AN APPRAISAL OF THE LAW AND PRACTICE OF CORPORATE GOVERNANCE IN THE NIGERIAN BANKING SECTOR

BY

Salvation Emike IMAEKHAI

DEPARTMENT OF COMMERCIAL LAW
FACULTY OF LAW
AHMADU BELLO UNIVERSITY,
ZARIA, NIGERIA

AUGUST, 2017

AN APPRAISAL OF THE LAW AND PRACTICE OF CORPORATE GOVERNANCE IN THE NIGERIAN BANKING SECTOR

BY

Salvation Emike IMAEKHAI, LL.B (Hons) (AAU, Ekpoma), LL.M (ABU, ZARIA)
PhD/LAW/607/2011-2012

A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERISTY ZARIA, NIGERIA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF PHILOSOPHY IN LAW (PhD)

DEPARTMENT OF COMMERCIAL LAW,
FACULTY OF LAW,
AHMADU BELLO UNIVERSITY
ZARIA, NIGERIA

AUGUST, 2017

DECLARATION

I declare that the work in this Thesis entitled: "**An Appraisal of the Law and Practice of Corporate Governance in the Nigerian Banking Sector"** has been carried out by me in the Department of Commercial Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other Institution.

_____ _____

Salvation Emike IMAEKHAI **Date**

CERTIFICATION

This Thesis entitled: "AN APPRAISAL OF THE LAW AND PRACTICE OF CORPORATE GOVERNANCE IN THE NIGERIAN BANKING SECTOR," by Salvation Emike IMAEKHAI meets the regulations governing the award of Doctor of Philosophy (PhD) in Law of the Ahmadu Bello University and is approved for its contribution to knowledge and literary presentation.

DR. A.A. AKUME
Chairman, Supervisory Committee _____ Signature _____ Date

PROF. A.R. AGOM
Member, Supervisory Committee _____ Signature _____ Date

DR. A.M. MADAKI
Member, Supervisory Committee _____ Signature _____ Date

PROF. A.R. AGOM
Head, Department of Commercial Law _____ Signature _____ Date

PROF. S.Z. ABUBAKAR
Dean, School of Postgraduate Studies _____ Signature _____ Date

DEDICATION

This work is dedicated to God Almighty for His wondrous love; and my parents, Most Revd & Mrs F.J. Imaekhai, JP, my jewels of inestimable value, for your ever present support.

ACKNOWLEDGEMENTS

The actualization of this dissertation is impossible without external support. I wish to express my gratitude to those whose contributions has made this study possible and a success. God moves in a mysterious way, His wonders to perform. I am grateful to God Almighty, my God King, the Author and Finisher of our faith for His divine grace, wisdom, knowledge, understanding, guidance and protection he bestowed on me during my program, for without Him, all efforts would have been in vain and wasted.

I am indebted to my Major Supervisor, Dr. A.A Akume and my Minor Supervisors, Dr. A.M. Madaki and Prof. A.R. Agom for their fatherly advice and for taking pains and offering very useful, constructive suggestions, scrutiny and criticisms, which contributed greatly to the success of this research; the Chairmen for both my first, second and third seminar paper presentations, Prof. B.Y. Ibrahim, Prof. Y. Bambale and Prof. M.T. Ladan respectively, for their corrections, suggestions, contributions and encouragement. I sincerely commend Prof. M.T. Ladan whose constructive criticisms and corrections during the internal examination endeared the practice aspect of this work. My gratitude also goes to the Chairman of my external examination, Prof. A.I. Ijohor, SAN, a legal jurist and advocate, noble and vast in all fields. I am equally indebted to Prof. Y. Aboki who tutored me on Research Methodology, Prof. S. Idris, Dr. (Mrs) I.F. Akande and Dr. S.A. Apinega, Assistant Dean, Postgraduate School for your assistance and encouragement.

I also admit a deep sense of indebtedness to my siblings, Revd (Engr.) & Mrs C. Imaekhai, Mr & Mrs M. Kakulu, (Mr. Kakulu, thanks for your encouragement and sometimes, providing airtime) Sir. Barr.& Dame B. Ogbaini (for your support and continuously monitoring the interview letter), Engr. Dr. & Mrs L. Imaekhai (Dr. Law thanks for the surprise gift to our parents in appreciation after my defence), Revd & Mrs E. Imaekhai (God bless you, Revd Emma, you've been a brother in need and indeed. You have assisted financially, prayerfully and in some

occasions you have had to help take care of Joshua to enable me attend to academic matters when the going was tough), Revd A. Imaekhai (always support at the slightest call) and Mr & Mrs N. Imasuen, for without you, I wonder what life would have been. You are all wonderful. To Joshua, my honey pie, I say thanks for your cooperation, understanding and love.

I must not fail to say thanks to Rt. Revd (Prof.) & Mrs C.S.S Bello for always providing shelter, your prayers, encouragement and love; and Rt. Revd J.A. Ajetunmobi and Rt. Revd (Dr.) & Mrs W.O. Aladekugbe for your fatherly advice and support. There are friends that I would like to appreciate, Mr. Stephen P. Boyi (for immense support), Miss Lohbyen Boyi and Miss Christy, you were there for Joshua at such other times to enable me meet up with academic work. Also of immense support are Mrs D. Laah, Mr. Abdul, Mrs J. Emiala, Mr. T. Oladeji, Isah Nyam and the blessed Mummies of the Children Sunday School of the Anglican Church of the Epiphany, Area 11, Garki, Abuja. God bless you all and grant you that which you desire in Jesus name, Amen.

Much as I would like to mention all one by one, time and space would not permit. Nevertheless, I hereby acknowledge the authors of several books, articles and journals whose work serve as my reference in the course of writing this dissertation. Posterity won't forgive me, if I fail to acknowledge Hon. (Dr.) Justice N. Okaisabor, Mr. Uthman S. Abbas, Hon. Peter Jiya, Mr. & Mrs Don Agbo, Dr. F.O. Onamson (for the necessary observations and comments), Mr. J. Gana for facilitating the interview and the Corporate Governance Team of the Central Bank of Nigeria.

Finally, my special thanks goes to my beloved and wonderful parents to behold, Most Revd (Dr.) & Mrs F.J. Imaekhai (JP) for their parental care, persistent and fervent prayers whose contributions so far is inestimable and uncountable. You have made me realise that mistakes in life abound, but one has to be patient, humble and determined, and gain experience from such mistakes for greater achievement. You are indeed wonderful parents worthy of emulation and good repute. You are my special treasures. I say thank you, *Ukhalagbe, Obilu khara khara, Ulwese, Mugode, Eshegon, Merci beaucoup, Dalu*., words are really not enough to say thank

you. Thanks to God for giving you to me as parents, may you live long enough to reap that which you have sown in abundance in Jesus Name, Amen, Amen and Amen.

TABLE OF CONTENTS

		Page
Title Page	- -	ii
Declaration	- - -	iii
Certification	- - -	iv
Dedication	- - -	v
Acknowledgements	- - -	vi
Table of Contents	- - -	ix
Table of Cases	- - -	xv
Table Statutes and Instruments	- -	xvii
List of Abbreviations	- -	xx
Abstract	- - -	xxiii
CHAPTER ONE		
GENERAL INTRODUCTION	**- -**	**1**
1.1 Background to the Study	**- -**	**1**
1.2 Statement of the Problem	**- -**	**14**
1.3 Aim and Objectives of the Research	**-**	**18**
1.4 Scope of the Research	**- -**	**19**
1.5 Justification of the Research	**- -**	**20**
1.6 Research Methodology	**- -**	**22**
1.7 Literature Review	**- -**	**22**
1.7.1 Empirical Literature	- -	23
1.7.2 Codes Provision Literature	- -	35
1.8 Organisational Outline	**- -**	**46**
CHAPTER TWO		
CONCEPTUAL DISCOURSE OF KEY TERMS	**-**	**48**
2.1 Introduction	**- -**	**48**
2.2 Nature and Scope of Corporate Governance	**-**	**48**
2.3 Principles of Sound Corporate Governance	**-**	**59**
2.4 Theoretical Framework of Corporate Governance	**-**	**73**

2.4.1 The Agency Theory - - 75

2.4.2 The Stewardship Theory - - 79

2.4.3 The Stakeholder Theory - - 80

2.4.4 Resource Dependency Theory - 82

2.4.5 Transaction Cost Theory - - 82

2.5 Models of Corporate Governance - - 83

2.5.1 Anglo US Model - - 84

2.5.1.1 Key Players in the Anglo US Model - 84

2.5.1.2 Share Ownership Patterns in the Anglo US Model - 85

2.5.1.3 Composition of the Board in the Anglo-US Model - 85

2.5.1.4 Regulatory Framework in the Anglo US Model - 86

2.5.1.5 Disclosure Requirements in the Anglo US Model - 86

2.5.1.6 Corporate Actions Requiring Shareholder Approval in the Anglo US Model - - 87

2.5.1.7 Interaction among Players in the Anglo-US Model - 87

2.5.2 The Japanese Model - - 88

2.5.2.1 Key Players in the Japanese Model - 88

2.5.2.2 Share Ownership Patterns in the Japanese Model - 89

2.5.2.3 Composition of the Board in the Japanese Model - 90

2.5.2.4 Regulatory Framework in Japanese Model - 90

2.5.2.5 Disclosure Requirements in the Japanese Model - 90

2.5.2.6 Corporate Actions Requiring Shareholder Approval in the Japanese Model 91

2.5.2.7 Interaction among Players in the Japanese Model - 91

2.5.3 The German Model - - 91

2.5.3.1 Key Players in the German Model - 92

2.5.3.2 Share Ownership Patterns in the German Model - 93

2.5.3.3 Composition of the Board of the Management Board(*Vorstand*) and the Supervisory Board (*Aufsichtsrat*) in the German Model 93

2.5.3.4 Regulatory Framework in the German Model - 93

2.5.3.5 Disclosure Requirements in the German Model - 93

2.5.3.6 Corporate Actions Requiring Shareholder Approval in the German Model 94

2.5.3.7 Interaction among Players in the German Model - 95

2.5.4 The Indian Model - - 95

2.5.5 The Nigerian Model - - 96

2.6 Good and Sound Corporate Governance - 97

2.7 The Nigerian Banking Sector - 104

2.8 Summary - - 113

CHAPTER THREE

ASSESSMENT OF THE LEGAL FRAMEWORK FOR CORPORATE GOVERNANCE IN THE NIGERIAN BANKING SECTOR - 119

3.1 Introduction - - 119

3.2 The Role of the Central Bank of Nigeria in Corporate Governance in the Nigerian Banking Sector - 119

3.3 The Legal Framework of Corporate Governance in the Nigerian Banking Sector - - 128

3.3.1 Mandatory Statutory Regime of Corporate Governance in the Nigerian Banking Sector - 132

3.3.2 The Code (Soft Law) of Corporate Governance for Banks in Nigeria 2006 Post Consolidation - 138

3.4 The Implementation of Corporate Governance in the Nigerian Banking Sector - - 149

3.4.1 Code Provision on Organisational Structure - 149

3.4.2 Code Provision on Quality of Board Membership - 157

3.4.3 Code Provision on Risk Management System - 158

3.4.4 Code Provision on Whistle Blowing - 172

3.5 Enforcement of Corporate Governance in the Nigerian Banking Sector - 179

3.5.1 The Nigerian System and Non-Compliance Culture - 182

3.5.2 Disclosure and Transparency - 182

3.6 Legal Mandates of Functionaries in Corporate Governance in the Nigerian Banking Sector - - 183

3.6.1 The Board of Directors in Corporate Governance - 183

3.6.2 The Auditors in Corporate Governance - 204

3.6.3 The Shareholders in Corporate Governance - 212

3.5 Summary - - 215

CHAPTER FOUR

CHALLENGES OF CORPORATE GOVERNANCE IN THE NIGERIAN BANKING SECTOR - 219

4.1 Introduction - - 219

4.2 The Challenge of Promoting a Supportive Corporate Governance Environment in the Nigerian Banking Sector - 221

4.3 Inside Management Related Challenges of Corporate Governance 226

4.3.1 Technical Incompetence of Board and Management - 227

4.3.2 Interrelationship Issues - - 228

4.3.3 Weak or Non-existent Internal Controls - 228

4.3.4 Ownership Structure - - 229

4.3.5 Resurgence of high incidence of malpractices - 229

4.3.6 Transparency Concerns and Inadequate disclosure of information 229

4.3.7 Non-Compliance Culture, Corruption and Indiscipline - 230

4.3.8 Other Inside Management Related Challenges - 230

4.4 Challenges Facing the Body Responsible for Enforcing Provisions of the Code - - 231

4.4.1 The Nigerian system and non-compliance culture - 232

4.4.2 Lack of an effective judicial system - 232

4.4.3 Lack of Capacity - - 234

4.4.4 Failure to Disclose - - 234

4.4.5 Lack of adequate mechanism to encourage ethical leadership - 235

4.4.6 Weak security standards - - 235

4.5 Exogenous Challenges of Implementing Corporate Governance in the Nigerian Banking Sector - - 235

4.5.1 The Challenge of Corruption - - 236

4.5.2 The Role of Short-Termism in the Nigerian banking sector - 238

4.5.3 Statutory Compliance Concerns - - 239

4.6 Summary - - 242

CHAPTER FIVE

THE PRACTICE OF CORPORATE GOVERNANCE IN THE NIGERIAN BANKING SECTOR - - 244

5.1 Introduction - - 244

5.2 The Research Technique - - 244

5.2.1 Population and Sample - - **245**

5.2.2 Technique of Data Collection - - 246

5.2.3 Problems encountered - - 247

5.3 Presentation and Analysis of Data: Audited Accounts - 248

5.3.1 Corporate Governance Framework in the Selected Nigerian Bank 249

5.3.2 Company Secretary and Corporate Governance in the Selected Banks 249

5.3.3 Structural Set Up of Board of Directors in the Selected Nigerian Banks 250

5.3.4 Presence of Independent Directors in the Selected Nigerian Banks 250

5.3.5 Board Committee in the Selected Nigerian Banks - 251

5.3.6 Governance of Risk Management in the Selected Nigerian Banks 252

5.3.7 Whistle Blowing in the Selected Nigerian Banks 252

5.3.8 Evaluating Board Efficiency in the Selected Nigerian Banks 253

5.3.9 Interview with the Regulator: The Central Bank of Nigeria 254

5.4 Discussion of Research Findings - - 254

5.4.1 Findings from the Annual Reports and Accounts - 255

5.4.2 Discussion on findings from the CBN Interview - 267

5.5 Comparative Corporate Governance System: Perspectives from the South African Standard Bank (together with its Subsidiary Bank) 275

CHAPTER SIX

SUMMARY AND CONCLUSION - - 286

6.1 Summary - - 286

6.2 Findings - - 288

6.3 Recommendations - - 292

6.4	Further Research	-	-	297
6.5	Contribution to Knowledge	-	-	298
BIBLIOGRAPHY		-	-	**299**
APPENDIX		-	-	**311**

TABLE OF CASES

	Page
A.G., Abia State vs A.G., Federation (2006) 16 NWLR (pt. 1005) 265	*233*
Ashurst vs Mason (1875) LR 5 Ch App 763	*138*
Atiku vs Yola Local Government (2003) 1 NWLR (Pt 802) 487	*204*
Atoyebi vs Barclays Bank Plc (2016) 15 NWLR (Pt 1534) 34	*104, 105*
Barron vs Potter (1914) 1 Ch 895	*151*
Bray vs Ford (1896) AC 44	*137*
Conoil Plc vs Solomon (2017) 3 NWLR (Pt. 1551) 50	*104*
Central Bank of Nigeria & Anor vs Mrs Agnes M. Igwilo (2007) 4-5 SC 154	*178*
Cook vs Deeks & Ors (1916) 1 AC 554	*137,175*
Dangote vs Civil Service Commission, Plateau State (2001) 9 NWLR (Pt 717) 132	*204*
Daniels vs Daniels (1978) Ch 406	*152*
Ebong vs Ikpe (2002) 17 NWLR (Pt 797) 504	*203*
Elf Devt (Nig) Ltd v Onyekwelu (2002) 17 NWLR (Pt 797) 461	*204*
First Guarantee Pension Ltd vs N.P.C (2016) 10 NWLR (Pt 1519) 39	*241*
Foss vs Harbottle (1843) 2 Hare 401	*138,174*
Francis Adesegun Katto vs Central Bank of Nigeria (1999) 5 SC (Part II) 21	*178*
Gate Way Holdings Ltd vs S.A.M & T. Ltd (2016) 9 NWLR (Pt. 1518) 490	*104,105*
General & Aviation Service Ltd vs Thala (2004) 10 NWLR (Pt 880) 50	*204*
Green vs Bestobel Industries Pty Ltd (1982) WAR 1	*153*
HL Bolton (Engineering) Co Ltd vs TJ Graham & Sons Ltd (1957) 1 QB 159	*150*
Hogg vs Cramphon Ltd (1967) Ch 254	*175*
Ifezue vs Mbadugha (1984) SC	*159*
Iwuchukwu vs Nwizu (1994) 7 NWLR (Pt 357) 379	*154*
Keech vs Sandford (1726) Sel Cas Ch 61	*137*
Lennards Carrying Co Ltd vs Asiatic Petroleum Co Ltd (1915) AC 705	*150*
Longe vs FBN Plc (2010) 6NWLR (Pt 1189) SC 1	*138,152,154* *233*

Morayo vs A.A.U. Akaungba (2017) 3NWLR (Pt. 1552) 245

Multinational Gas and Petrochemical Co vs Multinational Gas and Petrochemical Services Ltd (1983) Ch 25 *137*

Nelson vs James Nelson & Sons Ltd (1914) 2 KB 770 *154*

Ofomata vs Oneuzuligbo (2002) 8 NWLR (Pt 769) 298 *203*

Okeowo vs Migliore (1979) 11 SC 138 *137*

Okpe vs Fan Milk Plc (2017) 2 NWLR (Pt. 1549) 282 *234*

Olufosoye vs Fakorede (1993) 1 NWLR (Pt 272) 747 *154*

Panorama Developments (Guildford) Ltd vs Fidelis Furnishing Fabrics Ltd (1971) 2 QB 711 *153*

Peskin vs Anderson (2001) 1 BCLC 372 *137*

R vs Tithe Commissioners (1850) 14 QB 474 *159*

Re Barings Plc & Ors (No. 5) (1999) 1 BCLC 433 *138*

Re City Equitable Fire Insurance Co Ltd (1925) 1 Ch 407 *138*

Regal (Hastings) Ltd vs Gulliver (1967) 2 AC 134 *137*

Shonowo vs Adebayo (1969) 1 All NLR 170 *138*

Trenco Nig. Ltd vs African Real Estate & Investment Company Ltd (1978) 4 SC 9 *241*

Umanah (Jnr) vs N.D.I.C (2016) 14 NWLR (Pt.1533) 458 *234*

U.N.T.H.M. vs Nnoli (1994) 8 NWLR (Pt 363) 376 *178*

Western Nigeria Devt Corporation vs Jimoh Abimbola (1966) ANLR 150 *178*

Yalaju-Amaye vs AREC Ltd (1992) 4 NWLR (Pt 145) 422 *154*

TABLE OF STATUTES AND INSTRUMENTS

Assessment Criteria for Approved Persons Regime For Financial Institutions	*187,188,189,191*
Asset Management Corporation of Nigeria Act 2010	*11,35,112,126,132*
Bank Employees Etc (Declaration of Assets) Act Cap.B1 Laws of the Federation of Nigeria 2004	*11,35,132,133,134,237,255,260,295*
Banks & Other Financial Institutions Act 2Cap B3 Laws of the Federation of Nigeria 2004	*11,35,45,105,132,135,136,162,180,181,186,205, 207,212,218,249,255,282*
Basel Committee on Banking Supervision, Principles for Enhancing Corporate Governance, OECD 2010	*58,59,60,63*
Basel Committee on Banking Supervision, Corporate Governance for Banks, July, 2016	*60,61,62,*
Central Bank of Nigeria Act 2007	*35,120,121,,122,127,132,138,128,249,255*
Central Bank of Nigeria Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006	*6,11,15,19,27,28,35,130,132,133,140,141,142,143,144, 145,146,147,149,150,157,165,184,192,193,197,198,201 ,203,207,209,211,245,259,260,261,264*
Code of Corporate Governance for Banks andDiscount Houses 2014	*19,39,43,142,143,145,146,147,148,149,150,155,156,15 9,161,165,171,175,185,193,194,195,199, 206,207,209,211,212,213,219,255,258,260,261,266, 268,*

Code of Corporate Governance for the Insurance Industry in Nigeria 2009	*7,35,112,131,270*
Code of Corporate Governance for Licensed Pension Operators 2008	*6,35,112,131,156,270*
CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria	*267,268,269,270*
Companies and Allied Matters Act Cap C20 Laws of the Federation of Nigeria 2004	*35,41,43,45,129,132,136,137,138,139,151,153,154,155, 156,169,175,184,193,198,200,204,206,209,211,249, 255,259,282*
Companies Income Tax Act Cap C21 Laws of the Federation of Nigeria 2004	*262*
Constitution of the Federal Republic of Nigeria 1999	*232*
Economic and Financial Crimes Commission Act 2004	*179,236*
Failed Banks (Recovery of Debts and Financial Malpractices in Banks) Decree No.18, 1994	*162,202,236*
Financial Reporting Council of Nigeria National Code of Corporate Governance 2015	*42,175,176,178,256*
Financial Reporting Council of Nigeria Act 2011	*7,11,35,41,42,43,132,157,258,293*

Investment and Securities Act 2007	*11,35,132*
Nigerian Deposit Insurance Corporation Act 2006	*11,35,132,255*
Sarbanes- Oxley Act 2002	*1,2,174,176,178,*
Securities and Exchange Commission Code of Corporate Governance in Nigeria 2011	*7,11,35,40,42,131,155,158,160,249,259,268, 273*
South Africa Banks Act 94 of 1990	*276*
South Africa Companies Act 71 of 2008	*275,276*
South Africa King IV Code of Corporate Governance	*276,283*
United Kingdom Revised Code 2008	*44,157,159*
United Kingdom Combined Code 2006	*39,40,159*
Whistle Blowing Guidelines 2014	*173,174,177,265*

LIST OF ABBREVIATIONS

ADR Alliance Dispute Resolution

AGRA Alliance for Green Revolution in Africa

AGM Annual General Meeting

AMCON Asset ManagementCorporation of Nigeria

BAC Board Audit Committee

BEA Bank Employees Etc (Declaration Assets) Act

BDCs Bureau de-Change

BCBS Basel Committee on Banking Supervision

BIS Bank for International Settlement

BOD Board of Directors

BOFIA Banks and Other Financial Institutions Act

BRMC Board Risk Management Committee

CAC Corporate Affairs Commission

CAMA Companies and Allied Matters Act

CAMEL Capital Adequacy, Assets Quality, Management Proficiency, Earnings and Liquidity

