below South Africa which lost 25.72% and Kenya with a loss of 31.33%. Ghana, Tanzania and Tunisia, however gained 40.68%, 21.26% and 10.65% respectively, probably reflecting their level of exposure to global event. Nigeria also performed below other matured market such as United States of America (USA), Japan and the UK which lost 34.34%, 42.12% and 31.4% respectively.

However, according to the 2012 African Economic Outlook report of the World Bank, the global financial crisis caused a huge Nigerian stock market crash, but reforms have restored some confidence in the market. A campaign against insider dealing and share price manipulation and the enforcement of penalties have improved compliance with the securities law. Reforms have also been implemented to enhance market rules and regulations, promote collective investment schemes and improve shareholder management⁸.

3. *Laxity On The Part Of Regulators*

Most companies' window dress their reports showing the company is making profit and "healthy", thereby

¹ Section 2 of the FRCN Act 2011

² Section 23 of the FRCN Act 2011

³ Section 49 and 50 of the FRCN Act 2011

⁴ Adekoya .op cit. page 42 - 44

⁵ Ibid

⁶ Komolafe, B. 2007. Nigeria :Banks Flout Code of corporate governance(as accessed 6th September 2013) from www.CBN.http://fallafficalcom1stories4m7.091209.html.

⁷ Nigerian Capital Market Report .2009. (as accessed on the 6th September 2013) from <http://www.proshareng.com>

⁸ African Economic Outlook on Nigeria .2012. (as accessed on the 6th September 2013) from <http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/PDF/Nigeria%20Full%20PDF%20Country%20Note.pdf>

concealing outrageous malpractices in the company. They polish their financial accounts and reports to please the shareholders and other stakeholders including investors that all is well with the company, whereas otherwise is the case. It is this same window dressed reports that are being submitted to regulators. This act has caused the collapse of many corporate organisations (Enron of the USA, Intercontinental Bank of Nigeria etc) in the world at large. Laxity of the part of the regulators to detect window dressed and fraudulent reports of companies further enhances this problem and negatively affects the economy. Regulators should create more stringent regulatory procedures to detect such fraud, create penalties for erring companies and curb such practises.

Also regulators should have the capacity to investigate/probe into annual reports of companies¹.

4. Multiplicity Of Codes And Conflicts In The Nigerian Codes

It has been stated severally in the course of this research that the major challenge Nigeria is facing as regards corporate governance is the inability to harmonise the various corporate governance codes. This challenge has bred controversies and conflicts in terms of enforcement and compliance². The nature of the SEC code is not intended to be rigid but expected to be viewed and understood as a guide to facilitate sound corporate principles and behaviour³. While the CBN is mandatory in nature⁴.

Data indicates that Nigeria has lost 75 banks since the advent of banking since 1914 and the increase in the distress of these banks is due to poor corporate governance issues. The NDIC (Nigeria Deposit Insurance Corporation) stated the following facts that caused severe distress in banks:

Economic depression – 25%

Political crises -17.9%

Bad credit policy – 25%

Interference of board members (corporate governance) – 32.1%⁵

Although Section 1.3(e) the SEC code states that where there is a conflict between its content and an industry code, the industry code prevails, this in my opinion should not be the case. This is because the SEC code is meant to be the corporate governance code regulating listed companies in Nigeria. Its provision should have weight and taken seriously. The non mandatory clause will give unruly companies the reason to flout the rules especially in issues where their industry codes are silent and also fall within the scope of the SEC code. They have a reason not to comply with the SEC rules claiming they have the non binding clause option to rely on.

Disparities in the provisions of the key element of firm-level governance arising from the proliferation of codes of corporate governance in Nigeria, namely ,SEC code ,CBN code ,PENCOM and NAICOM codes respectively impact negatively on the economy⁶. The following are some of the conflicting sections in the SEC code, CBN code, NAICOM code, PENCOM code:

a. Composition of the board

Section 4.2 of the SEC code provides for not less than five (5) members of the board, while **section 5.3.5 of the CBN code** provides for no minimum number but maximum number of twenty (20) directors, emphasising that the number of NEDS should be more than that of the executive directors. The **NAICOM CODE** particularly **section 5.04(i)** provides that no insurance company shall have less than seven (7) and not more than fifteen (15) members on its board and that the percentage of executive members on the board should not exceed 40%. While **section 4.0 of the PENCOM code**, which provides for board composition is silent on the limit of number of directors but states that the number of NEDS shall at all times, in the minimum, equate the number of the executive members, if applicable.