CBN Central Bank of Nigeria

CCO Chief Compliance Officer

CEO Chief Executive Officer

CERES Coalition for Environmental Responsible Economies

CFO Chief Financial Officer

CGF Corporate Governance Framework

CRMS Credit Risk Management System

CRO Chief Risk Officer

DFIs Development Finance Institutions

DMB	Deposit Money Bank
EBRD	European Bank for Reconstruction and Development
ECO	Executive Compliance Officer
EFCC	Economic and Financial Crimes Commission
ERM	Enterprise Risk Management
FATF	Financial Action Task Force
FCs	Finance Companies
FCT	Federal Capital Territory
FRCN	Financial Reporting Council of Nigeria
FSB	Financial Stability Board
GAAP	Generally Accepted Accounting Practices
HOLDCO	Holding Company
ICAN	Institutes of Chartered Accountants of Nigeria
IFC	International Finance Corporation
IFRS	International Financial Reporting Standard
JSE	Johannesburg Stock Exchange
KYC	Know Your Customer
MD	Managing Director
MFBs	Micro Finance Banks
MMDs	Money Market Dealers
NAICOM	National Insurance Commission
NDIC	Nigerian Deposit Insurance Company
NED	Non Executive Director
NGOs	Non Governmental Organisations
NI	Not Indicated
NIRSAL	Nigerian Incentive Based Risk Sharing System for Agricultural Lending

NSE	Nigerian Stock Exchange
NSBP	Nigeria Sustainable Banking Principles
NSPM	Nigerian Security Printing and Minting
OECD	Organization for Economic Co-operation and Development
PDMMs	Primary Dealer Market Makers
PCAOB	Public Company Accounting Oversight Board
PMI	Primary Mortgage Institutions
PENCOM	The National Pension Commission
RMC	Risk Management Committee
SAP	Structural Adjustment Program
SEC	Securities and Exchange Commission
SEBI	Securities and Exchange Board of India
SGF	Secretary to the Government of the Federation
SOA	Sarbanes Oxley Act
UBM	Universal Banking Model
UK	United Kingdom
USA/US	United States of America

ABSTRACT

Corporate governance is a principled-based system by which corporations are organised and managed. It is made up of rules and regulations and ordered by a sound system of internal and external control. It exists for the benefit of all stakeholders. The principal role of corporate governance is to stem corporate maladministration and procure that companies are properly managed and directed. The prevalence of codes across jurisdictions justifies this proposition.But despite the heightened focus on corporate governance companies still fail, particularly in the Nigerian banking industry. For example Nigeria experienced its first major wave of financial crisis in the 1990s, and followed by the second major wave which occurred immediately after the banking consolidation in 2009. The second wave sent some banks to insolvent liquidation. That banks still face and experience life threatening shocks in the presence of robust governance provisions is without doubt a contradiction, nay a conundrum. There must be something wrong with the corporate governance architecture in the banking industry, because no other industry has gone through the level and ferocity of crisis the banking sector had experienced in Nigeria. Against this background the objective of the research was, among others, to examine corporate governance principles and models across national cultures in the light of the CBN industry specific Code applicable to the Nigerian banking sector, to analyse and appraise the legal framework for a sound system of corporate governance in the Nigerian banking sector and to identify the challenges which constrain the implementation of the sound system of corporate governance in the Nigerian banking sector. In order to give effect to the objective of the research, doctrinal and empirical research methodologies were adopted. This doctrinal methodology depended principally on examination and analysis of annual reports and financial statements of selected banks, existing laws and literature on the subject; while the empirical methodology deals with an analysis of an interview session with the Corporate Governance Team of the Central Bank of Nigeria. The research revealed among others that there is an inextricable relationship between the national corporate governance culture and corporate success, with the result that companies that adopt Anglo-US models, of which Nigeria is one, frequently go through shocks and implodes despite the presence of robust corporate governance architecture. It was also revealed by the work that the CBN is statutorily the right regulator but it is functionally a poor enforcer of corporate governance in the Nigerian banking sector. Equally it was found that there is a causal link between sound system of corporate governance and efficient risk management systems in the Nigerian banking sector. Moreover, the study revealed that the CBN industry specific Code of Corporate Governance for Nigerian Banks Post Consolidation was inefficient in tackling corporate malfeasance just as the Code failed woefully to provide for external audit and company secretary. Significantly and despite the inadequacy of the CBN Code, it was found that the implementation of corporate governance in the banking sector was bedevilled by endogenous and exogenous challenges. The practice clearly shows that in the Nigerian Banking sector, there is no knowledge of the distinction between corporate governance framework and corporate governance structure, in comparism with a foreign bank. Consequently, it was, among others recommended that the there should be a conference or workshop on corporate governance with the view to coming out with a corporate governance framework that appeals to our peculiar circumstances and business environment. It was also recommended that the CBN, not being an efficient functional enforcer even of its own Code should recluse itself from this role and handover to the statutorily empowered body in Nigeria, the Financial Reporting Council. Further it was recommended that the issue of corruption can be tackled by appointing the Economic and Financial Crimes Commission as the relevant authority of the law, Bank Employees, Etc (Declaration of Assets) Act which seeks to constrain managers of banks to appropriate corporate behaviour; while it was suggested that the industry specific Code should be reviewed to accommodate this statutory post incorporation compliance matter, and more importantly the law relating to professional negligence of external auditors should be made more punitive to discourage tainted mindsets that tend compromise their audit role.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Various concepts and measures have been developed globally and nationally to ensure that corporate organizations, financial institutions and other institutions will not only survive but operate in the best interest of the economy, stakeholders, shareholders, banks, organizations, operators, regulators and the government. One of such concepts is corporate governance.In the financial system, corporate governance is one of the key factors that determine the health of such an institution and its ability to survive economic shocks.[1] There has been renewed interest in the corporate governance practices of modern corporations, particularly in relation to accountability since the high profile collapses of a number of large corporations during 2000-2001, most of which involved accounting fraud. Corporate scandals of various forms have maintained public and political interest in the regulation of corporate governance.

The failure of the Johnson Mathey's Bank (JMB), Bank of Credit and Commerce International (BCCI), Baring Bank, Nomuru Securities, Brex and Long Term Capital Management (LTCM) of the 80s and the 90s and the Enron and WorldCom debacles, brought corporate governance to the lime light. The collapse of Enron in 2001, one of the America's largest companies, focussed attention on company's failure and the role that strong corporate governance needs to play to prevent them. Similarly, corporate crises such as Parmalat have shown that corporate governance weaknesses in different economies around the world can lead to similar problems. The United Kingdom responded to Enron by producing the Higgs Report in 2003 and the Smith Report in 2003, whereas the Unites States (US) provided the Sarbanes-Oxley Act 2002. However, the effectiveness of these principles and the codes of corporate governance best

[1]Reserve Banks of New Zealand, Corporate Governance in the Financial Sector, 2003. http://www.rnnz.govt.nz/speeches/0132484. html, accessed on the 26‐04 -2013.

practices may be called to question in the light of recent events. Although various frameworks of corporate governance around the world has been enacted, but for certain reasons these frameworks have not provided enough protection for the banks and other significant organizations. Corporate governance having been identified as the major cause of corporate failures, why then were lessons not learned from past failures rather than birthing more failures.

In the US, the demise of corporations such as Enron Corporation and MCI Inc. (formerly WorldCom) is associated with the U.S Federal Government passing the Sarbanes Oxley Act (SOA) 2002 intending to restore public confidence in corporate governance. The Sarbanes Oxley Act 2002 was enacted in the wake of a series of high profile scandals. It established a series of requirements that affect corporate governance in the United States and influenced similar laws in many other countries. The law required, among other things that the Public Company Accounting Oversight Board (PCAOB) be established to regulate the auditing profession, which had been self-regulated prior to the law. Auditors are responsible for reviewing the financial statements of corporations and issuing an opinion as to their reliability; that the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) attest to the financial statements. Prior to the law, CEOs had claimed in court that they had not reviewed the information as part of their defence amongst others. Thus, the Sarbanes-Oxley Act of July 2002 took a hard line on the regulation of auditing. It restricted the consulting work that accounting firms are allowed to carry out for their audit clients. It also attempted to address accounting fraud through regulation.[2]

Also, it is important to note that every public company must have an audit committee which consist solely of independent directors. Corporations have complied with the requirements as contained in the SOX and SEC's Final Rule in Reports on Internal Control over Financial Reporting and Certification of

[2]Jill S., (2010). *Corporate Governance & Accountability*,3rd Edition, John Wiley& Sons Ltd, United Kingdom, p.34.

Disclosure in Exchange Act Periodic Reports 2003. Comparable failures in Australia (HIH, One.Tel) are associated with the eventual passage of the CLERP 9 reforms.

The United Kingdom has witnessed development of policy documents and codes for corporate governance focussing on the Cadbury Report, Greenbury Report, Hampel Report, Tumbull Report, Higgs Report and Smith Report. The proliferation of codes does not mean that there is no more to be done. The difference between corporate governance in the United States and the United Kingdom is that company law in the United States, exists only at a state level and not at a federal level. Global Crossing, Enron and WorldCom were each guilty of denying large chunks of shareholders wealth as well as impacting negatively in the stakeholders. The Sarbanes Oxley Act was the most radical and dramatic change. The Organization for Economic Co-operation and Development Principles of Corporate Governance were first published in 1999, but it was after the Enron, WorldCom debacles and the US Sarbanes Oxley Act response in 2002, that most other OECD Countries made it a duty to adopt their own code of corporate governance to reflect different sectors. Some voluntary corporate governance codes have been adopted within the OECD to include: Austria (2000), Canada (2002, of recent is Corporate Governance: Guide to Good Disclosure 2006), France (2002), Germany (Kodex 2003, amended severally and now reads German Corporate Governance Code, June 2007 and June 2008), Italy (2002), Japan (2001, the most recent Principles of Corporate Governance for Listed Companies in Japan, 2004), the Netherlands (Tabaksblatt 2003) and Switzerland (2002).[3]

In Argentina, the first code of corporate governance best practice was published in January 2004. The country was characterised by substantial family control and state ownership of companies, inefficient corporate operations and a closed economy. In the 1990s, there was a drastic change of events; Argentina opened its borders to trade and investment, attempt to improve corporate governance

[3]European Corporate Governance Institute Website for the list. Retrieved from www.ecgi.org/research/index.php.

system, privatization and reforms of company law. Brazil issued its third version of Brazilian Code of Best Practice in March 2004 to include recommendations on audit, risk management and training boards. The most recent code of corporate governance of practice published in China is the Provisional Code of Corporate Governance for Securities Companies 2004. Egypt first code of corporate governance for State Owned Enterprises was in July 2006, this was followed in October by a Code for the private sector. Kenya, was Corporate Governance in Kenya 2002. The Malaysian Code on corporate governance was revised in 2007 while Pakistan's latest version of their Code of Corporate Governance was in March 2002.

The UK and US law provides for instance, for companies to be managed by a unitary board, a single board of directors that is ultimately accountable in law for the actions of the company. Many countries in the European Union (such as Germany, the Netherlands, France and Austria) and elsewhere in the OECD (such as Indonesia and Taiwan) have a two-tier board structure, which provides for separate management and supervisory board. In some countries (e.g. Germany), this is a statutory structure and cannot be changes by shareholders. Two-tier boards are, to some extent or another, strictly separated, with the supervisory board responsible for supervising and monitoring the executive board. Some European laws also made trade union membership of supervisory board.[4] It should also be noted that, across European Union, the statutory and legal framework for commerce and corporate governance is primarily a civil code compared to case law in the United States, the UK and the European Union regulation is another, highly specialized area of company law.[5]

[4]Safari Books Online; A digital Library providing on- demand subscription access to thousands of learning resources, Chapter 3, p.25.Retrieved from http://my.safaribooksonline.com/book/finance/9780749448172/chapter-1-corporate-governance-the historical-background/chapter_1_corporate_governanceN2/ accessed 28/10/13.

[5]ibid.

Although, corporate governance structure differs from one country to another because of the differences in the economic climate and the historical experience of each country, the objectives of corporate governance share common denominator. The 1997 Asian crisis drew attention to the pitfalls of corporate governance practices in Asian Countries. Recent and prominent corporate collapses and scandals involving Enron, WorldCom, Tyco and Shell seemed to highlight the limitations of the Anglo-American model. Such developments spurred academic interest in corporate governance, much of which tends to underline the benefits of the Anglo-American Model, often implicitly supporting the idea that the rest of the world is gradually moving towards it.[6]

In Nigeria, the history of corporate governance in general and the banking sector in particular is distorted and confusing. Nevertheless, corporate governance cannot be divorced from company law in general. Before 1990, the *Companies Act 1968* was the principal company law statute in Nigeria. This Act was modelled after the *Companies Act 1948* of the United Kingdom. This statute was not without its limitations. Flowing from its criticisms, the Companies Act was repealed and replaced in 1990.[7] After the coming into force of the companies' statute, corporate challenges around the world brought the issues of corporate governance to the lime light. Consequently, some countries started reviewing their corporate governance practices, which led to issuing of corporate governance codes to address areas not covered by respective company legislation.

[6]Randall, K.M., (2006). A History of Corporate Governance around the World, Family Business Groups of Professional Manager, The University of Chicago Press, *Journal of International Business Studies*,p.1; Retrieved from http://aib.msu-edu/jibs/bookreview/pdf/2006-01.pdf.

[7]It was repealed and replaced by y the Companies and Allied Matters Decree No.1 of 1990 now with little modification, the Companies and Allied Matters Act (CAMA) Cap.C20 LFN, 2004, as the principle statute regulating companies in Nigeria.

In August 2003, the Code of Corporate Governance for Banks and Other Financial Institutions in Nigeria was issued by the Bankers' Committee. This Code was initiated due to the financial crises in Nigeria in the early 1990s and the realization of poor corporate governance. Its major weakness was that it was not issued by a regulator which will necessitate enforcement and implementation. It was predicated on 11 (eleven) principles to include: responsibilities of the board of directors, structure of the board of directors, the chairman and the CEO, appointments to the board, risk management, financial disclosure, relation with shareholders amongst others. The first corporate governance code issued by a regulator in Nigeria is the Code of Best Practices on Corporate Governance in Nigeria 2003 issued by the Securities and Exchange Commission in collaboration with the Corporate Affairs Commission on the 15th June, 2000, was applicable to all public companies. It was an outcome of a 17- member committee headed by Mr. Atedo Peterside. Soon after, the provision of the Securities and Exchange Commission Code 2003 was enacted; it became inadequate to addressing recent developments and innovations in the corporate world. This resulted to the births of corporate governance codes by various industries to meet with recent developments in the corporate world.

As a result, in 2006 the CBN issued its Code of Corporate Governance for Banks in Nigeria Post Consolidation. It was issued after the consolidation of banks in Nigeria in 2005, mandatory and with a view to resolving the corporate governance challenges and weakness in the banking sector. The Code amongst others provided for the separation of the roles of the Chief Executive Officer (CEO) and the Board Chairman. It also provides for the position of non- Executive directors on the board.During the implementation, of the code, it was observed that certain provisions could not be implemented by banks in view of their ambiguity and/or conflict with the provisions of the Companies and Allied Matters Act (CAMA) 1990. Furthermore, in a joint CBN/NDIC examination that led to the removal of five (5) Chief Executive Officers of banks in the country revealed, amongst others, poor corporate governance practices in the institutions. There was also the need to up-date the code in order to align it with

contemporary developments and international best practices, hence the need for a review.[8]In 2008, flowing from the reforms in the pension sector, the National Pension Commission (PENCOM) issued the Code of Corporate Governance for Licensed Pension Operators, to guide fund administration and Pension Fund Custodians. Also, the National Insurance Commission (NAICOM) issued its Code of Corporate Governance for the Insurance Industry in Nigeria 2009.

It was realised that the Securities and Exchange Commission Code 2003 lacked adequate provisions on contemporary corporate governance issues such as independent directors, directors' appointment, independence of external auditors, general disclosure and transparency amongst others. This led to its amendment and replacement in 2011 with the Code of Corporate Governance in Nigeria, 2011. Although, it is adjudged to be quite comprehensive, it is submitted that it is not a perfect document. This was followed by the Financial Reporting Council of Nigeria Act 2011 by the Federal Government. Although it has far reaching provisions regarding the operations of companies in Nigeria, its impact is yet to be seen on the principles and practice of corporate governance.

Corporate financial reporting provides fundamental information to Shareholders, management, government, creditors and the society at large in corporate and non- corporate sectors in the Nigerian economy. The increased incidence of bank failures in the recent period necessitated the need for greater emphasises on good corporate governance as a desirable means of achieving banks objectives. Corporate governance has received considerable attention worldwide in recent times. It is also an evolving field. According to Okpanachi et al[9], posit that corporate governance is the key to the global

[8]Provision 1.0 of the Code of Corporate Governance for Banks and Discount Houses 2014, p.4.Therefore the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 was revised and replaced by the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[9]Okpanachi, J., Samuel, G.J., & Suleiman, T., (2013). Corporate Governance Principles Application and the Financial Performance of Deposit Money Banks in Nigeria: An Impact Assessment, *Research Journal of Finance and Accounting*, 4(2): 53.

integrity of corporate institutions especially financial institutions and other sector. For this reason, the quality of corporate governance principles in place affects the performance of individual institutions and that of the economy as a whole in term of growth and development.

In the financial system, corporate governance is one of the key factors that determine the health of such an institution and its ability to survive economic shocks.[10] Good Corporate governance from the banking perspective demands that banks will operate in a safe and sound manner, and will comply with applicable laws and regulations while protecting the interest of depositors.[11] Thus, the relevance of corporate governance of financial institutions such as banks cannot be overemphasized.[12]

The Nigerian banking industry which is regulated by the Central Bank of Nigeria (CBN) and the Nigerian Deposit Insurance Company (NDIC), is made up of; deposit money banks referred to as commercial banks, development finance institutions and other financial institutions which include; micro-finance banks, finance companies, bureau de change, discount houses and primary mortgage institutions.Nwankwo[13] holds that formal banking began in Nigeria in 1892. From Nigeria's colonial era

[10]Reserve Bank of New Zealand, Corporate Governance in the Financial Sector, 2003. http//.www.rbnz.govt.nz/speeches/0132484.html accessed on the 26– 04 -2013.

[11]Wilson I., (2006). Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Banking Consolidation, *The Nigerian Economic Summit Group (NESG)*, 12(2):3. Retrieved from http//www.templars-law.com/media/regulatory%20and%20institutional%20challenges.pdf accessed on the 26-04-2013.

[12]Abiola, J., (2012). Corporate Governance in Nigerian Banking Sector and Relevance of Internal Auditors, *British Journal of Arts and Social Sciences*, 5(1):66.Retrieved from www.bjournal.co.uk/paper/BJASS_5_1/BJASS_05_0/_08.pdf.. Heposits that the importance of corporate governance in ensuring dependable financial reports and deterring fraud in banking sector cannot be over emphasized. Internal control framework is the direct responsibility of the board of directors and audit committee. This governance duty is discharged through the assistance of internal auditors.

[13]Nwankwo, G.O., (1975). Bank Lending in a Developing Economy: The Nigerian Experience. In: Ogwu Joy, U., & Olaniyan, O., (Ed) *Nigeria's International Economic Relations: Dimensions of Dependence and Change*, p.32.

to present day fourth republic, the banking industry has witnessed vast transformations in character, structure and organization.

The functions of the banking system as such include and are not limited to the development, administration and implementation of monetary policies that ensures stability in the Nigerian economy; the provision; the mobilization of financial resources from locations where they are least wanted to where they are most wanted; and the provision of information technology driven systems and platforms to support economic activities within and beyond the borders of Nigeria.The roles of banks in both developed and developing economy consist of financial intermediation, provision of an efficient and effective payments system and serving as conduit for the implementation of monetary policies. Donli[14] asserts that if these functions are efficiently carried out, the economy would be able to mobilize meaningful level of savings and channel these funds in an efficient and effective manner to ensure that no viable project is frustrated due to lack of funds.

The Nigerian Banking system is composed primarily of four (4) actors which play different but pivotal role in the banking sector, namely:The Regulators to include the government; operators to include the different types of banks; support groups that is the mint, electronic switches and the platforms and depositors to include the individuals, corporate bodies and governments. The Regulators include the Central Bank of Nigeria and the Nigerian Deposit Insurance Company (NDIC); which are set up to regulate, monitor and control the activities and actors in the banking and entire financial sectors in Nigeria. While the CBN is the principal regulator, the NDIC is the government agency responsible for guaranteeing the payment of deposits up to the maximum limit in accordance with its statute in the event of failure of an insured financial institution. It also supervises banks which is an essential element

[14]Donli, J G.,(2003). *The State and Future of the Banking Industry in Nigeria*, 2003, p.1. Retrieved fromhttp://www.academia.edu/784845/The_State_and_Future_of_the_.Banking_in_Nigeria accessed on the 25/8/2014

of its scheme as it seeks to reduce the potential risk of failure and ensures the unsafe and unsound banking practices do not go unchecked.[15] It should be noted that the NDIC utilizes three (3) types of supervision in the banking sector to include transaction based supervision, consolidated supervision and risk based supervision.[16]

The licensed banks depending on their financial services they provide are grouped into Deposit Money Banks (commercial banks), Micro Finance Banks (MFBs), Finance Companies (FCs), Bureau de-Change (BDCs), Primary Mortgage Institutions (PMIs) and Development Finance Institutions (DFIs). They provide financial services to include deposit mobilization and storage, term loans, mortgage loans and other types of credit facilities to both private and public sectors in the Nigerian economy.[17] The CBN is however interested in the activities of the Deposit Money Banks. The Support groups as an institution provides the services, media and platforms that support the activities of the banking system. They include The Nigerian Security Promoting and Monitoring Plc; the Nigerian Inter- Bank Settlement Plc; Private Owned Electronic Switches and the External Auditors. Lastly, the depositors include individuals, group of persons, corporate bodies as well as the tiers of government. They are often referred to as the beneficiaries who either supply or demand financial resources to and from the operators, who are supervised by the regulator.

The Nigerian Banking system is organized around the acts, activities and interactions amongst the above actors.[18] The Banks conducts their business and provides records of their operations using a 12-month

[15]NDIC: Mandate, Powers and Functions. Retrieved from http:/ndic.org.ng/mandate-power-functions.html accessed on the 17/11/2012.

[16] Retrieved from http:/ndic.org.ng/supervision.html accessed on the 17/11/2012.

[17]CBN Website: Supervisory Framework: www.cenbank.org/supervision/framework.asp accessed on the 17/11/2012.Presently, there are 24 Deposit Money Banks, 5 Discount Houses, 84 Finance Companies, 98 Primary Mortgage Institutions, 649 Bureau de- Change and 900 Micro Finance Banks.

[18]Appendix A: Lists of the 24 Licensed Deposit Money Banks in Nigeria.Although, 21 out of the 24 Deposit Money Banks are listed on the Nigerian Stock Exchange (publicly quoted), ownership of these Deposit Money Banks is mainly dominated by the single individual majority ownership and family majority ownership. Thus, the management and control of the operations of these banks are largely influenced by a significant individual or by a family, who usually appoint individuals to

financial year end accounting and reporting. As of today, the financial year-end and accounting varies for the 24 Deposit Money Banks in Nigeria. In 2012, to reduce regulatory arbitrage, the CBN directed all other financial institutions (OFIs) to adopt a uniform accounting year-end, affective – 31st December, 2012.[19] To further tackle money laundering and the financing terrorism, the Bank developed a three-level know – your – Customer (KYC) regime for banks and other financial institutions.

Given the importance of the banking sector in the growth and development of the Nigerian economy, the acts, activities and interactions amongst the actors as can be seen in the imperfections of the market mechanisms to mobilize and allocate financial resources, it becomes necessary for the Nigerian Government to regulate this sector and the entrenchment of good, sound, effective and efficient corporate governance. Prior to the reform, it was of great concerns among investors and regulators in Nigeria as a result of poor performance of banks, while others were failing mainly as a result of weak and poor corporate governance structure. To address this, the CBN further issued a Code of Conduct for Directors of Licensed Banks and Financial Institutions in 2006. The perception of non-executive directors on the boards of banks is particularly instructive as it is in consonance with agency theory which suggests that non- executive directors act as a check and balance mechanism. In spite of these provisions, the corporate governance culture in Nigeria has consistently failed to be responsible to the stakeholders, accountable to the shareholders and has no deep- rooted mechanism to maintain a balance among the major players (board of directors, shareholders and management) in corporate governance.[20]

---

membership of the board of directors. The CBN in nearly all cases approves of the boards appointment.

[19]Central Bank of Nigeria Economic Report for the First Half of 2012, p. XVI.

[20]Quadri, H.A., (2010). Conceptual Framework for Corporate Governance in Nigeria Challenges and Panaceas. Abogun, S., Fagbemi, T.O & Balogun, B.R (Ed) Corporate Governance and Bank Liquidity: Evidence from Selected Banks in Nigeria, *University of Ilorin Journal*, 16(2):196. Retrieved from https://www.unilorin.edu.ng/ejournals/index.plp/cparticle/or663-751-2-PBpdf.

Corporate Governance provisions relating to banks are contained in the Companies and Allied Matters Act 1990, the Banks and Other Financial Institutions Act (BOFIA) 2004, Bank Employees Etc (Declaration of Assets) Act 2004, Financial Reporting Council of Nigeria Act 2011, Nigerian Deposit Insurance Corporation Act, 2006, the Asset Management Corporation Act 2010, the Investments and Securities Act 2007, the Securities and Exchange Commission Code 2003 as amended in 2011 etc. and recently the Central Bank of Nigeria issued a Code of Conduct for Directors of Licensed Banks and Financial Institutions and a Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006. Some of the features of the SEC and the CBN Codes include: separation of roles of the Chief Executives Officers and the Board Chairman; prescription of non- executive directors on the board;transparency on financial and non-financial reporting;protecting shareholders rights and privileges; and introducing transparency, due process and disclosure requirements.

In response to recent failures across the world corporate governance has enjoyed considerable focus in both practice and academic research. The reforms in the Nigeria banking sector brought with it obvious problems of corporate governance in the sense that most of the banks still operate the same management structure before the capitalization with the chief executive officer holding substantial equity and power even at board level. It is therefore evident that it is not well with Nigeria banking sector's corporate governance process as can be seen in the recent EFCC cases against some bank executives. A good example is Oceanic Bank where its former MD, Cecillia Ibru was convicted of bank fraud with six months in jail and a forfeiture of over N150 billion in assets and cash.[21] Also former CEO bank PHB was accused of fraud involving £320million of depositors' funds. Others are Executive Chairman of Afribank fraud involving £220million and

[21]Sahara Reporters, Former MD of Oceanic Bank, Cecillia Ibru, October 8 convicted of Bank Fraud, 2010. Retrieved from http://sahara reporters.com/2010/w/08/former-md-oceanic-bank-cecillia-ibru-convicted-bank-fraud accessed 25/08/2014. Also see, Vanguard, Cecillia Ibru goes to jail, October 9, 2010. Retrieved from http;//www.vanguardngr.com/2010/10/cecillia-ibru-goes-to-jail accessed 25/08/2014.

CEO of Intercontinental bank of £108 million.[22] All these were possible with the failure and weakness of internal control and corporate governance; thus the CBN sacked the management and board of 5 banks replacing them with selected new officials to protect the depositors' funds.

The reform also led to mergers and acquisitions. The consolidation led to the development of the CBN Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006, which was made to compliment other policies in the Nigerian banking system and enhance the effective and good corporate governance structure/system. Although banking failure in the developing economies could be attributed to low economic development, what then do we say of developed economies which recently witnessed business failures as evidenced by Enron, Worldcom, Sunbeam and other high profile scandals. This goes to show to a large extent that it is not a question of developed and developing economies but weakness in corporate governance practices, agency problem and non-compliance to codes/rules and failure to sanction non-compliance. In the case of Nigeria, bank failures experienced at various stages right from the colonial era till date re-emphasizes the significance and vital role of corporate governance of financial institutions, such as banks. Balogun[23] noted that the banking reform in Nigeria is traceable to the colonial era in Nigeria.

Akpan[24] opined that the sector has undergone remarkable changes over the years in terms of the number of institutions, structure of ownership, as well as depth and breadth of operations. These changes have been influenced mostly by the challenges posed by deregulations of the financial

[22]Economic and Financial Crime Commission (EFCC) Abuja. Retrieved fromhttp://www.efcc.orgaccessed on the 17/11/2012.

[23]Balogun, E.D., (2007). Banking Sector Reforms and the Nigerian Economy: Performance, Pitfalls and Future Policy Options Adegbite, G., (Ed) *Corporate Governance of Banks and the Banking Reforms in Nigeria: The Issues*, World Fianance Conference Shanghai, China, p.6.Retrieved from http://papers.ssm.com/so/3/papers.cfm?abstract_id=2277986 accessed 25/08/2014.

[24]Akpan, A.B., (2007). Effectiveness of Bank Capitalization and Consolidation in Building Market Confidence: An Assessment of Customers Perception in Nigeria. Opkanachi, J., (Ed) Imperative Analysis of the Impact of Mergers and Acquisitions in Financial Efficiency of Banks in Nigeria, *Journal of Accounting and Taxation*, 3(1):1. Rertrieved from http;//www.academicjournals.org/article/article/379403604_Okapnachi.pdf accessed 25/08/2014.

sector, operations globalization, technological innovations and implementation of supervisory and prudential requirements that conform to international regulations and standards, which corporate governance is inclusive. It is this change in 2001 that led to the adoption of universal banking system where both commercial and merchant banking functions in Nigeria is jointly performed by a reclassified Deposit Money Banks (DMBs) in Nigeria, while the Corporate Governance Code was re-issued and made mandatory on 1/3/ 2006.

It becomes imperative to state that the key to understanding the nature of various on-going crises lies on the impact of corporate governance and its best practices. This is because corporate governance aims at preventing fraud and its vices of the ground rules of the activities and acts of corporate bodies and the application of same. Corporate governance is necessary to the proper functioning of banks and can only prevent bank distress which later transcends to failure if it is not well implemented. The law being the subjection of human action to the governance rules, it is a condition precedent for the optimal performance of corporate entities in our modern world. While the law might not be fully encompassing, it is hardly in dispute that without acknowledging the centrality of law in the scheme of things, the likely result is that the society would not go very far in the achievement of the set objectives and also guarantee the well being of its citizens.

1.2 Statement of the Problem

The experience of the financial crisis has further underscored the imperative for the entrenchment and practice of good corporate governance. The crises (most especially the 2007 – 2009 crises) taught the corporate world that no corporation is too big financially, structurally and otherwise to fail. It further teaches that corporate governance must be seen as a vehicle that corporations especially the banks use to attract investors and thus assuring them that their investments will be secured, efficiently managed and accounted for through transparency and adequate disclosure. The Nigerian banking sector has

undergone series of evolution from the advent of banking from 1892 to the Consolidation and post consolidation era, following the wide and far reaching reforms embarked upon by the CBN. The 1952 to 1958 witnessed the first round of bank failure while the second occurred between 1994 to 2003. The most recent reform which began in 2004 with the consolidation programme was necessitated by the need to strengthen the banks with a view to grow the banks and position them to play key role in a bid to driving development to various sector of the economy. As a result, banks underwent mergers and acquisition, raising the capital base from N2million to a minimum of N25billion which led to the reduction in the number of bank from 89 to 25 in 2004 and later 24, with the introduction of the non-interest bank – Jaiz Bank Plc in 2012. This consolidation was done with the CBN using the CAMEL parameter that is, Capital Adequacy, Assets Quality, Management Proficiency, Earnings and Liquidity.[25] At the end of the reform and consolidation, the sector witnessed great changes in terms of structure, size and ownership. Some of these changes and impact of the reform includes the emergence of fewer but bigger banks, huge flow of capital into the banking sector, high capital base and dilution of ownership amongst others. These laudable achievements where accompanied by inevitable challenges ranging from the integration of people, process and culture to corruption, incompetence of the board, development of information technology and procedures, poor infrastructure, customer retention, absence of robust risk management framework, legal and regulatory issues etc and these, necessitated the birth of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006.

It can be garnered that despite the presence of the 2006 Code banks faltered and failed. It shows clearly, the payment of lips service by banks and poor enforcement by the CBN in ensuring a high degree of implementation and compliance with the objectives and obligation imposed by the Code vis-à-vis international best practices. It is evident that at various stages in the history of the banking sector in

[25]Sanusi, L.S., Banking Reform and its Impact in the Nigerian Economy, Warwick's Economic Summit, United kingdom, 2012.

Nigeria, significant and substantive regulation and disclosure requirements have been enacted. However, without an effective regulator to monitor implementation, compliance and violations of the Code provisions, thereby enforcing by prescribing the necessary sanction, the objectives and tenets of corporate governance stands defeated. Compliance, implementation and enforcement are the greatest challenges that would define the success or otherwise of any code. This is because a Code will not enforce itself nor ensure compliance and implementation by itself. Failure of effective enforcement by the regulator and proper implementation and compliance by the banks has resulted in the weakness of corporate governance of banks. It poses a question as to whether the mere passage of the Code of Corporate Governance for Banks in Nigeria Post Consolidation amidst the challenges automatically lead to credible corporate governance practices in the Nigerian banking sector. Akin to it is the fact that the Code failed to prescribe sanction for any violation neither did it make provision for banks to explain posture for non-compliance to the provision of the code or explain variation.

The CBN Code 2006 acknowledges some challenges of corporate governance for banks post consolidation. Though, it aimed at addressing these challenges in order to establish an effective, efficient and sound system in Nigeria. It is important that this code is not able to a large extent accomplish this purpose if the institutional, legal, regulatory, managerial, financial and environmental framework for corporate governance in Nigeria are weak, insufficient and ineffective. The Code in itself is not free from loopholes and shortcomings. The code on organizational structure fell short of the basic statutory prescription as it stands in contrast with the provision of CAMA on structural patterns of companies in Nigeria, of which the banks are included. The code failed to impact on the statutory provision respecting board of directors, as it did not state matters which are or should be reserved for the board as against those that should be reserved for the executive management. This allows for the board to either be active positively or negatively. The board of any bank or company is duty bound to ensure the proper functioning of the bank in achieving the bank's stated vision and mission; and the

protection of shareholders. This brings to bear the requisite knowledge, quality, capacity and strength of the board as a determinant factor in the effectiveness of corporate governance.

Further, the CBN Code provision on risk management is not comprehensive and could not have assured a robust risk management framework in the banks. Risk management is one of the most visible indicators of the practice of corporate governance and the implementation of the code. It failed to stipulate the risk management framework which includes risk policy, risk management procedure and risk management process, which entails identifying the risk, analyzing the risk, estimating the risk and managing the risk.

The Code provision on whistle blowing fall short of the minimum standard as it contains non revolutionary provision such as the standard of information which the whistle blower must meet, the yardsticks to measure the quality of information provided, the absence of protection against victimization and retaliation, absence of whistle blower relief and the mechanism of operation. The Code also failed to make provision for company secretary and the protection of institutional investors. The above made implementation and compliance practically impossible. Although some of the provisions of the code were practicable, some banks decided to pay lip service to such provision probably because of the absence of any sanction provision.

The banks have consistently clung to short termism at the expense of market credibility and long term investment and incentive. The impact of good corporate governance in any business environment cannot be overemphasized. A country's corporate governance environment takes into consideration the political, social, cultural and economic factors that enhance good corporate governance and this prevents unethical conduct/misbehaviour. The corporate governance environment determines the content for evaluating corporation's performance, decisions, strategy choices and actions. It therefore becomes imperative that corporate governance codes should be enacted in a way to meet the need of

the Nigerian business environment, primarily because corporate financial reporting is essential and fundamental to shareholders, government, creditors, regulators, agencies, employees, suppliers and the society in general.

The 2009 financial crisis which engulfed the Nigerian banking industry immediately after the 2008 global economic meltdown came like a thunderbolt, leaving in its trail many banks battered and tottering and others squeezed out of existence. Coming just four years after the banking consolidation, the Nigerian banking sector was unprepared for the catastrophe. Meanwhile the promulgation of industry-specific CBN Code of Corporate Governance for Banks (Post Consolidation) 2006 was meant to build and entrench robust corporate governance architecture in the Nigerian banking sector with the view of lining them up in the league of world class, well managed mega banks. The financial crisis (generally known as banking crisis), blamed on failure of corporate governance systems among others[26], has thrown up the issue whether the law and practice of corporate governance in the Nigerian banking sector in the light of the CBN Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 has been efficient in promoting a sound system of corporate governance in Nigerian banks.

Consequently, the following research questions have been formulated to guide and direct the research in the light of the above problem:

a) Whether national cultures play any role on the effectiveness of corporate governance systems across jurisdictions.
b) Whether the CBN Code of corporate governance for banks in Nigeria post consolidation can efficiently stem corporate misbehaviour in Nigerian banks.
c) Whether there is any relationship between corporate governance and risk management in Nigerian banks.

[26]Sanusi, L.S., "The Nigerian Banking Industry: What Went Wrong and the Way Forward", Available online at http://cenbank.org/out/speeches/2010/pdf, accessed 12/10/2013.

d) Whether the Central Bank of Nigeria is efficient in regulating and enforcing corporate governance systems in the Nigerian banking sector.

e) Whether the implementation of corporate governance systems in the Nigerian banking sector are constrained by any challenges.

f) Whether the practice of corporate governance has been at its best. How can we improve banking sector corporate governance in Nigeria; and how do we promote sound corporate governance practices in the banks/banking sector.

1.3 Aim and Objectives of the Research

The aim of this research is to demonstrate that the practice of corporate governance has not been at its best and that the CBN Code of Corporate Governance for Banks in Nigerian Post Consolidation has not efficiently supported a sound system of corporate governance in Nigerian banks. It is against this backdrop that the following objectives are pursued in this research:

1) To examine the roles, the principles and various models (national cultures) of corporate governance play in the effectiveness of corporate governance systems and situate that in the context of Nigerian banking sector.
2) To analyse the CBN Code of corporate governance for banks in Nigeria post consolidation and thus bring out the limitations and deficiencies in the Code.
3) To examine the principles of risk management system and identify the nexus between risk management and corporate governance in Nigerian banks.
4) To review the role of the CBN as the principal regulator of banks in Nigeria and the extent to which it has been able to enforce its Code of corporate governance on the banks.
5) To examine the practice of corporate governance in banks vis-a-vis the provisions of the code.

6) To identify the challenges which constrain the implementation of the sound system of corporate governance in Nigerian banks and proffer recommendation on how best the problems identified can be addressed.

1.4 Scope of the Research

This research is limited to the study of the law and practice of Corporate Governance in the Nigerian Banking Sector. It is limited to the appraisal of the soft law CBN industry-specific code that is the Central Bank of Nigeria (CBN) Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006. Being that the 2006 Code was revised by the 2014 Code, reference was made to it. Bearing this in mind, it is outside the scope of this work to attempt detailed analysis of general application codes in Nigeria, although references will be made to them as is necessary within the scope of the research. In line with the established scope, the work did not consider strict statutory provisions respecting corporate governance, albeit they were properly identified and acknowledged in the work.[27]

It further deals with the nature of this Code and the basic obligations and consequences under which the Nigerian Banks are required to abide by. This research would therefore make adequate analysis on factors necessitating the practice and enforcement of sound, strong and good governance framework that enhances compliance and sanction non – compliance to the Corporate Governance Codes becomes imperative.

1.5 Justification of the Research

Bearing in mind that the banking institution occupies a vital position in the stability of the nation's economy, management is expected to exhibit good governance practices to ensure the attainment of its objectives and avoid the consequences of failure thereby leading to a betrayal of trust and the loss of confidence reposed on banks by the citizens. Poor corporate governance contributes to bank failure

[27] See below, 3.3.1, p. 132

which can lead market to lose confidence in the ability of a bank to properly manage its assets, liabilities and deposits which could in turn trigger liquidity crisis in the bank.

It should be noted that it was not the absence of corporate governance codes that triggered bank crises and led to the failure of some banks. This research is therefore justified based on the fact that the crises in the banks were triggered by, to a large extent failure/poor implementation by the banks (total compliance and not only lip service) and proper enforcement of the body saddled with the responsibility of implementation of existing codes of corporate governance. The justification lies in the fact that the challenges and possible solution of the practice, enforcement and implementation to the limited knowledge of this researcher are not covered nor discussed by any text, which makes this research unique, filling the gap and thereby providing information towards consistent enforcement, implementation and how strictly the provisions of the Code will be applied by regulators. The research would make impact in the areas of:

Law Review: It would attempt to discover the extent to which the Government of the Central Bank of Nigeria has performed or fulfilled its obligation with a view to understanding the problems and challenges facing the Nigerian Banks, even after post consolidation and how best to remedy these challenges;

The Academia: This research will add to existing reference material in the academic community on the subject Corporate Governance in the Nigerian Banking Sector. This will be achieved by making the concluded thesis available to public libraries especially of Tertiary Institutions to ease access;

The Banks in Nigeria: The Banks in Nigeria will find this research useful and meaningful as a material contributing to the understanding of their obligations under the Code of Corporate Governance and adding more to their awareness, thereby making their duties easier and purposeful. It will also aid them

in compliance with a view to resolving the various challenges; while enabling them to appreciate the distinction between corporate governance framework and corporate governance structure;

The Public: This research will provide the Public with the understanding of the current reforms, its usefulness and keep them abreast of their roles and obligations as citizens who banks with the Nigerian Banks. It will further inform the public of the practice of corporate governance in banks vis-a-vis the provisions of the Code;

The Government of Nigeria: The Government of Nigeria would find this study useful and important where policies relating to corporate governance are to be made in the field of banking and other sectors; and

The International Community: The observations and the recommendations made at the end of this research would be useful in building the Code of Corporate Governance for the common benefit of the International Community in general and Nigeria in particular. It will also facilitate and build greater relationship between the CBN and Banks of other Countries, thereby building and strengthen ties.

1.6 Research Methodology

The doctrinal and empirical methods of research were adopted in the work. The doctrinal research methodology does not necessarily require empirical approach which necessitates and entails collection of facts and data on the field and the analysis of same. This method of research is based on the descriptive content analysis of primary and secondary data. The primary sources considered include the annual reports and financial statements of selected banks, statutes, case laws drawn from Nigerian and foreign jurisdictions. The primary source constituted an important element of the research because they constitute the ground norm of every legal rule and the very basis on which views are predicated. On the other hand, the secondary sources included Textbooks, Journals and Seminar Papers, Newspapers, Statistical data, Official Reports and scholarly internet materials. The research took a critical examination

of the various sources and the materials derived from them. This helped to ground the view to forming opinions and that informed the conclusions and recommendations proffered in the work.

The research also employed empirical research methodology in obtaining relevant information and data which formed the basis of the conclusions reached. In the empirical method, reference was made to an interview session with the Corporate Governance team at the Central Bank of Nigeria.

1.7 Literature Review

Several literatures formed the basis in the course of this research. Such literatures under review ranges from text books, statutes to journal articles, aimed at adding value to this research. The approach adopted for the literature review is in two-fold. To wit:

1) Empirical Literature; and
2) Codes Provision Literature

1.7.1 Empirical Literature

The spate of corporate failures that have occurred in the past two decades involving companies such as Enron, WorldCom, Global Crossing, Adelphia Communications, HiH, Tyco, Vivendi, Royal Ahold and Health South, together with a host of smaller-scale examples worldwide, have drawn far greater attention to this area. Coupled with the perceived increase in the frequency of misstated financial statements worldwide, all of this has had a negative and cumulative impact on the way informed opinion views financial reporting.[28]

A holistic investigation into what went wrong in Nigeria leading up to the banking crisis in 2008 found eight interrelated factors responsible. This were macroeconomic instability caused by high and sudden capital inflows, major failures in corporate governance at banks, lack of investor and consumer

[28]International Federation of Accountants – IFAC, Establishing Credibility in the Investor Community,2003. Retrieved fromhttp://www.ifac,org/sites/default/files/publications/files/3.1-Carlos-Madrazo-Establishing-Credibility-FINAL.pdf.

sophistication, inadequate disclosure and transparency about the financial position of banks, critical gaps in the regulatory framework and regulations, uneven supervision and enforcement, unstructured governance and management process at the CBN and weakness in the business environment. Each of these factors is serious on its own right. Acted together they brought the entire Nigerian financial system to the brink of collapse.[29]

As a result of corporate collapse and financial scandal around the world, the concept of corporate governance emerged together with its attendant codes globally and nationally. Corporate governance systems have evolved in a number of developing African countries.[30] However, Rwegasira[31] argued that the concept of corporate governance is not necessarily the best solution for developing economies. This according to Agbonifoh[32] is because a number of developing countries face numerous problems that include unstable political regimes, low capital incomes and diseases. Such problems require more elaborate solutions than simply adopting corporate governance in developing countries especially countries African.

The research considers the importance of corporate governance generally in the light of national cultures and acknowledged that if a nation adopts a national corporate governance culture that best suits its environment without borrowing other countries national corporate governance culture, corporate governance will thus become the best solution for both developed and developing

[29]Sanusi, L. S., (2012). Banking Reform and its Impact on the Nigerian Economy, being a Lecture delivered at the University of Warwick's Economic Summit, United Kingdom,p.3; *CBN Journal of Applied Statistics*, 2(2): 116.

[30]Adepoju, B.A., (2010)The Nexus between Corporate Governance and Human Resources, Management Practices, Nigerian *Academy of Management Journal,* 4(2): 48-56.

[31]Rwegasira, K., (2000) Corporate Governance in Emerging Capital Markets Whiter Africa? *An International Review* 8 (3). Retrieved from http://dx.doi.org/10.1111/1467-8683-00203

[32]Agbonifoh, B.A., (2010) Human Management and Corporate Governance: The Quest for Best Practices in Nigeria, *Nigerian Academy of Management Journal* 4 (2), pp.37-42.

economies. Good corporate governance practices will help developing countries and emerging markets to attract both domestic and foreign investments aimed at building markets competitiveness, restoring investors' confidence, private economic growth and thereby boost national development. This of course is not free from challenges, ranging from individuals, societal, national environment and its legal system.