These disparities in the provisions of the Nigerian codes need to be harmonised with a prescriptive optimum board size for all the codes. An oversize or undersize board may lead to an ineffective enforcement of corporate governance codes⁷

b. Extended family

Section 5.2.3 of the CBN code provides that no two members of the same extended family should occupy the position of chairman/CEO or Executive director at the same time. Section 7.1 of the SEC code allows this..Section 5.02 (iii) of the NAICOM code also prohibits such, just like the CBN code. The PENCOM code is

¹ Mukoroji,C.T. 2012.CBN,SEC'S conflicting regulatory regimes threaten financial sector reform gains. (as accessed on the 14th July 2013) From www.Zimbo.com/Nigeria+Today/articles/GMbcOSIY

² Ibid

³ Principle 1.3 of the SEC Code 2011

⁴ Section 1.7 of the CBN code

⁵ Corporate governance in Nigeria-prospects and problems .from www.scribd.com/doc/54/84771/Corporate_Governance... (as accessed on the 14th July,2013)

⁶ Demaki, G.O.2011.Proliferation of codes of corporate governance in Nigeria and Economic Development. *Business and Management Review* ISSN:2047-0398.(as accessed on October 14th 2013)from <http://www.businessjournalz.org/bmr.1.6:1-7>

⁷ Ibid

silent on the issue. The SEC code provisions should be adjusted in line with the CBN code, to avoid unfettered dominance of a family.

c. Internal auditors

Section 8.1.1 of the CBN code provides for internal auditors to be largely independent while section 8.15 of the SEC code not clear limited the independence of the internal audit .Both codes agreed on the tenure of external auditors (10years) but disagreed on the period which an audit firm shall not be re appointed. The CBN code says until after another 10 years while the SEC code says the firm should be re appointed 7yrs after disengagement.

d. Independent directors

The SEC Code provides for one independent director while the CBN code provides 2 independent directors. They both also provide that independent directors should be Non-executive Directors (NEDS).The PENCOT and NAICOM codes have no such provisions. The Vienot II code of corporate governance in France require 30percent of the directors to be external and independent of management in compliance with the organisation of Economic Cooperation and Development (OECD)international standard principles. The extent of independence of directors is a crucial issue which the PENCOT and NAICOM codes have to incorporate¹.

e. Multiple directorship

Section 6.1 of the SEC code provides that there should be no limit on the number of concurrent directorships a director of a company may hold. The CBN code on the other hand disapproves as such could lead to contradictions; conflicts of interest and capable of interfering with an individual's ability to discharge his responsibilities. The Vienot II codes in France require that French companies should disclose the number of meetings of the board of directors during the year. The German code 2010 overcomes this problem of inadequate monitoring of the executives of the company and lack of devotion of substantive amount of time by the board over company's management by recommending that a person should not be a member of more than five board of directors and should be reported and should be reported in the supervisory annual report if a member defaulted by attending less than half of the board meetings².

f. Accountability and transparent reporting

The SEC and PENCOT codes provides for accountability and transparent reporting by including sections 60-65 of the 2007 Investment and Security Act (ISA) making it mandatory for operators of public companies to file with the security and exchange commission on a periodic or annual basis, its audited financial report and such other returns as may be prescribed by the commission from time to time.

The CBN code went further to prescribe the category of officers that should be held accountable for duties and responsibilities attached to their respective offices and the clear lines of responsibility and hierarchy. The NAICOM code is germane to the provisions of the OECD standard principles which require carrying out annual auditing through independent auditors³.

g. Regulatory mechanisms

The CBN and PENCOT codes are mandatory. All the codes should be made mandatory in other to ensure effective compliance. As stated by an author⁴, it has been revealed by Akintola William Deloitte (a firm of renowned auditors and chartered accountants in Nigeria) in a report on four years financial statement of the Nigerian Stock Exchange (NSE), how it defied corporate governance because of the non mandatory nature of the 2003 SEC code. The forensic audit report show that NSE, limited by guarantee, is not allowed to declare surplus as bonus to its council members. This is contrary to section 26(3) of the Companies and Allied Matters Act of Nigeria C20 LFN 2004 (CAMA) and Section 6 of the Memorandum and articles of association of the NSE, and no portion thereof should be paid or transferred directly or indirectly by way of dividend, bonus or otherwise. The summary of the illegally shared money due to lack of the harmonisation of the plethora of the Nigerian codes together with the non- obligatory character of the SEC code (2003) shows as follows:

In 2006 – N160 million

In 2007 – N710 million

In 2008 – N480 million

In 2009 – N1.2 billion.

The interim administrator of SEC had received N40million from the former chairman of the NSE. The NSE was indebted to its subsidiary (central securities and clearing system CSCS in the sum of N900million, and the NSE council was dissolved.

5. Weak Regulatory Mechanisms

Poor implementation and weak enforcement of the CBN corporate governance code have prevented the CBN

¹ Demaki, G.O. op cit. page 5

² Ibid

³ Ibid

⁴ Demaki, G.O. opcit .page 6

from achieving its objectives of ensuring proper corporate governance in Nigerian banks¹. These challenges are embedded in the corporate governance environment and the weak enforcement mechanisms because events have shown that the CBN code was either not complied with completely by the banks or its enforcement deliberately compromised by CBN and other regulatory agencies.