This research examines the roles played by national cultures (models) of corporate governance in Nigeria. Amupitan[33] identified several models of corporate `governance around the world to include, the disclosure model, stakeholder model, Berle and Means Model amongst others. Although at the time his book was written, the soft law has existed for two years, but he did not identify the limitations of the code. The research categorise the models into Anglo-US model, Japanese Model and the German model. The researcher observed that Nigeria practices more of the Anglo- US model, a system of one size fits all stance which will not only affect the national corporate governance culture of Nigeria and its environment as both legal systems are entirely different.

As the developed economies struggle with the persistent financial crisis, the Nigerian economy is also affected by the meltdown because the banking sector is weakly linked with the global financial system. These failuresbrought with it the need for good governance practices. Bell *et al*[34]stated that the last 20 yearswitnessed several bank failures throughout the world. Financial distresses in most of these countries were attributed to a high incidence of non – performing loans, weak management and poor credit policy. In this light, the developments have reflected the deterioration in the quality of credit facilities, coupled with the ongoing reclassification of bank assets.

In the assertion ofBell *et al*, bank failures in most countries were attributed to high incidence of non-performing loans, weak management and poor credit policy without the mention of weakness in

[33]Amupitan, J.O., (2008). Corporate Governance: Models and Principles, Hilltop Publishers p.47.

[34]Bell, J.,& Pain D., (2000). Leading Indicator Models of Banking Crises- A Critical Review. In: Godlewski, C.J., (Ed) An Empirical Investigation of Bank Risk Taking in Emerging Markets within a Prospect Theory Framework, *Bank and Banks Systems*, 2(2): 36.

corporate governance. Thus, there was no where it was mentioned that poor enforcement and lack of implementation constitute the greatest challenge of failure in corporate governance. To fill this gap, emphasis must be placed on effective implementation by the banks and proper enforcement by the body saddled with such responsibility in order to attain sound and best practices of corporate governance.

Wilson[35] noted that poor corporate governance can lead market to lose confidence in the inability of a bank to properly manage its assets and liability, including deposits which could in turn trigger a bank liquidity crisis. To the researcher, not only can poor corporate governance lead to loss of confidence in the inability of a bank to properly manage its assets and liability, lack of it can also lead to weakness, poor relationship, insider related-dealing and lack of performance among the board, management, shareholders and other stakeholders.

From the view of Bell *et al* and Wilson, it is pertinent to state that there will be no corporate governance if there is no enforcement and implementation of the provisions of any code of corporate governance. The impact of good and sound corporate governance in the banking sector and its reputation cannot be over emphasized. It promotes the confidence reposed on them by the citizens, its credibility, enhances corporate performance at all levels, increased valuation, transparency, accountability and reliable financial reporting system. The researcher believes that where the banks concerned implements the provisions of the Code (if not lacking in any of its provisions) to its latter and the body responsible for ensuring enforcement so does, the sky of the banks in particular and the economy in general will be a stepping stone.

[35]Wilson I., (2006). Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Banking Consolidation, *The Nigerian Economic Summit Group (NSESC)*, 12(2):3.

Nworji et al[36] posit that "the result of the findings revealed that the new code of corporate governance for banks is adequate to curtail bank distress and improper risk management, corruption of banks officials and other expansion of banks the key issues Nigerian banks fail" the study concluded that corporate governance is necessary to the proper functioning of banks and can only prevent bank distress only if well implemented. The article stated further that the CBN in its continuing efforts to enhance corporate governance in the Nigerian banking sector has come up with the corporate governance code which is intended to promote international best practices in the corporate governance of Nigerian banks.

This research examined the inadequacy of the CBN to curtail bank distress and reiterates that however banks fully implemented the code provisions, bank distress was far from being preventable. As against Nworji at al's finding, it would have so prevented the 2008-2009 banking crisis, two years after the establishment of the code (2006) and four years after the consolidation of banks (2004).

In the article"Implication of Corporate Governance on the Performance of Deposit Money Banks in Nigeria[37] the author observed that poor corporate governance was identified as one of the major factors responsible for the entire distress situation experienced in the Nigerian banking industry and concomitant loss of about 75 banks. He stated that the Nigerian deposit money banks (NDMB) failed to observe effectively the underlying principle that guide the application of corporate governance in the industry.[38] The article further stated emphatically, that despite the existence of corporate governance regulatory agencies like the CBN, SEC, the NDMB are yet to comply with corporate governance codes.[39] The article recommends that the existing banking ethics, rules and regulations need to be strengthened

[36]Nworji, I.D, Olagunju, A., & Adeyanju, O.D., (2011). Corporate Governance and Bank Failure in Nigeria: Issues, Challenges and Opportunities, *Research Journal of Finance and Accounting,* 2:2; ISSN 2222-1697 (Paper) @ www.itse.org accessed 29-4-2013, Unpagenated (Abstract).

[37]Osuagwu, G.O., (2013). Implication of Corporate Governance on the Performance of Deposit Money Banks in Nigeria, *Arabian Journal of Business and Management Review*, 2:10 p.115.

[38]Osuagwu, G.O., (2013). Implication of Corporate Governance on the Performance of Deposit Money Banks in Nigeria, *Arabian Journal of Business and Management Review*, 2:10 p.115.

[39]ibid.

in order to develop sound, reliable and dependable banking system as well as carrying out real banking business in Nigeria.[40]

This article failed to examine the code provisions to discover the weaknesses and limitations which call for urgent review. Such limitations include the code provision on organisational structure as it relates to members in general meeting, board of directors headed by the Chairman, executive management headed by the managing director, viewed in line with the Companies and Allied Matters Act. Other limitations include the code provision on quality of board membership, risk management, whistle blowing and others.

Gower in Principles of Modern Company Law[41] identifies the board committees which clearly deal with sensitive governance matters to include nomination, remuneration and audit committees. The functions and roles especially of the board committee and most especially of the external audit were not expounded by the author. This research shows that the banking sector with regards to the Code is bedevilled with three challenges, as to non provision of a company secretary, failure to provide for strong internal audit function and stringent conditions for the discharge of external audit, neither did it define what constitutes a relevant professional body. In a Practical Guide to Corporate Governance,[42] the author noted that the presence of a company secretary ensures that the directors are reminded of their legal duties and limits and reduced their director's requirement for outside legal service. The CBN Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 made no provision or mention of the role of a Secretary, which amounts to a misnomer. Both the audit function and the role of a secretary are matters of statutory compliance concerns.

[40]Ibid, p.116.

[41]Gower and Davies, P.L.,(2008). Principles of Modern Company Law, Davis, P.L (ed), Sweet & Maxwell, London, p.407.

[42]Smerdon, R.A.,(2007). A Practical Guide to Corporate Governance, Sweet & Maxwell, London, p.1.

Inyang in his article, Nurturing Corporate Governance Systems: The Emerging Trends in Nigeria[43] stated that the CBN code seeks to address the issues of poor corporate governance and create a sound banking system in Nigeria. This research examines the provisions of the code in its entirety to decipher its efficiency, effectiveness and whether it can birth a sound banking system in Nigeria.

He stated further that the code introduced more stringent requirements in the area of industry, transparency, equity ownership, criteria for the appointment of directors, board structure and composition, accounting and auditing, risk management and financial reporting. Although the research restates these as features inherent in the code, the researcher reiterates the short comings of the code provision on organisational structure, a compromised audit function, sanction provision and constituent elements of risk management and its relationship with corporate governance. The code was in place as at 2006 while the problems in the financial system occurred between 2008 – 2009. This is a pointer to the fact that certain of the code's provision needs to be revisited and further acquaint the directors and executives of their responsibilities. The independence of auditors is a very crucial aspect of every rule or code in any organisation because if it is compromised, companies especially banks will capitalise on it to give misleading financial report. In Code provision 8.1.1[44] it was clearly stated that internal auditors should be largely independent, while code provision 8.1.5[45] is not clear about this because it is limited to the independence of the audit committee which will be responsible for the review of financial reporting and oversee the independence of the external auditor. The code and its operators did not envisage any breach of its provision and so made no appropriate provision for breach of its provision.

[43]Inyang, B.J., (2009). Nurturing Corporate governance System: The Emerging Trends in Nigeria, *Journal of Business, Governance and Ethics*, 4:2, p. 5.

[44]Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006.

[45]ibid.

Inyang's article made no mention of whistle blowing. This research considered the features of whistle blowing and the code provision's shortcomings as to non-revolutionary provisions, absence of protection against victimization and retaliation, the relief for the blower and mechanism of operation. Furthermore, the research in considering the efficiency of the code arising from its limitations, examined the various challenges of promoting a supportive corporate governance environment, the challenges of implementation, corruption related challenges, exogenous challenges and the challenge of enforcement.

In Issues in Corporate Governance in the Banking Sector[46] Toyin emphatically posit that "the CBN new code is aimed at assisting board of banks manage the challenges of balancing the conflicting interests of different stakeholders". The article pointed out that one of the provision pertaining to directors include the office and responsibilities of the chairman of the board should be clearly separated from that of the MD/CEO; that no one person should combine the post of chairman with that of the Executive Officer of any bank.

This research has examined the role played by various functionaries in corporate governance. Directors are vehicles conveying corporate governance in their respective companies, auditors are tasked with upholding the integrity of financial reporting and business conduct and the shareholders' role is to appoint directors. Toyin's article restated the position of the code as to executive duality but failed to state that it presents a danger even in situations where the positions are kept separate. This research states the potential danger of executive duality. Furthermore that the code has failed to enumerate succinctly the roles of the board of directors and the executive management. It is also not different from the non-provision of members in general meeting.

[46]Toyin, P., (2007). Issues in Corporate Governance in the Banking Sector, *CBN Bullion*, Vol. 31 No.3, p.10.

Similarly, Aguilera and Cuervo[47] considered the codes of good governance as 'a set of best practice' recommendations regarding the behaviour and structure of the board of a firm...designed to address comprehensive set of norms on the role and composition of the board of directors, relationship with shareholders and top management, auditing and information disclosure and selection, remuneration and dismissal of directors and top management. Also Ogbechie and koufopoulous[48] posit that the institutionalisation of good corporate governance system will help to facilitate and stimulate performance of corporations by creating incentives that motivate insiders to maximise the firms' operating efficiency. At the same time, it enables the limiting of insiders, abuse of powers over corporate resources as well as providing the means for monitoring managers' behaviour in order to ensure corporate accountability.

The opinion of the authors on the one hand, the research considered the need for the enactment of a robust and well grounded code, putting the Nigerian peculiarities in terms of her legal system, national culture, customs, psychology, environment amongst others in drafting any code in order to free such code from fundamental defects. It is one thing to enact a code but its implementation and enforcement are the greatest challenges that would define the success or otherwise of the code. This is because the code will not implement nor enforce itself; but with enforcement, it takes the will, zeal and determination of the body saddled with such responsibility to enforce the provisions of the code to its letter.

[47]Aguilera, R.V., & Cuervo, C.A., (2004). Codes of Corporate Governance Worldwide, What is the trigger? *Organisational Studies, 25 (3)* pp.417-8.

[48]Ogbechie, C., & Koufopoulous, D.N., (2007). Corporate Governance Practices in Publicly Quoted Companies in Nigeria*, International Journal of Business, Governance and Ethics 3(4)* p.351.

Sanusi in his article[49] stated that in Nigeria the economy faltered and the banking system experienced a crisis in 2009 and many Nigerian Banks have to be rescued. In order to stabilise the system and return confidence to the markets and investors, the CBN injected N620bn of liquidity into the banking sector and replaced the leadership at eight Nigerian banks. He also posit in his article,[50] Banking Sector Reform and its Impact on the Nigerian Economy that a holistic investigation into what went wrong in Nigeria leading up to the banking crisis in 2008 found eight interrelated factors responsible. There were macro economic instability caused by large and sudden capital inflow, major failures in corporate governance at bank, lack of investor and consumer sophistication, critical gaps in the regulatory framework and regulations. This research examined the lack of a proactive approach of the regulatory authority (CBN) which appeared to have encouraged poor corporate governance. The research shows the overburdened regulatory activity of the CBN as against its functional role of enforcing the code provisions, which wasn't one of the factors mentioned in Sanusi's articles.

According to Bollard[51] the weakness in some of the ailing banks reflected poor management of conflict of interest, inadequate understanding of bank risks and poor oversight by board of the risk management system and internal audit arrangements. These problems were further compounded by poor quality of financial disclosure and ineffective external audit.Critically reviewing Bollard, there is no where it is mentioned that enforcement and implementation hinders corporate governance. Thus, together with factors stated earlier, makes this research ground breaking. It is easy to enact codes of corporate governance but the question is what is the effect when lips services are paid to the provisions of the

[49]Sanusi, L. S., (2010). The Nigerian Banking Industry; What Went Wrong and the Way Forward, Bayero University Kano, p.2.

[50]Sanusi, L. S., (2012). Banking Reform and its Impact on the Nigerian Economy, being a Lecture delivered at the University of Warwick's Economic Summit, United Kingdom,p.4, paragraph 8.

[51]Bollard, A., (2003). Corporate Governance in the Financial Sector. In:Mohammed, F., (Ed) Impact of Corporate Governance on Banking Sector Performance in Nigeria, *International Journal of Economic Development, Research and Investment*, 2(2): 53.

code without proper and complete implementation? Secondly, what is the credibility and competence of the body saddled with the enforcement of the provisions of the code? How has the body dispelled the burden of banks placed amidst the limitations inherent therein? Are there sufficient sanction and punishment spelt out for failure to comply with the provisions of the code?

Hence, creating an effective corporate governance framework with effective enforcement and proper implementation is desirable in order to enhance efficiency and transparency in the Nigerian financial system. It should be noted that most bad loans were made through aggressive lending without considering credit worthiness of the borrowers and the significance of collateral. An unfortunate situation is the return of collateral of high risky loans to borrowers while loan is yet to be repaid. This increased incidence of bank failure in recent times generated the need for corporate governance and its best practices.

Ato[52] defines corporate governance as a system by which governing institutions and all other organizations relate to their communities and stakeholders to improve their quality of life. Ahmad and Tukur[53] also posit that corporate governance is concerned with the ways parties (stake holders) interested in the wellbeing of firms ensure that managers and other insiders adopt mechanism to safeguard the interest of the shareholders. It is therefore important that good corporate governance

[52]Ato, G.,(2002). Corporate Governance: How is the Accounting Profession Responding to the Demand for Greater Transparency and Good Governance in the Public and Private Sectors of the Economy.In:Mohammed, F., (Ed) Impact of Corporate Governance on Banking Sector Performance in Nigeria, *International Journal of Economic Development, Research and Investment*, 2(2): 53.

[53]Ahmad, S.A., and Tukur, G., (2005). Corporate Governance Mechanism and Firm's Financial Performance in Nigeria.In:Mohammed, F., (Ed) Impact of Corporate Governance on Banking Sector Performance in Nigeria, *International Journal of Economic Development, Research and Investment*, 2(2): 53.

ensures transparency, accountability and fairness in reporting. In this regard, that Mayer[54]notes that corporate governance is not only concerned with corporate efficiency, it relates to a much wider range of company strategies and life cycle development.

From the assertions of Tukur and Mayer, management in governance has various functions and objectives which might conflict with that of the Shareholders. In search for solutions to resolve these conflicts, management may focus on short term results as against long term results and loss focus on practices and values such as effective corporate governance, transparency, accountability amongst others. Failure to take into account these practices, values and effective corporate governance has and will hinder the performance of banks as experienced in past bank failures and the recent failures on Intercontinental Bank, Oceanic Bank Ltd and Bank PHB in 2011.

As a concept reflected in this capstone's title and much more as a theme in business ethics, corporate governance denote the concrete application of ethics in organizational behaviors, activities and systems. Corporate governance has a vast literature as business ethics itself, and has evolved over centuries, often in response to corporate failures or systemic crises.[55] Arjoon[56] also opined that the persistent concern in societies over the status of health of corporations and of society in general underpins the relevance of corporate governance both as an ethical principle and as a practice to date. Boatright[57] asserts that corporate governance is concerned broadly with who has the right to control the activities

[54]Mayer, C**.**, (2007). Developing the Rules for Corporate Governance.In:Mohammed, F., (Ed) Impact of Corporate Governance on Banking Sector Performance in Nigeria, *International Journal of Economic Development, Research and Investment*, 2(2): 53.

[55]Iskander, M. R., & Chamlou, N., (2000). *Corporate Governance: A Framework for Implementation*. Washington, D.C.: World Bank 2000, p.1.

[56]Arjoon, S**.**,(2005). Corporate Governance: An Ethical Perspective,*Journal of Business Ethics*, 61(4), 2005, p. 343.

[57]Boatright, J., (2001). Ethics *and Corporate Governance: Justifying the role of the Shareholder,* Blackwell Guide to Business Ethics, p.38.

of a firm and how this right is to be exercised. Although Boatright acknowledges the importance of corporate governance as a concept in business ethics and as a system of practices in the business world, corporate governance is essentially a search for the most efficient system of economic organization.[58]

To a large extent, the researcher disagrees with Boatright because corporate governance involves a social contract in which the governing institutions and other organizations relate to communities with a view to improving the quality of life of the individual in particular and the community in general. Succinctly put, corporate governance is the extent of corporate social responsibility an organisation exhibits with regards to ethical values, professionalism, desirable best practices, accountability and transparency. Corporate governance practices are essential to achieving and maintaining public trust and confidence in the banking system, which are critical to proper functioning of the banking sector, which could in turn lead to a run on the bank, unemployment and negative impact on the economy.[59] Thus, the consequences of ineffective and weak corporate governance or failure will not only affect the Shareholders but the employees, suppliers, and the nation as a whole, since it involves the regulatory and market mechanisms, and the roles and relationships between a Company's management, its board, its shareholders and the objective for which the corporation is governed. An important theme of corporate governance is the nature and extent of accountability of the people in the business, disclosure and the mechanism that try to decrease the principal – agent problem.

Millstein[60] sees corporate governance as the internal means through which corporations accomplish their goals, opines that corporate governance is comprised of both internal relationships (e.g. between

[58]ibid.

[59]Basel Committee on Banking Supervision, Consultative Document: Principles for Enhancing Corporate Governance, Bank for International Settlement, 2010, pp.4-5.

[60]Millstein, I. M., & Organization for EconomicCo-operation and Development. BusinessSector Advisory Group on Corporate Governanc***e***, (1998) Corporate Governance:Improving Competitiveness and Access to Capital in Global Markets: A Report to theOECD. Paris: OECD, p.7.

shareholders, board of directors, managers, employees, etc) and external relationships amongst stakeholders (e.g. between firms and government regulations, public perception and competitors). An understanding of these interrelationships between stakeholders and their individual roles is therefore needed to understand how corporate governance is shaped or modeled.

Amongst the gaps identified are weakness in corporate governance, insider related lending, failure to take into account long term results such as practices and values as effective corporate governance, credibility and confidence by the public, accountability and transparency and so on, will go a long way to hinder the performance of banks. The researcher will in the course of this research attempt to proffer solutions to filling this gap and also recommend how most of the challenges contributing to the weakness of corporate governance can be tackled.

1.7.2 Codes Provision Literature

An article reviewed in this research is Proliferation of Codes of Corporate Governance in Nigeria and Economic Development.[61] The crux of discussion is on the multiplicity of corporate governance codes in Nigeria. Demaki identified four (4) distinct codes of corporate governance to include:

1) The Securities and Exchange Commission (SEC) Code of Corporate Governance 2003, for public companies listed in the Nigerian Stock Exchange (NSE);
2) The Central Bank of Nigeria (CBN) Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006, specifically for Banks;
3) The National Insurance (NAICOM) Code 2009, for all insurance companies and its related activities in Nigeria; and
4) Pension Commission (PENCOM) Code 2008 for all licensed pension operators.[62]

[61]Demaki, G.O.,(2011). Proliferation of Codes of Corporate Governance in Nigeria and Economic Development, *Business and Management Review*, 1:6 @http//www.businessjournals.org/bmr accessed 24/07/2014.

The author omitted to make mention of the SEC Code of Corporate Governance in Nigeria, 2011 which reviewed the 2003 Code, the Companies and Allied Matters 2004 and the Investment and Securities Act 2007. Under the Banking system, the researcher categorized the codes into Mandatory Statutory regime and the Soft Law regime, The Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 which forms the basis of this research. Other Mandatory statutory regime considered briefly in the course of this research regulating banks includes the Asset Management Corporation of Nigeria Act (AMCON) 2010, Banks and Other Financial Institutions Act (BOFIA) 2004, Bank Employees Etc (Declaration of Assets) Act (BEA) 2004, the Central Bank Act (CBN) 2007, Financial Reporting Council of Nigeria Act (FRCN) 2011 and Nigeria Deposit Insurance Corporation of Nigeria (NDIC) 2006.

Demaki's article pointed out that despite the key elements in the four Codes of corporate governance; there are disparities in the provisions and enforcement mechanisms. The key elements include:

a) Composition of board of directors;

b) Independent directors;

c) Multiple directorship;

d) Board of director's committee;

e) Accountability and transparent reporting; and

f) Mandatory and self-regulatory requirements of the provisions of the Code.[63]

For example, code provision 5.3.5[64] of the CBN Code states that the number of non executive directors should be more than that of executive directors subject to a maximum board of 20 directors, which is in

[62]ibid.

[63]Demaki, G.O.,(2011). Proliferation of Codes of Corporate Governance in Nigeria and Economic Development, *Business and Management Review*, 1:6pp. 4-5. @http//www.businessjournals.org/bmr accessed 24/07/2014.

contrast with SEC Code provision 4.2 of 2011 which provides that membership of the board should not be less than five (5) and should not exceed 15 persons. Also, CBN Code provision 5.2.3[65] clearly provides that no two members of the same extended family should occupy the position of chairman and that of the Chief Executive Officer or Executive director of a bank at the same time, which is at variance with its SEC code provision 7.1 which states that no more than two members of the same family should sit on the board of a public company at the same time. This implies that should the banks adhere strictly to the CBN code, they will be violating the SEC's provisions in the above regard. Thus, when one is violated without penalty, the others become camouflage. It shows that banks in the Nigeria banking sector are regulated by more than two codes that is the mandatory statutory regime and the soft law regime, which goes a long way to affect their compliance and implementation by the banks and enforcement by the body saddled with the responsibility of ensuring implementation. This research advocates harmonization, in the sense that in one breath, one gets the impression that it is compulsorily applicable to all public companies, and in another breadth it seems to succumb to the supremacy of the industry specific code (soft law). There is no room or provision made as to when conflicts arises, which should prevail. This research further takes a position that corporate governance be regulated and enforced through the directorate for corporate governance of the Financial Reporting Council of Nigeria (FRCN)

Nworji et al[66] emphasized the essence of corporate governance as a means by "which resources available to an organisation are judiciously used to achieve the overall corporate objective of an organisation, it keeps the organisation in business and creates a greater prospect for future

[64]Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006. Provision 2.2.1 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[65]Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006. Provision 2.3.1, Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[66]Nworji, I.D, Olaunju, A., & Adeyanju, O.D., (2011). Corporate Governance and Bank Failure in Nigeria: Issues, Challenges and Opportunities, *Research Journal of Finance and Accounting*, 2:2; ISSN 2222-1697 (Paper) @ www.itse.orgaccessed 29-4-2013, Unpagenated.

opportunities.[67] It concluded that poor corporate governance may contribute to bank failures, which can pose significant public cost and consequences due to their potential impact on the applicable deposit insurance system and the possibility to broader macroeconomic implications, such as contagion risk and the impact of payment system.[68] The article pointed out that in Nigeria, recent history, "the lack of corporate governance witnessed a near collapse of the financial sector through the phenomenon of failed banks and other financial institutions, giving a few examples of Savannah and Peak Merchant banks.[69]

This endeared the researcher to take a drift into studying literatures on the principles, theoretical framework, models and good and sound corporate governance. The Basel Committee on banking Supervision[70] drawing its principles from the principles of corporate governance in Organisations for Economic Co-operation and Development (OECD)[71] intends to guide actions of the board, senior managers and supervision of a diverse range of banks in a number of countries with varying legal and regulatory systems, including both member and non-member countries. The OECD principles are widely well accepted and established principles aimed at assisting government in evaluating and improving their framework guidance for bank, participants and regulators of financial institutions.[72] The European

[67]ibid.

[68]ibid

[69]Ibid.

[70]The Basel Committee on Banking Supervision is a committee of banking supervisory authorities which was established by the Central Bank Governors of the Group of Ten Countries in 1975. It consists of senior representatives of banks, supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong, SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. It usually meet at the Bank of International Settlement (BIS) in Brazil, Switzerland, where its permanent secretariat is located.

[71]The Basel Committee on Banking Supervision, Enhancing Corporate Governance for Banking Organizations, September, 1999 and February 2006, p.1. Retrieved from www.bis.org/pub/bcbs122.htm accessed 26-01-2014.

[72]2.2 Chapter Two, pp 69 - 72.

bank for Reconstruction and Development (EBRD) determined to ensure all its operations have transit set of ten (10) core principles for a corporate governance framework.[73] The United Kingdom Corporate Governance Code[74] outlined five sections toward a sound corporate governance system and in Nigeria, the soft law, Corporate Governance for Banks in Nigeria for Banks in Nigeria Post Consolidation, which is the main thrust of this research prescribes eighteen (18) principles and practice that promote corporate governance[75] and the Sustainable Banking Principles (NSBP) 2012.

In the cumulative analysis of the empirical study of the theoretical framework of Corporate Governance,[76] it can be said that corporate governance is a principles based system of rules and regulations ordered by a sound system of internal and external control.Thus every corporate governance system exists for the benefit of all stakeholders[77]and is (i) a principles-based system made up (ii) of rules and regulations and ordered by (iii) a sound system of internal and external control.

(i) A principles-based system

From the definitions advanced above, corporate governance is a system made up of structures and processes. To be effective, those structures and processes are ordered by principles. This means that for the code of corporate governance of any jurisdiction to be sound and efficient, it must be based on principles which underlie them. For instance, there are the Organization for Economic Cooperation and Development (OECD) thirteen Principles of Corporate Governance[78]; the Commonwealth fifteen Principles of Corporate Governance[79]; the Hermes' Corporate Governance Principles[80]; and Chambers

[73]Ibid, p.73.
[74]ibid, p.76.
[75]Ibid, pp. 76 – 77.
[76]2.2 Chapter Two, pp. 83 - 94.
[77]This includes the managers, employees, shareholders, creditors, contractors, government, and the society.
[78]Retrieved from http://www.oecd.org accessed 24/4/2015.
[79]Retrieved from http://www.cbcglobelink.org accessed 24/4/2015.
[80]Retrieved from http://www.hemes.co.uk/corporate.governance accessed 24/4/2015.

ten principles of good corporate governance[81]. Principles are statements of intention. In order to achieve those principles of corporate governance, jurisdictions come up with code provisions, which are statements of guide to achieving those intentions. In other words, the principles constitute the plank upon which the provisions stand. Although the provisions stand upon the principles, they are nevertheless based on the practice of successful companies.

To discover the practical implications of principles as far as corporate governance system is concerned, one has to compare the United Kingdom (UK) jurisdiction to the Nigerian corporate governance culture. In this regard, in the UK, compliance with the Principles contained in the UK Combined Code 2006 is compulsory for all companies within its purview. With respect to the Provisions in the same Code, compliance is on a "comply or explain" basis. Thus, with respect to the Principles, in UK, a company must report on how it applied them; while with respect to the Code Provisions it is expected to confirm that it complied with the provisions or where it does not, to provide an explanation for non-compliance.[82] Comparatively, the CBN Code of Corporate Governance for Banks (whether that of the 2006 or its revised version of 2014) did not specify any principles which should have informed the Provisions in the Code. For example the CBN Code 2014 states that the "provisions of this Code represent the minimum standard which banks shall comply with". It is thus compulsory. Likewise, the SEC Code of Corporate Governance 2003 lacked any principles but contained only provisions. Aware of this anomaly, the SEC Code 2011 states that "the principles and provisions of this Code" shall be complied with, as a minimum standard of corporate behaviour, by all public companies in Nigeria. However a cursory look at the said 2011 Code shows that the principles and provisions were muddled up. That is, the Principles were not distinctly identified and separated from the Code Provisions. As recently as this year (2015), the draft National Code of Corporate Governance 2015 issued by the Financial Reporting Council of Nigeria contained what qualified as Principles in contradistinction to Provisions. However, like the SEC 2011 Code, the principles were not specifically identified as such.

[81]Chambers, op cit, p. 209

[82]There is now Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

This state of practice in Nigeria reveals two things. One, the drafters of the Codes did not appreciate the distinct role of Principles in a Code. As to this point, Principles are general in character. This means, that being statements of intention, it must apply generally to all companies within the purview of the Code. However, Code Provisions are guides which are distilled from the practice of best run companies. This means that the practice (culture) of Company A will not be similar with the practice (culture) of Company B. Despite this divergence in practice, both Company A and Company B will still achieve maximum returns to their stakeholders because their practices are hinged on the same Principles. Thus, Code Provisions lie within the precincts of corporate culture.Two, the failure to separate Principles of the Code from Provisions of the Code meant that, albeit compulsory, compliance will not be efficient. This is because the Nigerian Codes are primed on the dangerous assumption of one cap fits all. Instead, companies must be given the freedom to develop code provisions specific and peculiar to their corporate culture. However, that freedom must be bounded by the ground norm which, in this case, will be Code Principles. By this, companies are allowed to retain their unique cultures while carrying on their operations in basically similar philosophy. This is the complexion of the UK Combined Code 2006. Today in the UK, even institutional investors, which are companies, have code provisions which detract from the Combined Code but sits well with the Principles of the Combined Code.

(ii) A system of rules and regulations

From the perspective of rules and regulations, corporate governance is made up of laws which form the external rules and regulations, which are to be found in national codes and internal rules[83]. But there is a correlation between the laws and regulations, especially the national codes. Thus, where the law fails to cover a particular field regulations step in to fill the role. For example, the law (external rule) provides for disclosure, duties of directors and provisions respecting protection of minorities. On the other hand, regulations (the national codes like the SEC Code of Corporate Governance for Public Companies in

[83]The Financial Reporting Council of Nigeria recently released, among other National Codes, "**Exposure Draft of National Code of Corporate Governance (Private Sector Code) 2015.** It is yet to come into effect and when it does, it is expected to replace all existing industry-specific codes in the country, including the CBN Code.

Nigeria 2011 and the CBN Code of Corporate Governance for Banks Post Consolidation 2006[84])[85], preferring substance over form, will go to the details and specifics of these provisions and so clear any doubt as to its application and applicability:

> *For example, the law provides that the managing director should come from the body of the directors,[86] and equally gives the directors free hand to elect a chairman of their meetings and determine the period for which he is to hold office.[87] This means that in fact and in law, there is nothing wrong having one person holding both positions. However, the code (a regulation) will insist that doing that will amount to over concentration of power in one individual and thus the two has to be kept separate.*

This layer-filling role elevates corporate governance and makes it a holistic concept. Secondly, as to national codes, this includes the Codes of various industry-specific regulators. They include the SEC Code of Corporate Governance in Nigeria 2011; extant CBN Code of Corporate Governance for Banks and Discount Houses; and Code of Corporate Governance for Licensed Pension Operators by the National Pension Commission (PENCOM). The SEC Code 2011 is an improvement to its forbear, the 2003 Code, as it applies to all public companies in Nigeria. However, the level of compliance with the Code depended on whether the company is a publicly quoted entity or not. Where it is the former, it must comply compulsorily with the principles and provisions of the Code as a minimum standard of corporate behaviour. Where it relates to a public company which is not quoted but which seeks to raise funds from the capital market, it must demonstrate sufficient compliance with the principles and provisions of the Code. This means that all banks in Nigeria must compulsorily comply with the principles and provisions of the Code.

However, as between the SEC Code 2011 and the CBN Code of Corporate Governance for Banks and Discount Houses 2014 (which reviewed and replaced the CBN Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006), which should take precedence? It is thus submitted that the multiplicity of codes in corporate governance in Nigeria has made the corporate governance climate

[84]Section 64(b) CAMA.
[85]Section 263(4), ibid.
[86]Part VI Directorate of Corporate Governance, Financial Reporting Council of Nigeria (FRC) Act (No 6) 2011.
[87]Section 50(a)-(g) FRC Act 2011.

unwieldy and disjointed. In order to bring sanity in the system, the Directorate of Corporate Governance was established pursuant to the relevant Act.[88] Among others, the objectives of the Directorate include to develop principles and practices of corporate governance; promote the highest standards of corporate governance, encourage sound systems of internal control.[89] To achieve these objectives, the Directorate is seized with the functions of assessing the need for corporate governance in the public and private sector, issuing the code of corporate governance and guidelines, developing a mechanism for periodic assessment of the code and guidelines, etc.[90]

On the strength of these provisions, the Financial Reporting Council of Nigeria (FRC) developed and released three distinct **exposure draft codes** earlier in the year.[91] These are Not-For-Profit Organisations Governance Code 2015 which applies, without exception, to all entities registered under Part C of CAMA[92]; National Code of Corporate Governance for the Private Sector in Nigeria 2015 which applies to all public companies in Nigeria (whether listed or not), all private companies that are holding companies or subsidiaries of public companies and all Public Interest Entities within the meaning of section 77 of the FRC Act 2011[93]; and the Public Sector Governance Code in Nigeria 2015 which applies to all ministries, departments and agencies of government, all State-owned Entities, all parastatals, and all government commercial agencies.[94] For now, the Codes are still draft, not yet in force and thus not applicable.[95]

As noted earlier, the national code fills the gaps left by the external rules (the law) and which are likely to be exploited by the opportunistic antics of managers of the banks. In other words, the national code addresses the principal-agent conflict, and, in doing so, creates a framework for effective corporate

[88]Section 51(a)-(e) FRC Act 2011.
[89]The Codes were released on 15/4/2015 for comments from the public to the deadline of 19/5/2015.
[90]Code Provision 7.2, Paragraphs (a)-(i) of the Code.
[91]Code Provision 2.1, Paragraphs (a)-(c) ibid.
[92]Paragraphs (a)-(d) FRC Act 2011.
[93]When they become operational, the Codes will override other industry-specific codes, like the CBN Code. Also, only the Private Sector Code will be applicable to all banks in Nigeria.
[94]Revised Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[95]Chambers, Corporate Governance and Group Dynamics, p. 202.

governance. Usually, the national code will make provisions relating to the Board and management of the bank, protection of shareholders, rights of other stakeholders, disclosure in the annual report, risk management, ethics, professionalism and conflict of interest, and sanctions.[96] In other words, the national code, being codes of corporate governance in operation in Nigeria, brings out in proper perspective the next and last content of corporate governance, a system of internal and external control.

(iii) A system of internal and external control.

Corporate governance has to do with internal and external control. First, it comprises the processes of accountability to, and oversight by, the board which are necessary if internal control are to be effective so that the stated corporate objectives can be achieved and secondly, it comprises the processes of accountability to, and oversight by,stakeholders which provide the means by which external control can be exercised'. This explains why the principles and provisions of national codes tackle distinct aspects of corporate life – namely, corporate management, (directors, chairman, secretary, etc), financial reporting, risk management and control, auditing (external and internal audits and audit committee), Annual General Meeting, shareholder participation and institutional shareholder activism, remuneration, corporate social responsibility, among others.

a) *Internal (Inside) Control:*The key element of inside control in the corporate governance framework is the board. In this role, the board exercises oversight on the activities of the executive management of the company led by the managing director or chief executive. In other words, the executive management is accountable to the board. This corporate governance architecture (that is where the executive management is accountable to the board) is said to be "necessary if risk management and internal control are to be effective so that corporate objectives can be achieved.[97] This is a universal trend in Anglo-American corporate governance milieu. For example as to risk management, the UK

[96]Issued in June 2008 by the UK Financial Reporting Council.
[97]Ajogwu, op cit, pp 202-203.

Revised Combined Code of Corporate Governance 2008[98] bestows on the board the oversight powers of reviewing the risk management systems of a public company. Equally, Corporate Governance Standards of the New York Stock Exchange (NYSE) Listed Companies shows the board is a watchdog of risk management. According to the NYSE Governance Standards, "while it is the job of the chief executive officer (CEO) and senior management to assess and manage the listed company's exposure to risk, the (Board) audit committee must discuss guidelines and policies to govern the process by which this is handled."[99] The position is not different with Nigeria. Thus, like the English and United States (US) jurisdiction, the CBN Code 2014 in Code Provision 6.1.2 vests on the board the responsibility "for the bank's policies on risk oversight and management and shall satisfy itself that the management (of the bank) has developed and implemented a sound system of risk management and internal control". In comparison, employees (otherwise called labour co-determination) represent a strong internal control mechanism for German companies.[100]

b) *External (Outside) Control*: The external control is represented by the investors (shareholders) and other stakeholders (like creditors) whose actions are capable of restraining the behaviour of the board and management. Significantly, the CBN Code 2014 recognises this when it stated, among other provisions, in Code 3.1.1 that "shareholders have the right to obtain relevant and material information from the bank on a timely and regular basis". In other words, the board is accountable to the shareholders. As to other stakeholders the CBN Code 2014 in Code 4.1.1 provides that "stakeholders shall be able to freely communicate their concerns about illegal or unethical practices to the board". It is submitted that other stakeholders will include customers of the banks and even the creditors. The creditors of a company take a vital position in external control of management. However, the role of creditors as a veritable source of external control has not been reckoned with in extant corporate

[98]Hopt, K.J., "Labour Representation on Corporate Boards: Impacts and Problems for Corporate Governance and Economic Integration in Europe", 14 International Review of Law and Economics, 1994, p. 203 and Hopt, K.J., "Modern Company Law Problems: A European Perspective Keynote Speech", Company Law Reform in OECD Countries, Stockholm, Sweden, 7-8 December 2000. Retrieved from http://www.oecd.org/daf/ca/corporategovernanceprinciples/1857275.pdf accessed 10/7/2015.

[99]Section 314(a) CAMA.

[100]Section 315(1) CAMA.

governance codes. This is surprising in view of the fact that they (creditors) could through contracts seriously restrain the freedom of the management and board to run or govern the company according to their personal liking or interests.

There are other stakeholders forming part of the outside control of management. The role of statutory agencies will come in here as a component of the external control. For example, the Corporate Affairs Commission (CAC) has such control powers which it can exercise and order investigation into the activities of the company. The powers of the CAC in this regard maturates under three scenarios or circumstances, that is to say where an interested party makes an application for CAC to appoint inspectors[101], where the court orders investigation into the affairs of the company[102], and where the CAC on its own motion initiates the investigation.[103]Specifically for banks, external control can be exercised by the Central Bank of Nigeria to affect the governance of any bank. Specifically, the CBN Code 2014 provides that where the bank conducts its business unethically, recourse should be had to the CBN where the bank fails to remedy the conduct. Other sources of external control which impact on the corporate governance are the capital markets, the disclosure obligations and statutory auditing requirements for companies. However, the efficiency of capital market as a 'building block' of external control of management in Nigerian companies is suspect. This is principally due to the relatively undeveloped state of our capital market.

Positing the findings of the Organization for Economic Co-operation and Development (OECD) advisory group, Millstein goes further to say that:

a) Corporate governance practices constantly evolve to meet changing conditions (no single universal model of corporate governance);
b) Corporate governance practices will continue to vary across nations and cultures;

[101]Section 315(2), ibid.
[102]Sections 31-33 Banks and Other Financial Institutions Act (BOFIA) CAP B3 LFN 2004.
[103]Millstein, I. M., & Organisation for EconomicCo-operation and Development. BusinessSector Advisory Group on Corporate Governanc***e***, (1998) Corporate Governance:Improving Competitiveness and Access to Capital in Global Markets: A Report to theOECD. Paris: OECD, p.7.

c) Corporate governance practices will vary as a function of ownership structures, business circumstances, competitive conditions and corporate life cycles.

The postulations above are cogent as they reflect present realities (and complexities) of the business world today and more so in the case study of the Nigerian banking industry.

1.8 Organisational Layout

This research is divided into six chapters for easy comprehension. At the end of each chapter is a summary with the exception of chapters one and five.

Chapter one gives a general background of the concept of corporate governance and corporate failures around the world. The chapter contains the aims, objectives of the study, scope of the research and research methodology based on doctrinal method, which entails a descriptive analysis of primary and secondary data. The statement of the research problem was identified leading to the formulation of the research questions. The literature review and the justification also fall under this chapter.

Chapter two deals with the conceptual clarification of terms on corporate governance that are potentially controversial in nature. The main thrust of this clarification includes the principles of corporate, theoretical framework of corporate governance, models of corporate governance, good, effective or sound corporate governance and the Nigerian banking sector.

Chapter three gives a brief role of the Central Bank of Nigeria. The chapter proceeded to consider the legal framework for corporate governance in the banking sector, and further classified the legal framework into two; to wit, the mandatory statutory regime and the soft law regime. Under the soft law regime, the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 (and the Revised Code 2014) as applicable to banks only and it features were x-rayed, how well these features pan out in practice *vis –a – vis* the major determinant factors which inhibits its implementation and enforcement. The chapter further considered the role of the various functionaries, such as the board of directors, auditors and the shareholders in corporate governance.

Chapter four focuses on the challenge of promoting a supportive corporate governance environment, challenges of the banks in the implementation of the provisions of the code, the challenges of the body

saddled with the responsibility of enforcing code provisions and exogenous challenges. This chapter identified some lacuna in the code, as the code failed to make provisions for company secretary and strong internal audit function and the role of external auditors.

In chapter five, the main crux of discussion is the practice of corporate governance in the Nigerian banks. The chapter took a cursory look into the Annual reports and financial statements of selected banks and an interview session with the CBN Corporate Governance Team.

Chapter six, the concluding chapter, contains the summary, findings and recommendations. At the end of the chapter is a bibliography, a list of authors whose texts were consulted in the course of the research.

CHAPTER TWO

CONCEPTUAL DISCOURSE OF KEY TERMS

2.1 Introduction

All terms are potentially controversial. This chapter introduces and tends to lend meaning to some of the words/concepts used in this research in order to drive home the point and for a better understanding. Words and concepts such as principles of corporate governance, theoretical framework of corporate governance, models of corporate governance, and good, effective or sound corporate governance are the main focus in this clarification of terms.

2.2 Nature and Scope of Corporate Governance

Corporate governance is not restricted or confined to a rigid definition. Various definitions have been ascribed to the word, corporate governance. It is a field that concentrates on the relationship between boards, stockholders, top management, regulators, auditors and other stakeholders. Monks and

Minow[104] views corporate governance as the relationship amongst the various participants in determining the direction and performance of corporations. In this definition, the group of participants includes shareholders, management, members of the board of directors, employees, customers, suppliers, creditors and other interest groups.According to Cochran and Wartick,[105] corporate governance is an umbrella term that covers many aspects related to concepts, theories and practices of the board of accountability.[106] Corporate governance is a nebulous concept but it is safe to say that it is all about the manner in which corporations are directed, controlled and held to account. It is concerned with effective leadership of corporations to ensure that they deliver on their promise as the wealth creating organ of the society and that they do so in a sustainable manner.[107]

As stated by Tricker[108]… corporate governance can mean things to those concerned. Institutional investors have a different perspective from corporate regulators, board members from researchers. Insights can be drawn from professional and theoretical worlds of organizational behaviour, jurisprudence, financial economies, accountancy and auditing, as well as from the experiential worlds of director's behaviour and board practices. Demb and Neubauer[109] explicate that it is much too narrow a focus to equate corporate governance with the role of board of directors, these and other authors

---

[104]Monks, R.A.G., and Minow, N., (1995). Corporate Governance, Blackwell Business, Oxford, p.1, In: Maassen, G.F., (Ed) *An International Comparison of Corporate Governance Models*, Spencer Stuart, Amsterdam, the Netherlands, 3rd Edition, p.12.

[105]Cochran, P.L., and Wartick, S.L., (1988). *Governance: A Review of the Literature*, Financial Executives Research Foundation, Morristown, New Jersy, p.30.

[106]Okpanachi, J., Samuel, G.T., & Suleiman, T., (2013). Corporate Governance Principles Application and the Financial Performance of Deposit Money Banks in Nigeria: An Impact Assessment, *Research Journal of Finance and Accounting,* 4(2): 53.Availiable at http://www.iiste.org accessed 9/1/2014.

[107]Wilson, I., (2006). Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Consolidation*, Nigerian Economic Summit Group, Economic Indicators,* 12:2, p. 2.

[108]Tricker, R.I., (1993). *Corporate Governance- The New Focus of Interest, Corporate Governance*: An International Review, p.2.

[109]Demb, A., and Neubauer, F., (1992). *The Corporate Board, Confronting the Paradoxes,* Long Range Planning 25, p.16.

indicate that corporate boards are important to the accountability of corporations and the way corporations comply with modern ethical and economic standards.

Corporate governance is largely concerned with governing the relationship between shareholders and directors. The concept of corporate governance is primarily concerned with the process of customs, policies, system, laws and regulations have been applied in organisations.[110] Corporate governance also refers to how organization is run, that is, how the resources of an organization are employed in pursuance of the set goals of the organization. Corporate governance regimes are a necessity for the success and stability of the Nigerian financial system.[111] According to the Organization for Economic Co-operation and Development (hereinafter referred to as OECD), corporate governance structures specifies the distribution of rights and responsibilities among the different participants such as the shareholders, boards, managers and other stakeholders in the corporation and spells out the rules and procedure for making decision on corporate affairs.

Corporate governance includes corporate discipline, transparency, independence, accountability, fairness, social responsibility, timely and accurate disclosure of all material matters relating to a company including the situation of financial performance, ownership and governance arrangements.[112] The Federal Reserve Bank of Richmond defines the concept of corporate governance as the framework by which a company's board of directors and senior management established and pursues objectives

[110]Alo, O., (2007). Corporate Governance in Nigeria: An Overview, In: Okpanachi, J., et al., (Ed)Corporate Governance Principles Application and the Financial Performance of Deposit Money Banks in Nigeria; An Impact Assessment, *Research Journal of Finance and Accounting,* 4(2): 55.Retrieved from http://www.iiste.org accessed 9/1/2014.