6. Protection For Whistle Blowers ²

The fear of victimisation has kept many potential whistle blowers from speaking up against corporate malpractices. People tend to maintain the silent culture even there is an obvious malpractice being perpetrated by the board or other prominent stakeholders. This is because no one wants to lose his/her job and fall back into the unemployment market nor wants to be “harmed” in the course of speaking out. There should be structures put in place for protection of whistle blowers. Although the Nigerian National Assembly has a bill on protection of whistleblowers, pressure should be mounted to ensure that the bill becomes an Act³. Also in countries like the UK, there is an independent bureau created by the government⁴ where whistle blowers can report corporate malpractices and have their identities concealed, and also whistle blowing policies created by the government⁵. A similar approach could be introduced in Nigeria.

Other challenges are lack of adequate training of the company’s officials on corporate governance issues, inability of the securities exchange commission (sec) to create a working and effective mechanism for enforcement⁶, technical incompetence of board and management, increased levels of risks, insider –related lending, ineffective board/statutory audit committees among others.

7. Recommendations

1. The UK is foremost in corporate governance implementation. This is because they have taken corporate governance as a serious business, and enriched their regime with resource from various source for example the European Union and its directives, Recommendations from various groups among others. They have also committed an independent body to constantly review their regime, a form of mandatory continuous review exercise. They also have a unified, all encompassing code called the combined code unlike Nigeria which has a multiple code system (which is the beginning of its corporate governance failure as stated above). Nigeria needs to be more pro active in Corporate governance matters. Corporate governance issues are so important, as bad corporate governance can crash a nation’s economic structure.
2. Following the creation of the FRCN Act 2011 in Nigeria, the Financial Reporting Council has being saddled with the responsibility to see the Corporate Governance issues in Nigeria. It is recommended that this body FRC in Nigeria should ensure the constant review and updating of the proposed Nigerian code, just like their counterpart the FRC in the UK.
3. Countries are putting in place various measure to strengthen good corporate governance in order to tackle the problem connected with bad corporate governance practices. The essence of good corporate governance is to help sustain investor’s confidence and also serve as benchmark for monitoring and implementing corporate policies and practices at firm –level poor corporate governance is identified as one of the major factors in virtually all known instance of financial institution distress in Nigeria. Harmonisation of the multiplicity of corporate governance codes in Nigeria is a pre-requisite for a rational behaviour of any organisation for sustainable development and growth⁷.
4. There is a need for the Securities Exchange Commission and other capital market operators/stakeholders to establishing a working structure that will enable strict adherence/enforcement to the corporate governance codes. As the erosion our corporate governance system and capital market is due to poor enforcement. Also collaborations between these stakeholders are needed in terms on creating effective policies formulation to avoid a mismatch of policies and further crash of our economic market⁸.
5. The German and Australian systems have a two tier board structure. This consists of a supervisory board (comprising mostly of NEDS) and a management board (mostly executive directors). The

¹ Adekoya, A.A. opcit. Page 41

² Mukoroji, C.T. opcit

³ Ibid

⁴ (as accessed on the 14th January 2014) www.whistleblower-ng/storage/documents/WBC_Report-pdf

⁵ (as accessed on the 14th January 2014) From www.nao.org.uk/wp-content/uploads/2014/01/Government-whistleblowing-policies.pdf

⁶ Ibid

⁷ Demaki, G.O. opcit. page 1-2

⁸ Bizteller.2012. Nigerian capital market urged to enforce corporate governance codes?(as accessed on the 26th July,2012) From <http://bizteller.com/2012/06/nigerian-capital-market-urged-to-enforce-corporate...>

chairman of the supervisory board coordinates and cooperates with the management board. The strategy for the company is developed by the supervisory board and ensures general supervision of the management. The members of the supervisory board are elected by the shareholders at the general meeting, employees are also represented on the supervisory board. Although it has been criticised that a large board may cause unnecessary delay in decision making among other criticisms.

It is however suggested that a two tier board be introduced into the Nigerian system as the unitary board structure has not fastened good corporate governance practice in Nigeria and has been a source of serious corruption and in the aptitude. A two tier structure will ensure a total separation of the management from the supervisory board and ensure a thorough supervision of the management¹.

8. Conclusion

Corporate governance has been recognised as an important concept that has major implications for corporate performance, investors confidence and the efficient creation of wealth. Some of the corporate governance failures recorded in Nigeria and the world at large have drawn attention to the need to strengthen institutional mechanisms designed to aid the orderly growth and development of modern corporation².

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¹ Aina, K. op cit. page 32.

² Alo, O. op cit

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