[111]Chiejine, F.C., (2010)). Corporate Governance in the Nigerian Financial Sector: An Ethical Analysis of the 2009 Regulator Intervention and Operators' Behaviours, p.30.

[112]Hassan, Y.A., (2010). Corporate Governance and Performance of Deposit Money Banks in Nigeria. In: Okpanachi, J., et al., (Ed)Corporate Governance Principles Application and the Financial Performance of Deposit Money Banks in Nigeria; An Impact Assessment, *Research Journal of Finance and Accounting,* 4(2): 55.Retrieved from http://www.iiste.org accessed 9/1/2014.

while providing effective separation of ownership and control. It includes the establishment and maintenance of independent validation mechanism within the organization that ensures the reliability of the system of controls used by the board of directors to monitor compliance with the adopted strategies to risk tolerance. Corporate governance is concerned with the various systems adopted in which all parties interested in the continued survival of the firm attempt to ensure that managers and other insiders take adopt strategies that safeguard the interest of the stakeholders with regards to accountability and transparency. Such measures are necessitated by the separation of ownership from management which forms a vital feature to the modern firm.[113]

Corporate governance has a vast literature as business ethics itself and has evolved in countries often in response to corporate failures or systemic crises.[114] The persistent concern in societies over the status of health of corporations and of society in general underpins the relevance of corporate governance both as an ethical principle and as a practice to date.[115] For Boatright[116] corporate governance is concerned broadly with who has the right to control the activities of a firm and how the right is to be exercised. Furthermore, he acknowledges the importance of corporate governance as a concept in business ethics and as a system of practices in the business world. For Boatright, corporate governance is essentially a search for the most efficient system of economic organization.[117]

---

[113]Okpanachi, J., Samuel, G.T., & Suleiman, T., (2013). Corporate Governance Principles Application and the Financial Performance of Deposit Money Banks in Nigeria; An Impact Assessment, *Research Journal of Finance and Accounting,* 4:2,p.56.Retrieved from http://www.iiste.org accessed 9/1/2014.

[114]Iskander, M.R. and Chamlou, N., (2000). *Corporate Governance: A Framework for Implementation*, Washington D.C., World Bank, p.1.

[115]Arjoon, S., (2005). Corporate Governance: An Ethical Perspective, *Journal of Business Ethics*, 61(4): 343.

[116]Boatright, J., (2001). *Ethics and Corporate Governance; Justifying the Role of the Shareholder*, The Blackwell Guide to Business Ethics, Bowie (ed.),p.38.

[117]ibid,p.58.

Primeaux[118] views corporate governance (although he did not use the term) as a blueprint for business and for people in business to be able to appreciate the ethics of business, and to regulate themselves rather than waiting for political, legal and religious demands to be imposed from outside. As such, using Primeaux's thinking, Corporate Governance is about tying business ethics to profit maximization where profit maximization goes beyond the rational, bottom-line accounting profits.

Iskander and Chamlou[119] offer two perspectives (private sector and public sector) on how corporate governance is viewed. From a private sector or corporation's perspective, corporate governance is about maximizing value subject to meeting the corporation's financial and other legal and contractual obligations. This involves the balancing of the interests of shareholders with those of other stakeholders. From the public sector perspective, corporate governance is about nurturing enterprises while ensuring accountability in the exercise of power and patronage by firms. Within the public view, corporate governance serves to provide incentives and discipline to minimize disparities between private and social returns, as well as to protect the interests of stakeholders.[120]

Millstein[121] sees corporate governance as the internal means through which corporations accomplish their goals, opines that corporate governance is comprised of both internal relationships (e.g. between shareholders, board of directors, managers, employees etc) and external relationships amongst stakeholders (e.g. between firms and government regulations, public perception and competitors). An

[118]Primeaux, P., (2002). *Maximizing Ethics and Profits*, Reprinted in Hartman, L., Perspectives in Business Ethics, 2nd Edition, p.242.

[119]Iskander, M. R., & Chamlou, N., Corporate Governance: A Framework forImplementation. Washington, D.C.: World Bank 2000, p.3.

[120]Iskander, M. R., & Chamlou, N., Corporate Governance: A Framework forImplementation. Washington, D.C.: World Bank 2000, p.3.

[121]Millstein, I.M., (1998) & Organization for Economic Co-operation and Development, Business Sector Advisory Group on Corporate Governance, Corporate Governance: Improving Competitiveness and Access to capital in Global Markets: A Report to the OECD, Paris, p.7.

understanding on these interrelationships between stakeholders and their individual roles is therefore needed to understand how corporate governance is shaped.

Positing the findings of the OECD advisory Group, Millstein goes further to say that:

1. corporate governance constantly evolve to meet changing conditions (no single universal model of corporate governance);
2. corporate governance practices will continue to vary across nations and cultures;
3. corporate governance practices will vary as a function of ownership structures, business circumstances, competitive conditions and corporate life cycles etc. This represents realities of the today business world especially the Nigerian Banking sector. Corporate governance is aimed at reducing conflicts of interest, short- sightedness of writing costless perfect contracts and monitoring of controlling interest of the firm, the absence of which firm value is decreased.[122]

Corporate governance as a concept can be viewed from at least two perspectives. The narrow view is concerned with the structures within which a corporate entity or enterprise receives its basic orientation and directions. The broad perspective is regarded as being the least of a market economy and a democratic society,[123] the narrow view perceives corporate governance in terms of issues relating to shareholder protection, management control and the popular principal-agency problems of economic theory. In contrast, Sullivan[124] a proponent of the broader perspective uses the examples of the resultant problems of the privatization crusade to prove that issues of institutional, legal and capacity

[122]Denis, D.K., & Mc Connell, (2003). International Corporate Governance, *Journal of Financial and Quantitative Analysis*, 38:1, pp. 1-36

[123]Oyejide, T.A.,and Soyibo, A., (2001). The Practice and Standard of Corporate Governance in Nigeria, *DPD Research Report* 26: 33.

[124]Sullivan, J.D., (2000). Corporate Governance: Transparency between Government and Business. In: Ayandele, I.A., & Isichei, E.E., (Ed) Governance Practices and challenges in Africa, *European Journal of Business Managemen*t, 5:4, p.51.

building as well as the rule of law are at the heart of corporate governance. Further, he puts it that corporate governance covers a large number of distinct concepts and phenomena as can be seen from the definition of OECD. Oyejide and Soyibo[125] defined corporate governance as the relationship of the enterprise to shareholders or in the wider sense as the relationship of the enterprise to society as a whole. They further defined corporate governance as the manner in which the power of a corporation is exercised in the stewardship of the corporation's total portfolio of assets and liabilities with the objective of maintaining and increasing shareholders' value and satisfaction of other stakeholders in the context of its corporate mission.[126] However, Mayer[127] contends that it means the sum of the processes, structure and information used for directing and overseeing the management of an organization.

Corporate governance is often said to chiefly concern the "internal" governance of corporations; that is, the relationship among the participants in the corporate enterprise. "Internal" governance is sometimes distinguished from "external" regulation of the nominally "private" business corporation by the state. But the internal and external relationships are intertwined and not mutually conclusive. Any state regulation that affects an enterprise at the corporate level will also affect the private claimants that comprise it, possibly altering their relationships. Moreover, any "internal" relationship within a corporation exists, for better or for worse, within legal frameworks created by governments. Thus, even as the contemporary legal discourse on corporate governance purports to focus on internal matters, it

[125]Oyejide, T.A., and Soyibo, A., (2001). The Practice and Standard of Corporate Governance in Nigeria, *DPD Research Report 26:3*3.

[126]Ayandele, I.A., & Isichei, E.E., (2013). Corporate Governance Practices and challenges in Africa, *European Journal of Business Managemen*t, 5:4, p.52.

[127]Mayer, F., (1999). *Corporate Governance and Performance in Enterprise and Community: New Directors in Corporate Governance*, Blackwell Publishers, Oxford, United Kingdom, p.1.

advances arguments regarding the extent to which internal relationships are, and should be, structured by private claimants, and the extent to which they are or should be, structured externally by the state.[128]

India's SEBI Committee on Corporate Governance[129] defines corporate governance as the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, ethical business conduct and making a distinction between personal and corporate funds in the management of a company. Corporate governance involves regulatory and market mechanism, and the roles and relationships between a company's management, its board, its shareholders and other stakeholders, and the goals for which the corporation is governed.[130]

Corporate governance is only part of the larger economic context in which firms operate that includes, for example macroeconomic policies and the degree of competition in product and factor markets. The corporate governance framework also depends on the legal, regulatory and institutional environment. In addition, factors such as business ethics and corporate awareness of the environmental and societal interests of the communities in which a company operates can also have an impact on its reputation and its long term success.[131] Lately, corporate governance has been comprehensively defined as a system of law and sound approaches by which corporations are directed and controlled focusing on the internal and external corporate structures with the intention of monitoring the actions of management and

[128]Thomas W. J., (2010). *Themes and Models of Corporate Governance*, University of California, Davis Legal Studies Research Paper Series, Research Paper No.213, p.1.

[129]Report of the SEBI Committee on Corporate Governance, February, 2003. Retrieved from http:/www.sebi.gov.in/commreport/corpgov.pdf accessed 19-03-2013.

[130]Organization for Economic Co-operation and Development Principles of Corporate Governance, Paris, 2004. Retrieved from http://www.oecd.org/dataoecd/32/18/31557724.pdf accessed on the 19-3-2013.

[131]ibid.

directors and thereby mitigating agency risks which may stem from the misdeeds of corporate officers.[132]

In modern business corporation certain groups referred to as the main external stakeholders ranging from the shareholders, customers, suppliers, debt holders, trade creditors to the communities in which the companies are situate are affected by the corporation's activities; while the board of directors, executives and other employees form the internal stakeholders. Thus, most contemporary interest in corporate governance stems from the conflict of interest between stakeholders and the corporation. Ways of mitigating or preventing these conflicts of interest include the process, customs, policies, laws and institutions which have an impact on the way a company is controlled.[133] An important theme of corporate governance is the nature and extent of accountability of the people in business.

Luigi Zingales[134] defined corporate governance as the set of conditions that shapes the ex post bargaining over the quasi-rents generated by a firm. The firm itself is modelled as governance structure acting through the mechanisms of contract[135] possibly in tandem with corporate finance.[136] Corporate governance is based on the idea that an organization is essentially a nexus of contractual agreements between many parties for the purpose of achieving the organization's objectives. These parties include shareholders, directors, managers, suppliers, employees, customers, financiers, government authorities,

---

[132]Sifuna, Anazett, (2012). Disclose or Abstain: The Prohibition of Insider Trading on Trial, *Journal of International Banking Law and Regulation*, 12:9.

[133]The Financial Times Lexicon. Retrieved from http://lexican.ft.com/term?term=corporate accessed 19-3-2013.

[134]Luigi Zingales, (2008). Corporate Governance The New Palgrave Dictionary of Economics, 2nd Edition. Retrieved from http//www.dictionaryofeconomics.com/article?id=pde2008_c000370&edition=current&q= accessed 19-3-2013.

[135]Williamson, Oliver, E. (2002). The Theory of the Firm as Governance Structure: Firm Choice to Contract, *Journal of Economic Perspectives*,16:3, pp. 178- 187 and 191-192.

[136]Williamson, Oliver, E. (1998). Corporate Finance and Corporate Governance, *Journal of Finance,* 43:3,p.567_591;http://classweb.spea.indiana.edu/kenricha/oxford/Archives/oxford%202006/courses/Governance/Articles/Williamson%20-%20corporat%20Governance.pdf. accessed 19-3-2013.

other stakeholders and the society in which the company operates.[137] Although, the company enjoys the status of a person through legal fiction, in reality a company is constituted entirely by the actions and interactions of people with other people, product of technology, system and the natural world. Corporate governance involves managing the framework within which these complex relationships operate.[138]

Setting corporate governance procedure in place also enhances the organization's reputation and builds integrity, making it more attractive to customers and investors.[139] Corporate governance refers to the processes and structure by which the business and affairs of an institution are directed and managed in order to improve long term shareholders value by enhancing corporate performance and accountability, while taking into account the interest of other stakeholders.[140] Corporate governance is therefore about building credibility, ensuring transparency and accountability as well as maintaining an effective channel of information disclosure that would foster good corporate performance.[141]

The World Bank states, corporate governance refers to that blend of law, regulation and appropriate voluntary private sector practices which enable the corporation to attract principal and human capital, perform efficiently, and thereby perpetuate itself by generating long-term economic value for its shareholders and society as a whole. The principal characteristics of effective corporate governance are: transparency (disclosure of relevant financial and operational information and internal process of management oversight and control); protection and enforceability of the rights and prerogatives of all

[137]What is Good Corporate Governance. Retrieved from http://www.succurro.com.au/article/49-governance/85-what-is-good-corporate-governance accessed 19-3-2013.
[138]What is Good Corporate Governance. Retrieved from http://www.succurro.com.au/article/49-governance/85-what-is-good-corporate-governance accessed 19-3-2013.
[139]DeCicco, M., (2011). *Tips for Good Corporate Gover*nance, WithumSmith+Brown, p.1. Sponsored by Bank of America, Merrill Lynch. Retrieved from http://www.riskmanagementmonitor.com/guest-post-tips-for-good-corporate-governance accessed 19-3-2013.
[140]Sanusi, J., (2003). *Good Corporate Governance Rest with the Board, Business, Banking and Finance*, The Punch, Thursday, 11th December, p.22.

[141]Ibid.

shareholders; and directors capable of independently approving the corporation's strategy and major business plan and decisions, and of independent management, monitoring management's performance and integrity, and replacing management when necessary.[142]

Corporate Governance entails designing systems, procedures, structures and taking transparent decisions on ways of improving firms' values to promote corporate governance framework which varies from one jurisdiction to another depending on the various legal systems.[143] The Organisation for Economic Co-operation and Development (OECD) defined corporate governance as a system on the basis of which companies are directed and managed. Corporate governance involves a system by which governing institutions and all other organizations relate to their communities and stakeholders to improve their quality of life.[144] Corporate governance is therefore important to ensure transparency, accountability and fairness in corporate reporting. In this regard, corporate governance is not only concerned with corporate efficiency, it relates to company strategy and life cycle development.[145] It is also concerned with the ways parties interested in the wellbeing of firms (stakeholders) ensure that managers and other insiders adopt mechanism to safeguard the interest of the shareholders.[146]

---

[142] www.worldbank.org, January, 1999 accessed 20/12/2013.

[143] See Sheridan, T., and Kendall, N., (2002). Corporate Governance, An Action Plan for Prosperity and Business Success, Financial Times, Pitman Publishing, London, suggest that … different Countries have different ideas as to what constitute corporate governance, In: Maassen, G.F., (Ed) *An International Comparison of Corporate Governance Models*, Spencer Stuart, Amsterdam, the Netherlands, 3rd Edition, p.12.

[144] Ato, G., (2002). Corporate Governance: How is the Accounting Profession Responding to the Demand for Greater Transparency and Good Governance in the Public and Private Sectors of the Economy. In: Mohammed, F., (Ed) Impact of Corporate Governance in Banks Performance in Nigeria, *Journal of Emerging Trends in Economics and Management Science*, 3(3): 257.

[145] Mayer, C., (2007). Developing the Rules for Corporate Governance. In: Mohammed, F., (Ed) Impact of Corporate Governance in Banks Performance in Nigeria, *Journal of Emerging Trends in Economics and Management Science*, 3(3): 257.

[146] Ahmad, S.A., and Tukur, G., (2005). Corporate Governance Mechanism and Firms' Financial Performance in Nigeria. In: Mohammed, F., (Ed) Impact of Corporate Governance in Banks

The *Organization for Economic Co-Operation and Development (OECD)*[147] describes corporate governance,

> ..... *as a key element in improving economic efficiency which involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. .....provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interest of the company and shareholders and should facilitate effective monitoring. The presence of an effective corporate governance system, within an individual company or group and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy.*

Taking a cursory look at the above definition, one can decipher that corporate governance involves the relationships between the management of a company, its board, it shareholders and other stakeholders with a view to meeting the set objectives for which the company was incorporated in particular and improving economic efficiency in general. From the banking industry perspective, Corporate governance[148] determines the allocation of authority and responsibilities by which the business and affairs of a bank are carried out by its board and senior management, including how they:

i) set the bank's strategy and objectives;

ii) select and oversee personnel;

iii) operate the bank's business on a day-to-day basis;

iv) protect the interests of depositors, meet shareholder obligations, and take into account the interests of other recognised stakeholders;

Performance in Nigeria, *Journal of Emerging Trends in Economics and Management Science*, 3(3): 257.

[147]Basel Committee on Banking Supervision, Principles for Enhancing Corporate Governance, Organization for Economic Co-Operation and Development (OECD), Bank for International Settlement, March, 2010, p.5. Retrieved from http:/www.eocd.org accessed on the 26-04-2013.

[148]Provisions 2, The Basel Committee on Banking Supervision, Corporate Governance for Banks, July 2016, p.3, Retrieved from http://www.bis.org/bcbs/pub/d328.htm accessed 28th December 2016.

v) align corporate culture, corporate activities and behaviour with the expectation that the bank will operate in a safe and sound manner, with integrity and in compliance with applicable laws and regulations; and

vi) establish control functions.

From the totality of the above various definitions, corporate governance has no rigid definition. The perception of corporate governance depends on which side of the coin one is focussing on. The description of corporate governance given by the OECD even as it relates to the banking sector appears to be somewhat embracing for this study. As a matter of fact, corporate governance in Nigeria and many African Countries is still at lower ebb or at a rudimentary stage as espoused by Wilson.[149]

It is pertinent to state therefore that there is a clear distinction between corporate governance for banks, corporate governance of banks and corporate governance in banks. Corporate governance for banks is a set of rules, processes or laws issued by a regulatory authority, in this case, the Central Bank of Nigeria by which banks are operated, regulated and governed. An example of a code of corporate governance for banks is the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006, which is the scope of our study. Corporate governance of banks means the individual bank's corporate governance, while corporate governance in banks means the practice of banks that is, how the issued code or codes pans out in practice.

2.3 Principles of Corporate Governance

Given the importance of the financial sector and its role in any economy, the citizens, public and markets have a degree of expectation and sensitivity to any difficulty arising from any failure in

[149]Wilson, I., (2006). Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Consolidation, *Nigerian Economic Summit Group, Economic Indicator*s, 12(2): 1.

corporate governance.The Basel Committee on Banking Supervision[150] draws its principles from principles of corporate governance on Organization for Economic Co-operation and Development (OECD).[151]These principles have been Revised been revised in July 2015 with focus on thirteen (13) key principles.[152]One of the primary objectives of this revision is to explicitly reinforce the collective oversight and risk governance responsibilities of the board. Another important objective is to emphasise key components of risk governance such as risk culture, risk appetite and their relationship to a bank's risk capacity. The revised guidance also delineates the specific roles of the board, board risk committees, senior management and the control functions including the CRO and internal audit. Another key emphasis is strengthening banks' overall checks and balances.[153] The thirteen key principles are as follows:

> Principle 1: Board's overall responsibilities- The board has overall responsibility for the bank, including approving and overseeing the implementation of the bank's strategic objectives, governance framework and corporate culture. The board is also responsible for providing oversight of senior management.[154]
>
> Principle 2: Board qualifications and composition: Board members should be and remain qualified, individually and collectively, for their positions. They should understand their

[150]The Basel Committee on Banking Supervision is a committee of banking supervisory authorities which was established by the Central Bank Governors of the Group of Ten Countries in 1975. It consists of senior representatives of banks, supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong, SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. It usually meet at the Bank of International Settlement (BIS) in Brazil, Switzerland, where its permanent secretariat is located.

[151]The Basel Committee on Banking Supervision, Enhancing Corporate Governance for Banking Organizations, September, 1999 and February 2006, p.1. Retrieved from www.bis.org/pub/bcbs122.htm accessed 26-01-2014.

[152]The Basel Committee on Banking Supervision, Corporate Governance for Banks, July 2016, Retrieved from http://www.bis.org/bcbs/pub/d328.htm accessed 28th December 2016.

[153]Provision 9, The Basel Committee on Banking Supervision, Corporate Governance for Banks, July 2016, p. 4, Retrieved from http://www.bis.org/bcbs/pub/d328.htm accessed 28th December 2016.

[154]Provisions 20 - 44, ibid.

oversight and corporate governance role and be able to exercise sound, objective judgment about the affairs of the bank.[155]

Principle 3: Board's own structure and practices: The board should define appropriate governance structures and practices for its own work, and put in place the means for such practices to be followed and periodically reviewed for ongoing effectiveness.[156]

Principle 4: Senior management: Under the direction and oversight of the board, senior management should carry out and manage the bank's activities in a manner consistent with the business strategy, risk appetite, incentive compensation and other policies approved by the board.[157]

Principle 5: Governance of group structures: In a group structure, the board of the parent company has the overall responsibility for the group and for ensuring that there is a clear governance framework appropriate to the structure, business and risks of the group and its entities.17 The board and senior management should know and understand the bank's operational structure and the risks that it poses.[158]

Principle 6: Risk management: Banks should have an effective independent risk management function, under the direction of a Chief Risk Officer (CRO), with sufficient stature, independence, resources and access to the board.[159]

Principle 7: Risk identification, monitoring and controlling: Risks should be identified, monitored and controlled on an ongoing bank-wide and individual entity basis. The sophistication of the

[155]Provisions 45 - 54, ibid, pp.10-13.
[156]Provisions 55 - 84, ibid, pp.13 - 17.
[157]Provisions 86 - 93, ibid, p.18.
[158]Provisions 94 - 102, The Basel Committee on Banking Supervision, Corporate Governance for Banks, July 2016, pp. 19 - 21, Retrieved from http://www.bis.org/bcbs/pub/d328.htm accessed 28th December 2016.
[159]Provisions 103 - 109, ibid, pp. 22 – 23.

bank's risk management and internal control infrastructure should keep pace with changes to the bank's risk profile, to the external risk landscape and in industry practice.[160]

Principle 8: Risk communication: An effective risk governance framework requires robust communication within the bank about risk, both across the organisation and through reporting to the board and senior management.[161]

Principle 9: Compliance: The bank's board of directors is responsible for overseeing the management of the bank's compliance risk. The board should approve the bank's compliance approach and policies, including the establishment of a permanent compliance function.[162]

Principle 10: Internal audit: The internal audit function provides independent assurance to the board and supports board and senior management in promoting an effective governance process and the long-term soundness of the bank. The internal audit function should have a clear mandate, be accountable to the board, be independent of the audited activities and have sufficient standing, skills, resources and authority within the bank.[163]

Principle 11: Compensation: The bank's compensation structure should be effectively aligned with sound risk management and should promote long term health of the organisation and appropriate risk-taking behaviour.[164]

Principle 12: Disclosure and transparency: The governance of the bank should be adequately transparent to its shareholders, depositors, other relevant stakeholders and market participants.[165]

---

[160]Provisions 110 - 124, ibid, pp. 24 - 26.
[161]Provisions 125 - 130, ibid, p.27.
[162]Provisions 131 - 138, ibid, p.28.
[163]Provisions 139 - 143, The Basel Committee on Banking Supervision, Corporate Governance for Banks, July 2016, p. 29, Retrieved from http://www.bis.org/bcbs/pub/d328.htm accessed 28th December 2016.
[164]Provisions 144 - 151, ibid, pp.30 – 31.

> Principle 13: The role of supervisors: Supervisors should provide guidance for and supervise corporate governance at banks, including through comprehensive evaluations and regular interaction with boards and senior management, should require improvement and remedial action as necessary, and should share information on corporate governance with other supervisors.[166]

This guidance is intended to assist banking organizations in enhancing their corporate governance frameworks and to assist supervisors in assessing the quality of these frameworks. It is not, however, intended to establish a new regulatory framework layered on top of existing national legislation, regulation or codes. The implementation of the principles set forth in this document should be proportionate to the size, complexity, structure, economic significance and risk profile of the bank and the group (if any) to which it belongs. The application of corporate governance standards in any jurisdiction is naturally expected to be pursued in a manner consistent with applicable national laws, regulations and codes.[167]

The European Bank for Reconstruction and Development (EBRD), being a major lender and investor in enterprises domiciled in the countries of Central and Eastern Europe and the CIS, has always sought to improve corporate governance standards. The bank is determined to ensure that all its operations have "transit impact", that is, they contribute to the transformation of its countries of its operations from centrally planned economies to market

---

[165]Provisions 152 - 157, The Basel Committee on Banking Supervision, Corporate Governance for Banks, July 2016, pp. 32 - 33, Retrieved from http://www.bis.org/bcbs/pub/d328.htm accessed 28th December 2016.

[166]Provisions 158 - 169, ibid, pp. 34 – 36.

[167]Basel Committee on Banking Supervision, Principles for Enhancing Corporate Governance, Organization for Economic Co-Operation and Development (OECD), Bank for International Settlement, March, 2010, p.3. Retrieved from http:/www.eocd.org accessed on the 26-01-2014.

economies, and by insisting on good corporate governance, the EBRD assist the transition process.[168]

The EBRD has laid a set of 10 core principles for a corporate governance framework (CGF). By virtue of being "core" principles, these cannot be exhaustive but are intended to form the foundation of a CGF. These principles are based on international standards and best practices, and therefore can assist in assessing a country's CGF in identifying the need for reform. They are meant as guidelines only and identify the results to be achieved rather than the process by which to achieve them. Invariably, exceptions to these principles may have to be made in the context of a given country's legal system.[169] These principles include:

1) A CGF should aim to promote business ethics, fairness, transparency, accountability, responsibility and market efficiency: Markets can be transparent and efficient only if participants are educated to understand and encouraged to implement accountability and ethics. Business ethics, transparency and market efficiency are key pillars of corporate governance.
2) A CGF should be flexible and enforceable: ACGF should be flexible enough to allow fast adaptation to market changes and sufficiently enforceable to ensure that rules are respected. A CGF should be a mix of primary, secondary legislation and voluntary codes. Secondary legislation and voluntary codes should be modelled on primary provisions. The compliance with the codes should be monitored and the market should receive detailed and reliable information about implementation and compliance.

[168] European Bank for Reconstruction and Development, 2012; http://www.ebrd.com/pages/sector/legal/corporate/core.shtml accessed on the 02-002-2014.
[169] ibid.

3) A CGF should ensure clear division of tasks, rights and responsibilities between management and shareholders: a clear division of tasks between company's bodies is essential for an effective and transparent management of the company in a competitive market. Rights and responsibilities follow such division tasks. Shareholders should have the possibility to participate effectively in key corporate governance decisions. The management should be free to run the company within the boundaries of shareholders' and charter's mandate. Shareholders should have all information to control and access the management of the company.
4) Shareholders should have easy access to their rights: it is not only important that rights of shareholders are clearly stated, but also that shareholders- both national and foreign – have access to their rights. Essential rights include information, voting and profit sharing. A CGF should allow use of electronic communication and easy accessible and transparent voting in absentia procedures.
5) Shareholders of the same class should be treated equally: the principle of equal treatment of shareholders of the same class is a key issue in corporate governance. All shareholders should have the same possibility to take profit from increase of corporate value according to their shareholding. In case of change of control, shareholders should be fully informed and free to decide whether to sell their shares or not. Anti-takeovers should be approved by shareholders.
6) Stakeholders[170] should have the opportunity to obtain effective redress for violation of their rights: stakeholders should have the possibility to obtain redress for violation of

[170]A stakeholder is a person who holds money or other property while its owner is being determined. In the last 20th century, the word "stakeholder" has evolved into a term of art in the field of business

their rights when stated by law or agreement. Effective methods should be in place to obtain redress at a reasonable cost and without excessive delay. A correct balance should be found between safe harbours and the right to seek compensation.

7) A CGF should ensure timely, accurate and verified information disclosed to all stakeholders: one of the essential rights of stakeholders is to receive regular and reliable information for a sound assessment of the company management and profitability. A CGF should ensure that investors, creditors, employees, the market, the regulator and all other stakeholders can rely on the information received by the company and act accordingly. In particular, financial information should be prepared in accordance with high quality standards of accounting. The integrity of the market requires information be reliable, timely disclosed, regularly updated an easily accessible.
8) The shareholding structure of a company should be transparent: arrangements, mechanisms and structures aiming to lengthen the control chain (beyond known controlling parties) or to exercise a degree of control not corresponding to the level of risk should be disclosed. Pyramid structures and cross shareholdings are usual but should not be transformed into abusive mechanisms. The market should be promptly warned about the presence of such structures, sufficiently to asses any lack of transparency or accountability/auditing problems.
9) A CGF should put in place a structure able to independently verify and safeguard the integrity of a company's financial reporting: internal and external control mechanisms

---

management and the concept has been broadened to include everyone with an interest (or stake) in what the entity does. That includes, among others, shareholders, creditors, employees and suppliers. See European Bank for Reconstruction and Development, 2012; Retrieved from http://www.ebrd.com/pages/sector/legal/corporate/core.shtml accessed on the 02-02-2014.

should be tailored into consideration the public interest of a transparent market. Sanctions should be appropriate and tailored to discourage any possible abuse. Rating companies and firms providing recommendations to the market should be able to assess and verify all international cross border participations and activities.

10) The Management should act at all time in the interest of the company and the shareholders: abusive behaviours by the board should be prohibited and discouraged. Board remuneration and compensation schemes should be approved by shareholders. Material interests by executives in transactions or matters affecting the company should be disclosed. The management should include independent directors with specific tasks for the avoidance of conflict of interest.

Also, the United Kingdom Corporate Governance Code[171] consists of five (5) Sections to include Leadership, Effectiveness, Accountability, Remuneration and Relation with Shareholders. It also consists of three (3) Schedules to include: The design of performance-related remuneration for Executive Directors, Disclosure of Corporate Governance arrangements and Engagement principles for Institutional Shareholders.

Coming back home, the Central Bank of Nigeria (CBN) in 2006 published a Code of Corporate for Banks in Nigeria Post Consolidation, aimed at enhancing corporate governance for banks. Part 11 of the Code prescribes the code of Best Practices in Corporate Governance presents principles and practices that promote good corporate governance[172] to include:

1) The establishment of strategic objectives and a set of corporate values, clear lines of responsibility and accountability;

[171] www.frc.org.uk/corporate/combined.cfm accessed 03-06-2013.
[172] Code of Corporate Governance for Banks in Nigeria Post Consolidation, April 2006 accessed on 02-02-2014.

2) Installation of a committed and focused Board of Directors which will exercise its oversight functions with a high degree of independence from management and individual;
3) A proactive and committed management team;
4) There should be adequate procedures o reasonably manage inevitable disagreements between the Board, Management and staff of the bank;
5) The Board should meet regularly at a minimum of four (4) regular meetings in a financial year. There should also be adequate advance notice for all Board meetings as specified in the Memorandum and Article of Association;
6) The Board should have full and effective oversight on the bank and monitor its executive management;
7) There is a well-defined and acceptable division of responsibilities among various cadres within the structure of the organisation;
8) There is balance of power and authority so that no individual or coalition of individuals has unfettered powers of decision making;
9) The Article of Association should clearly specify those matters that are exclusively the rights of the Board to approve apart from those for notification;
10) The number of non-executive directors should exceed that of executive directors;
11) All directors should be knowledgeable in business and financial matters and also possess the requisite experience;
12) There should be a definite management succession plan;
13) Shareholders need to be responsive, responsible and enlightened;
14) Culture of compliance with rules and regulations.

15) Effective and efficient Audit Committee of the Board;

16) External and internal auditors of high integrity, independence and compliance;

17) Internal monitoring and enforcement of a well articulated code of conduct/ethics for Directors, Management and staff; and

18) Regular management reporting and monitoring system.

Globalization of business and the need to ensure uniformity in the practice of corporate governance, has led to the development of some basic principles of good corporate governance and sets of code of best practices. The following practices are expected to be observed in the running of a firm or an organisation:[173]

1) Every listed company should be headed by an effective board, which should lead and control the company. The board should meet regularly and should have a formal schedule of matters referred to it for decisions. Directors should bring independent judgment to bear on issues of strategy, performance, resources and standards of conduct. They should receive appropriate training on first appointment and as the need arises thereafter. Banks should establish an effective, capable and reliable board of directors with well qualified and successful individuals with integrity. This implies that majority of banks' board of directors should be truly independent directors. The board must be effective and must meet periodically and it should also have long-term policy, strategy and values;

[173]Implementation of Sustainable Banking Principles by Banks, Discount Houses and Development Institutions in Nigeria, FPR/DIR/CIR/CBN/01/33, Circular to all Banks, Discount Houses and Development Institutions, fprd@cbn.gov.org., 24th September, 2012, accessed on the 11-08-2013. This NSBP took effect from the 26th September, 2012.

2) Banks should establish a Corporate Governance Code of Ethics that would govern the operations of the bank both for short-term and long-tern perspective. The codes should be reviewed annually. Banks should have an effective and operating Audit Committee, Compensation Committee and Nominating /Corporate Governance Committee. These committees should compose of external directors of the bank who operate independently. The committees should have access to attorneys and consultants paid by the bank.

The independence of the committees will guide against any bias in the internal audit committee's decisions;

1) There are two key tasks at the top of every public company namely the Chairman of the board and the Executive responsibility for the operation of the company's business (Chief Executive's Role). There should be a clear division of responsibilities between these two roles, so as to ensure check and balances of power and authority thereby avoiding a situation where one person has unlimited powers;
2) The board should have a balance between executive and non-executive directors with at least one-third from the later. The majority of non-executive should be independent of the management and free of business relationships that could interfere with their independence;
3) Banks should consider Effective Board Compensation in terms of fair compensation, which shall be paid to the directors. Their remuneration should be commensurate with the risks they assume;

4) Banks shall disclose the information and ensure that the disclosure is made faster, quicker and less burdensome. This may be through quarterly letters to the shareholders or other types of communication;
5) Banks shall recognise that their duties are to establish Corporate Governance Procedures that will serve to enhance shareholder value. The primary objective of the board of directors is to maximize the shareholders' wealth. The strategy adopted to achieve this objective should now encompass corporate governance procedures and should be designed with long-term value for shareholders in focus;
6) There should be a formal and transparent procedure for the appointment of directors and all directors should offer themselves for re-election every three years;
7) Levels of remunerations should be sufficient to attract and retain well qualified directors to run the company successfully, but should not be excessive. Payments to directors should incorporate performance related elements; and
8) The board should use the annual general meeting to communicate with the individual investors and encourage their participation.

The Bankers' Committee at its retreat of 14th July, 2012 approved the adoption of NSBP for Banks, Discount Houses and Development Finance Institutions in Nigeria. This is in furtherance of the Bankers' Committee's commitment to deliver positive development impacts to society while protecting the communities and environment in which financial institutions and their clients operate.[174] The NSBP includes:

[174]Implementation of Sustainable Banking Principles by Banks, Discount Houses and Development Institutions in Nigeria, FPR/DIR/CIR/CBN/01/33, Circular to all Banks, Discount Houses and Development Institutions, fprd@cbn.gov.org., 24th September, 2012, accessed on the 11-08-2013. This NSBP took effect from the 26th September, 2012.

1) Our Business Activities[175]: Environmental and Social Risk Management: a bank should develop and take a practical approach in integrating the Environmental and Social (E&S) consideration through the development of appropriate E&S policies, development of appropriate E&S procedures, categorisation of potential E&S risks, development and customisation of E&S due deligence procedure, articulation of E&S governance and approval authority measures, monitoring E&S risks and reviewing E&S conditions, development of appropriate E&S reporting criteria, reporting on implementation progress and support for investment in sustainable, and innovative business.
2) Our Business Operations[176]: Environmental and Social Footprint[177]: a Bank should take a practical approach to managing the potential negative impacts of its Business Operations and promoting positive impacts through the development of an environmental management programme with facilities management which addresses issues like climate change and greenhouse gas emission reduction, water efficiency and so on, compliance with relevant labour and social standards and implementation of a community investment programme, application of E&S standards to relevant third parties.

[175]Business Activities: the provision of financial products and services to clients including, but not limited to: corporate finance, investment banking (corporate advisory, structured lending and capital, trading), equity investments, project finance, project finance advisory, structured commodity finance, small and medium business lending, retail banking, trade and leasing, and other forms of direct lending.

[176]Business Operations: the undertakings of employees and the physical human capital, assets and infrastructure (e.g offices, branches, equipment) that a bank engages in the course of facilitating its business Activities. This would also include suppliers, contractors and third party service providers engaged by the bank in the course of facilitating its Business Operations and Business Activities.

[177]Environmental and Social Footprint: the total effect or impact that a Bank's Business Operations have on the environment and society in which it operates (e.g the amount of natural resources used, the amount of waste produced, or the effects on local/host communities or the Bank's human capital).

3) Human Rights: a Bank should develop and take a practical approach to managing human rights issues in its business operations and business activities through the development and implementation of a human right policy, integration of human rights due intelligence into E&S procedures and the investment in resources and training of staff on human right issues.
4) Women Economic Empowerment: a Bank should take a practical approach to women's economic empowerment that is appropriate for its Business Activities and Business Operations through developing and implementing a women's economic empowerment policy, establish a women's economic empowerment committee, develop initiatives and programmes to promote and celebrate women empowerment, invest and dedicate resources for female talent and support the establishment of a sector-wide women empowerment fund.
5) Financial Inclusion: a bank should take a practical approach to financial inclusion that is appropriate for its Business Activities through developing and implementing a financial inclusion policy, providing development and growth support to SMEs, improving financial and institutional practices and improving access to Bank facilities and services.
6) E&S Governance: in developing its E&S governance approach, a Bank should consider both its own Business Operations as well as assess the activities of its clients. A Bank should establish E&S governance responsibility, develop institutional E&S governance practices, actively support key industry initiatives that aim to address E&S governance issues with clients operating in sensitive sectors, implement E&S performance-linked compensation and incentive schemes, establish internal and, where appropriate, external E&S audit procedures and increase public disclosure and dialogue.

7) Capacity Building: in developing the appropriate institutional capacity, a Bank should identify relevant roles and responsibilities for delivery against Sustainable Banking commitments, provide Sustainable Banking training sessions, create practical E&S training tools and resources and multi-stakeholder capacity building.
8) Collaborative Partnerships: to implement this Principle, a Bank should collaborate and coordinate with other Banks, convene sector-wide workshops and events, commit to international standards and best practice initiatives and establish and participate in Nigeria sector level initiatives.
9) Reporting: to report on the implementation of the Principles, and the progress made against targets, a Bank should establish a Sustainable Banking reporting template, set clear targets and relevant performance indicators, ensure the necessary systems are in place to collect data, agree the frequency, nature and format of internal and external reporting and contribute to Sector-Level Reporting.

There is no doubt that Banks, Discount Houses and Development Finance Institutions in Nigeria would need to reassess their objectives and strategies to reach these principles. These Principles are based on leading International Sustainable Finance and Standards and established industry best practices. These 9-fold Principles will go a long way in enhancing transparency, accountability, uniformity in reporting system and disclosure. These principles are to be interpreted and applied by each bank in a way appropriate with its core values, objectives, business model and risk management. They will also enhance social responsibility, protection of the environment, women empowerment, citizens' rights and long term success of financial institutions.

2.4 Theoretical Framework of Corporate Governance

Various theories and philosophies have provided both the theoretical and philosophical foundation for the development of alternative forms of corporate governance systems around the world as it varies from one country to another. A corporation on incorporation attains corporate personality which empowers it to enter into contract not only to produce goods but also to ensure effective services together with the right of acquiring property. Shareholders will not only be entitled to benefits as a result of the earnings/profit generated by the corporate, but elect members of the board of directors who indirectly oversees actions undertaken by the managers. In this manner, shareholders are empowered in setting directors, monitoring performance and controlling distribution of profits of the corporation. In particular, the internal control mechanism is meant to promote the integration if interests of common stockholders and executive managers of a corporation by rewarding good corporate performance. These managers act as agents of the shareholders, and it's the expectation that they perform for the best interest of the owners of the corporation. These corporate managers can also destroy the wealth of the corporation and act not in the best interest of the corporation which often time has resulted in bankruptcy of some corporations.

Right from the time of invention of Joint Stock Company and the activities of the medics in Florentine, Italy, the aggregation of capital by individual, private investors required state licence and protection for the enhancement of their search for profit, fame and influence. Now, the permit of the state to create artificial entities, possessing names different from those of the promoters and vested with capacity to possess a common seal, own property, sue and be sued and endowed with perpetual succession, no doubt, accelerated the growth and development of capitalism. The fact has to be admitted that limited liability of the companies established by private persons hiding behind the corporate veil helped to

advance the cause and fortunes of investors for as long as the companies established did not contravene their charters or act in any way considered inimical to the interest of the state or the public good.[178]

In other words, company charters did not envisage unlimited or unrestricted power to make money. If and whenever the company acted contrary to the public interest or for instance, traded with the enemy in times of war, the granting authority could always pierce the corporate veil or revoke the licence and thereby put an end to its activities.[179] In modern times, the company has become subject to innumerable regulations pertaining to matters such as structure, composition of boards, the duty of full disclosure of accounts, payment of taxes, prohibition of monopolies, unwholesome business practices, compliance with employment laws etc. Today, companies are required to comply with tenets of corporate governance as well as good corporate citizenship by way of corporate social responsibility, non-payments of bribes for contracts and sensitivity to the needs and interests of communities in their area of operation.

Corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders and spells out the rules and procedures for making decisions in corporate affairs. It also provides the structure through which the company's objectives are attained and the instruments for monitoring performance. The need to anchor the concept and practice of corporate governance within the framework of certain theories cannot be overemphasized.[180]Accordingly, the fundamental corporate governance theories range from the agency theory and expanded into the stewardship theory,

[178]Oyebode, A., (2009). The Imperative of Corporate Governance in Nigeria, Nigeria Village Square, p.1. Retrieved from hhtp://nigeriavillagesquare.com/articles/akin-oyebode/the-imperative-of-corporate-governance on the 12/08/2013.
[179]Ibid, pp.1 - 2.
[180]Oso, L., and Bello S., (2012). *The Concept and Practice of Corporate Governance in Nigeria: The Need for Public Relations and Effective Corporate Communication*, Kamla-Raj, J Communications, 3:1,p.8. Retrieved from http://www.krepublisher.com/02/Journals/JC/JC-033-0-000-12-Web/JC-03-1-000-12-Abst-PDF/JC-03-1-001-12-039-080-L/JC-03-1-001-12-039-080-L-Tt.pdf accessed on the 01/02/2014.

stakeholder theory, resources dependency theory, transaction cost theory, political theory and ethics related theories.[181]

2.4.1 The Agency Theory

Agency theory has its roots in economic theory, was exposited by Alchian and Demsetz (1972) and further developed in 1976 by Jensen and Meckling. Hilman *et al*[182] define agency theory as the relationship between the principles, such as shareholders and agents such as the company executives and managers. Shareholders under the agency theory being owners or principals of the company hire the agents to perform the work. The principals delegate the running of the business to the directors or managers, who are the shareholders' agents. The theory stipulates that the shareholder expect the agents to act and make decision in the best interest of the principal.

The theory suggests that the firm can be viewed as a nexus of contracts (loosely defined) between resource holders. An agency relationship arises whenever one or more individuals, called principals, hire one or more other individuals called agents, to perform some service and then delegate decision-making authority to agents.[183] The scholars both opined that the primary agency relationships in business are those: 1) between the stockholders and the managers and 2) between debt holders and stockholders. These relationships are not necessarily harmonious; indeed agency theory is concerned with so-called agency conflicts of interest between, among other things corporate governance and

---

[181]Ayandele, I.A.,& Isichei, E.E., (2013). Corporate Governance Practice and Challenges in Africa, *European Journal of Business and Management*, 5:4, p. 54 @ www.iste.org accessed on the 02/02/2014.

[182]Hilman, A.J., Canella, A.A & Paetzold. (2000). The Resource Dependency Role of Corporate Directors: Strategic Adaptation of Board Composition in Response to Environmental Change. In: Ayandele, I.A.,& Isichei, E.E.,(Ed), (2013). Corporate Governance Practice and Challenges in Africa, *European Journal of Business and Management*, 5:4, p. 54 @ www.iste.org accessed on the 02/02/2014

[183]Bamberg, G., & Klaus, S., Agency Theory, Information and Incentives, Berlin, Sponger-verlag, In: Oso, L., and Bello S., (2012). *The Concept and Practice of Corporate Governance in Nigeria: The Need for Public Relations and Effective Corporate Communication*, Kamla-Raj, J Communications, 3:1, p. 8. Retrieved from http://www.krepublisher.com/02/Journals/JC/JC-033-0-000-12-Web/JC-03-1-000-12-Abst-PDF/JC-03-1-001-12-039-080-L/JC-03-1-001-12-039-080-L-Tt.pdf accessed on the 01/02/2014.

business ethics. Agency theory actually emerged as a dominant model in the financial economies literature in the 1990s and is widely discussed in business texts.

Agency theory argues that in the modern company in which share ownership is widely held, managerial actions depart from those required to maximise shareholders return. This theory states further that owners of a company are the principals and the managers are the agents and that there is an agency loss which is the extent to which returns to the residual claimants, the owners, fall below what they would be if the principals, the owners, exercised direct control of the corporation. Part of the loss which the owners experience is executed through what organisational economic theory call managerial opportunism expressed partly through indulgence in exercise perquisite at the expense of shareholders' interest.[184] The essence of agency problem is the separation of management and finance, or as defined in a more standard terminology, the separation of ownership and control. Historically, corporate governance evolved as a mechanism to deal with the consequences of the agency problem. The largely popular Anglo-Saxon model of corporate governance is based on this theory.[185]

Agency theory refers to a set of propositions in governing a modern corporation which is typically characterized by large number of shareholders or owners who allow separate individuals to control and direct their collective capital for future gains. These individuals, typically, may not always own shares but may possess relevant professional skills in managing the corporation. The theory offers many useful ways to examine the relationship between owners and managers and verify how the final objective of maximising the returns to the owners is achieved particularly when the managers do not own the

[184]Egwuonwu, R., (1997). *Interlocking Directorate & Corporate Governance*, Stride Associate Ltd, Ikeja, Lagos, Nigeria, p.66.
[185]Santosh Pande, (2011). *The Theoretical Framework of Corporate Governance*, ITM University presented at the International Conference on Gandhian Values & Corporate Governance, Bangalore, paragraph 5; http://www.slideshare.net/spande19552/the-theoretical-framework -for-corporate-governance accessed -05/02/2014

corporation's resources.[186] The principal/agency literature suggests that hired managers will not have the same objectives as profit-oriented private owners; rather, they will use firm's specific rents to satisfy their own maximands. The main issue in the principal/agency literature is centred on asymmetric information because outside owners do not have access to full information on corporate performance or the reasons of underperformance.[187] The major problem with the agency theory is when the principal cannot monitor the agent's performance. The shareholders who hire the managers also have a challenge in getting the manager to act in their best interests as there is a likelihood of the manager acting in his own interest.

Following Adam Smith (1776), Berle and Means in 1982 initiated the discussion relating to the concerns of separation of ownership and control in a large corporation. These concerns were further brought to lime light by Jenson and Meckling[188] into the agency problem in governing the corporation. They identified managers as the agents who are employed to work for maximizing the returns to the shareholders, who are the principals. They assume that as agents do not own the corporation's resources, they may commit moral hazards (such as shirking duties to enjoy leisure and hiding inefficiency to avoid loss of rewards) merely to enhance their own personal wealth at the cost of their principals. To minimise the potential for such agency problems, Jensen[189] recognises two important steps, to include the principal-agent risk bearing mechanism and secondly, the design must be monitored through the nexus of organisations and contract. The cost inherent in the agency problem

[186]Sridharan, V.G.,& Navissi, F., (2012). *TheTheoretical Foundations of Corporate Governance*, p.2 Retrieved from *virtusinterpress.org/additional_files/book_corp.../sample_chapter02.pdf*accessed 21/12/2013.

[187]Oyejide, A.T., & Soyibo, A., (2007). *Corporate Governance in Nigeria*, A paper presented at the Conference on Corporate Governance, Accra, Ghana, p.5.

[188]Jensen, M.C., and Meckling, W.H., (1976). Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure. In: Sridharan, V.G.,& Navissi, F., (Ed) *TheTheoretical Foundations of Corporate Governance*, p.3 Retrieved from *virtusinterpress.org/additional_files/book_corp.../sample_chapter02.pdf*accessed 21/12/2013.

[189]Jensen, M.C., Organization Theory and Methodolog. In: Sridharan, V.G.,& Navissi, F., (2012). *TheTheoretical Foundations of Corporate Governance*, p.3 Retrieved from *virtusinterpress.org/additional_files/book_corp.../sample_chapter02.pdf*accessed 21/12/2013..

can be reduced by investments in monitoring and the structuring or relationships such that agents are induced to act in the interest of the principals without a need for further monitoring such as offering bonuses and inducing them to monitor each other. Another way is the payment of stock options as this aligns more closely with the interest of the agents.[190]

Two ways by which a principal can reduce the risk of an inappropriate conduct by an agent are by monitoring the agent and bonding of the manager or the agent to certain positive outcomes. Thus, first, the principal must transfer same rights to the agent who in turn, must accept to carry out the duties enshrined in the rights, while the second is the position agency theory stipulates that firms use contractual monitoring and bonding to bear upon the structure designed in the first step and derive potential solutions to the agency problem.[191] The agency problem can usually be reduced through the protection derived from good corporate governance.

From the above, it is envisaged that a huge responsibility is placed on the shoulders of the agents by the principals. Therefore, to fulfil the aim and purpose of the agency theory by agents, there is greater need to apply corporate governance to the process and operation of any corporation and organisation. In the financial services sector, it is difficult to avoid conflicts. According to Arun and Turner[192] however, the unique nature of the contractual firm of banking in developing economies calls for corporate governance mechanisms in the banks which encapsulate both the depositors and the shareholders. In the financial industry, the retention of public confidence through the enthronement of good corporate governance remains of utmost importance given the role of the industry in the mobilization of funds,

[190]Jensen, M.C., and Meckling, W.H., Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure. In: Sridharan, V.G.,& Navissi, F., (2012). *TheTheoretical Foundations of Corporate Governance*, p.3 Retrieved *from virtusinterpress.org/additional_files/book_corp.../sample_chapter02.pdf*accessed 21/12/2013.

[191]Jensen, M.C., (1983). Theory and Methodology, *The Accounting Review*, V.LVIII, P.334.

[192]Arun,T.G., & Turner, J.D., (2003). *Governance of Banks in Developing Economies-Concepts and Issues*, University of Manchester, School of Environment Education and Development, Policy Working PaperNo.2,p.4.Retrieved from http://www.sed.manchester.ac.uk/medialibrary/IDMP/working-papers/depp/depp_wp02.pdf accessed 27/8/2014.

the allocation of credit to the needy sectors of the economy, the payment and settlement system and the implementation of monetary policy.[193]

Agency theory is an important set proposition in the organisation economics discipline. The theory is founded under the assumption that when ownership is separated from the control of a large firm, the managers acting as an agent on behalf of the owner-principal is prone to creating moral hazards such as shirking and seizing wealth at the expense of the principal. Hence, the theory suggests that the principal builds appropriate ex ante incentive mechanism to deter the agent from indulging in such behaviour.[194]

2.4.2 Stewardship Theory

This theory has its root from psychology and sociology and is defined by Davis, Schoorman and Donaldson[195] as a steward protects and maximises shareholders wealth through firm performance because by so doing, the steward's utility function are maximized. In this perspective, stewards are company executives and managers working for the shareholders, protect and make profits for shareholders. Unlike the agency theory, stewardship theory stresses not on the perspective of individualism[196] but rather, on the role of top management as stewards, integrating their goals as part of the organisation. The stewardship perspective suggests that stewards are satisfied and motivated when organisational success is attained.

---

[193]Wilson, I., (2006). Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Consolidation, *Nigerian Economic Summit Group, Economic Indicators*, 12:2, p. 9.

[194]Sridharan, V.G.,& Navissi, F., (2012). *TheTheoretical Foundations of Corporate Governance*, p.3 Retrieved from *virtusinterpress.org/additional_files/book_corp.../sample_chapter02.pdf*accessed 21/12/2013.

[195]Davis,J.H., Schoorman, F.D., and Donaldson, L., (1997). Towards a Stewardship Theory of Management. In: Ayandele, I.A.,& Isichei, E.E., (Ed.) Corporate Governance Practice and Challenges in Africa*, European Journal of Business and Management,* 5:4,p. 55. Retrieved from www.iste.org accessed on the 02/02/2014.

[196] Mak, Y., and Kusnadi, Y., (2005). Size Really Matters : Further Evidence on the Negative Relationship between Board Size and Firm Value. In: Ayandele, I.A.,& Isichei, E.E., (Ed.) Corporate Governance Practice and Challenges in Africa*, European Journal of Business and Management,* 5:4,p. 55. Retrieved from www.iste.org accessed on the 02/02/2014.

2.4.3 Stakeholder Theory

Stakeholder theory is a further development on the concept of stakeholder and its relationship to any business corporation.[197] Freeman[198] offers a traditional definition of a stakeholder thus "any group or individual who can affect or is affected by the achievement of the organisation's objectives." The focus of the stakeholder theory is articulated in two questions formulated by Freeman to include; a) what is the purpose of the firm and b) what responsibility does management have to stakeholders? Therefore, the general idea of stakeholder theory is a redefinition of the organisation. The theory as noted by Friedman[199] states that the organisation itself should be thought of as grouping of stakeholders and the purpose of the organisation should be to manage their interest, need and requirements. This stakeholder management is thought to be fulfilled by the managers of a firm. The managers on the one hand manage the corporation for the benefit of its stakeholders in order to ensure their rights and participation in decision making and on the other hand, the management must act as the stakeholder's agent to ensure the survival of the firm to safeguard the long term stakes of each group.

---

[197]Oso, L., and Bello S., (2012). The Concept and Practice of Corporate Governance in Nigeria: The Need for Public Relations and Effective Corporate Communication,*Kamla-Raj J Communications*, 3:1,p. 8. Retrieved from http://www.krepublisher.com/02/Journals/JC/JC-033-0-000-12-Web/JC-03-1-000-12-Abst-PDF/JC-03-1-001-12-039-080-L/JC-03-1-001-12-039-080-L-Tt.pdf accessed on the 01/02/2014.

[198]Freeman, R.E., (1984). Strategic Management: A Stakeholder Approach. In: Oso, L., and Bello S., (Ed). The Concept and Practice of Corporate Governance in Nigeria: The Need for Public Relations and Effective Corporate Communication, *Kamla-Raj J Communications,* 3:1,pp.8-9. Retrieved from http://www.krepublisher.com/02/Journals/JC/JC-033-0-000-12-Web/JC-03-1-000-12-Abst-PDF/JC-03-1-001-12-039-080-L/JC-03-1-001-12-039-080-L-Tt.pdf accessed on the 01/02/2014.

[199]Friedman, A.L., (2006). Stakeholders Theory and Practice. In: Oso, L., and Bello S., (Ed) *The Concept and Practice of Corporate Governance in Nigeria: The Need for Public Relations and Effective Corporate Communication*, Kamla-Raj, J Communications, 3:1, p.9. Retrieved from http://www.krepublisher.com/02/Journals/JC/JC-033-0-000-12-Web/JC-03-1-000-12-Abst-PDF/JC-03-1-001-12-039-080-L/JC-03-1-001-12-039-080-L-Tt.pdf accessed on the 01/02/2014.

Stakeholder theory was embedded in the management discipline in 1970 and gradually developed by Freeman (1984). Wheller, Colbert and Freeman[200] argue that stakeholder theory is not so much a formal unified theory as a broad research tradition that encompasses philosophy, ethics, political theory, economics, law and organisational social science. The authors further stated that stakeholder theory is concerned with value creation on multiple fronts, with social justice, with stability and with the role of business in society. Stakeholders are most often defined in relation to a focal organisation or business firm and, so stakeholder concepts are usually anchored at the organisational level. Sustainable development or sustainability (in business terms) is a construct whose fundamental ideas are consonant with those of stakeholder theory and which allows such a bridge to important global societal issues.[201]

Stakeholder theory suggests that a stakeholder is "any group of individual who can affect or is affected by the achievement of the organisation's objectives." Unlike the agency theory in which the managers are working and serving for the stakeholders, stakeholder theorists suggest that managers in organisation have a network of relationships to serve the key elements of the business survival, which includes the supplier, employees and business partners. It was argued that this group of network is important to the owner-manager-employee relationship as in agency theory.[202] Dabiri[203] equally

[200]Wheller, D., Colbert, B., and Freeman, R.E., (2003). Focussing on Value: Reconciling Corporate Social Responsibility, Sustainability and A Stakeholder Approach in a Network World, *Journal of General Management*, 28:3, p. 15. Retrieved from https:/www.w/u.ca/documents/26204/Wheeler_Colbert_%26_Freeman_2003_=Focusing_on_value.pdf accessed on the 27/8/2014.

[201]Wheller, D., Colbert, B., and Freeman, R.E., (2003). Focussing on Value: Reconciling Corporate Social Responsibility, Sustainability and A Stakeholder Approach in a Network World, *Journal of General Management*, 28:3, p. 16. Retrieved from https:/www.w/u.ca/documents/26204/Wheeler_Colbert_%26_Freeman_2003_=Focusing_on_value.pdf accessed on the 27/8/2014.

[202]Freeman, R.E., (1999). Response: Divergent Stakeholder Theory. In: Ayandele, I.A.,& Isichei, E.E., (Ed.) Corporate Governance Practice and Challenges in Africa*, European Journal of Business and Management,* 5:4, p. 55. Retrieved from www.iste.org accessed on the 02/02/2014

[203]Dabiri, W.B.,(2012). Corporate Governance and Accountability. In: Oso, L., and Bello S., (Ed) The Concept and Practice of Corporate Governance in Nigeria: The Need for Public Relations and Effective Corporate Communication, *Kamla-Raj J Communications*, 3:1, p.9. Retrieved from

observes that stakeholder theory takes into account of a wider group of constituents rather than focusing in shareholders. Where there is an emphasis on stakeholders, the governance structure of the company may provide for some direct representation of the stakeholder groups. According to Friedman (2006)[204] the main groups of stakeholders are: customers, employees, local communities, suppliers and distributors, shareholders, the media, general public, business partners, future generations, past generations (past founders), academics, competitors, NGOs, trade unions, regulators and governments.

2.4.4 Resource Dependency Theory

Whilst the stakeholder theory focuses on relationships with many group or network for individual benefit, resource dependency theory concentrates on the roles of the board of directors in providing access to resources needed by the firm. Hilman *et al*[205] contends that resource dependency theory focuses on the role that directors play in providing or securing essential resources to an organisation through their linkages to the external environment.

2.4.5 Transaction Cost Theory

This theory was first initiated by Cyert and March in 1963 and later theoretically described and exposed by Williamson in 1996.[206] Transaction cost theory was an interdisciplinary alliance of law, economics and organisations. The theory attempts to view the firm as an organisation comprising people with different views and objectives. This underlying assumption of transaction cost theory is that firm have become so

---

http://www.krepublisher.com/02/Journals/JC/JC-033-0-000-12-Web/JC-03-1-000-12-Abst-PDF/JC-03-1-001-12-039-080-L/JC-03-1-001-12-039-080-L-Tt.pdf accessed on the 01/02/2014.

[204]Friedman, A.L., (2006). Shareholder Theory and Practice. In: Oso, L., and Bello S., (Ed) *The Concept and Practice of Corporate Governance in Nigeria: The Need for Public Relations and Effective Corporate Communication*, Kamla-Raj, J Communications, 3:1, p.9. Retrieved from http://www.krepublisher.com/02/Journals/JC/JC-033-0-000-12-Web/JC-03-1-000-12-Abst-PDF/JC-03-1-001-12-039-080-L/JC-03-1-001-12-039-080-L-Tt.pdf accessed on the 01/02/2014.

[205]Hilman, A.J., Canella, A.A & Paetzold., The Resource Dependency Role of Corporate Directors: Strategic Adaptation of Board Composition in Response to Environmental Change. In: Ayandele, I.A.,& Isichei, E.E., (Ed.) Corporate Governance Practice and Challenges in Africa*, European Journal of Business and Management,* 5:4, p. 55. Retrieved from www.iste.org accessed on the 02/02/2014.

[206]Monks, R., and Minow, N., (2004). Corporate Governance. In: Ayandele, I.A.,& Isichei, E.E., (Ed.) Corporate Governance Practice and Challenges in Africa*, European Journal of Business and Management,* 5:4, p. 55. Retrieved from www.iste.org accessed on the 02/02/2014.

large to the extent that they are in effect substitute for the market in determining the allocation of resources. In other words, the organisation and the structure of a firm can determine price and production. The unit of analysis in transaction cost theory is the transaction. Therefore, the combination of people with transaction suggests that managers are opportunist and arrange firm's transaction for their selfish interest.[207]

2.5 Models of Corporate Governance

Corporate governance systems[208] vary around the world, from one country to another. In each country, the corporate governance structure has certain characteristics and constituent elements, which distinguishes it from the structure (system) in other countries. This is because in some countries, focuses is on the link between a shareholder and the company, some on formal board structure and board practices and other on social responsibilities of corporation. There is no universally acceptable model of corporate governance, although, each model has its own advantages and disadvantages. In other words, corporate governance is dynamic in the sense that in each country, it develops in response to the country's specific factors and conditions.

Each model identifies constituent key elements such as key players; the share ownership pattern in the given country; the composition of the board of directors; the regulatory framework; disclosure requirements for publicly-listed stock corporations; corporate actions requiring shareholders approval; and interaction among key players.

---

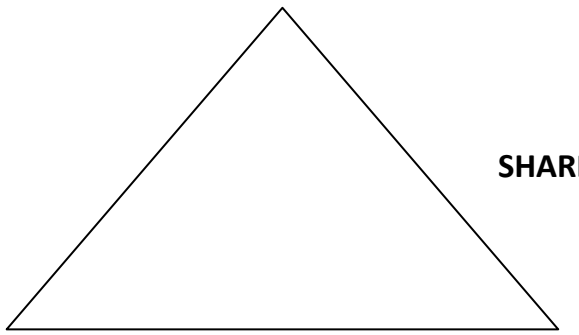
[207]Rwegasira, K., Corporate Governance in Emerging Capital Market:Whiter Africa? Empirical Research-Based-Theory, Building Papers, 2000, Ayandele, I.A.,& Isichei, E.E., (Ed.) Corporate Governance Practice and Challenges in Africa, European Journal of Business and Management, 5:4, p.55 @ www.iste.org accessed on the 02/02/2014.

[208]EWMI/PFS Program/Lectures on Corporate Governance-Three Models of Corporate Governance, December, 2005.doc., pp.1-14. Retrieved from http://www.emergingmarketsesg.net/esg/wp-content/uploads/2011/01/Three-Models-of-Corporate-Governance-January-2009.pdf. accessed 26-11-2013.

Researchers have identified three models of corporate governance in developed capital markets. These are the Anglo-US Model, the Japanese Model and the German Model and of more recent is the Indian model. With the globalisation of capital markets, each of these three models is opening (albeit slowly) to influences from other models, while largely retaining its unique characteristics.

2.5.1 Anglo-US Model

The Anglo-US model[209] is characterized by share ownership of individual, and increasingly institutional investors not affiliated with the corporation (known as outside shareholders or outsiders); a well – developed legal framework defining the rights and responsibilities of three key players: management, directors and shareholders; a comparatively uncomplicated procedure for interaction between shareholder and corporation as well as among shareholders during and outside the Annual General Meeting. They form the corporate triangle, which may be diagrammed as follows:



[209]The Anglo-US Model governs corporations in the United Kingdom, the United States, Canada, New Zealand and several other Countries. EWMI/PFS Program/Lectures on Corporate Governance-Three Models of Corporate Governance, December, 2005.doc., pp.1-14. Retrieved from http://www.emergingmarketsesg.net/esg/wp-content/uploads/2011/01/Three-Models-of-Corporate-Governance-January-2009.pdf. accessed 26-11-2013.

Equity financing is a common method of raising capitals in the United Kingdom and the United States.

2.5.1.1 Key Players in the Anglo-US Model

Players in the Anglo-US Model include: Management, directors, shareholders (especially institutional investors), government agencies, stock exchanges, self regulatory organizations and consulting firm which advice corporations and/or shareholders on corporate governance and proxy voting. But the three major players are management, directors and shareholders. The Anglo-US Model, developed within the context of the free market economy, assumes the separation of ownership and control in most publicly-held corporations. The important legal distinction serves a valuable business and social purpose in the sense that investors contribute capital and maintain ownership in the enterprise, while generally avoiding legal liability for the acts of the corporation. Investors avoid legal liability by ceding to management control of the corporation, and paying management for acting as their agent by undertaking the affairs of the corporation. The cost of a Berle and Means Corporation is known as agency costs.

The interests of shareholders and management may not always coincide. Laws governing corporations in countries using the Anglo-US Model attempt to reconcile this conflict in several ways. Most importantly, they prescribe the elections of the board of directors by shareholders and require that board act as fiduciaries for shareholders' interest by overseeing management on behalf of shareholders.

2.4.1.2 Share Ownership Pattern in the Anglo-US Model.

In both the United Kingdom and the United States, there has been a shift of stock ownership during the post war period from individual shareholders to institutional shareholders. The increase in ownership by institutions has resulted in their increasing influence, which in turn has triggered regulatory changes designed to facilitate their interest and interaction in the corporate governance process.

2.5.1.3 Composition of the Board in the Anglo-US Model

The board of director of most corporations that follow the Anglo-US Model includes both insiders referred to as the executive director and outsiders referred to as the non-executive director or independent director. An insider is a person who is either employed by the corporation (an executive, manager or employee) or who has significant personal or business relationships with corporate management. An outsider is a person or institution which has no direct relationship with the corporation or corporate management.

Traditionally, the same person has served as both chairman of the board of director and the Chief Executive Officer (CEO) of the corporations, which had led to abuses, concentration of power in the hands of one person amongst others. Currently, there is a discernable trend towards greater inclusion of outsiders in both the United States and the United Kingdom corporations. It should be noted that board composition and board representation remain important concerns of shareholders in the United Kingdom and the United States. The United Kingdom and the United States boards are generally smaller than in Japan and Germany.

2.5.1.4 Regulatory Framework in the Anglo-US Model

In the United Kingdom and the United States, a wide range of laws and regulatory codes define relationships among management, directors and shareholders. In the United States, a federal agency, the Securities and Exchange Commission (SEC), regulates the securities industry, establishes disclosure requirements for corporations and regulate communication between corporations and shareholders as well as among shareholders. Laws regulating pension funds also have an important impact on corporate governance.

In comparison with other capital markets, the United States has the most comprehensive disclosure requirements and a complex, well-regulated system for shareholder communication. The regulatory framework of corporate governance in the United Kingdom is established in parliamentary acts and

rules established by self-regulatory organizations such as the Securities and Investment Board, which is responsible for oversight market.

2.5.1.5 Disclosure Requirements in the Anglo-US Model.

While disclosure requirements are high in other jurisdictions where the Anglo-US Model is followed, none are as stringent as those in the United States. United States corporations are required to disclose a wide range of information to include amongst others information contained in annual report or in the agenda of the annual general meeting (proxy-statement), corporate financial data, a break down information of the corporation's capital structure; substantial background information on each nominee to the board of directors, information on proposed mergers and restructuring, proposed amendments to the articles of association and so on.

2.5.1.6 Corporate Actions Requiring Shareholder Approval in the Anglo-US Model

The two routine corporate actions requiring shareholder's approval under the Anglo-US Model are elections of directors and appointment of auditors. Non-routine corporate actions include the establishment or amendment of stock options plans, mergers and take-overs; restructuring and amendment of the articles of incorporation. Thus, there lies a distinction. In the United States, shareholders do not have the right to vote on the dividend proposed by the board of directors while in the United Kingdom, shareholders do vote on the dividend proposal.

2.5.1.7 Interaction among Players in the Anglo-US Model

The Anglo-US model establishes complex well-regulated system for communication and interaction between shareholders and corporations. A wide range of regulatory and independent organizations play an important role in corporate governance. Shareholders may exercise their voting rights without attending that annual general meeting in person. They may also vote by proxy. Also, in this model, a wide range of institutional investors and financial specialists monitor a corporation's performance and corporate governance. In contrast, one bank serves many of these (and other) functions in the Japanese

and German Models. These models are the strong relationship between a corporation and its main bank.

2.5.2 The Japanese Model

The Japanese Model[210] is characterized by a high level of stock ownership by affiliated banks and companies; a banking system characterized by strong, long-term links between banks and corporations; a legal public policy and industrial policy framework designed to support and promote *keiretsu*;[211] board of directors composed almost solely of insiders and a comparatively low (in some corporations, non-existent) level of input of outside shareholders, caused and exacerbated by complicated procedures for exercising shareholders' votes. Equity financing is important for Japanese corporations.

2.5.2.1 Key Players in the Japanese Model

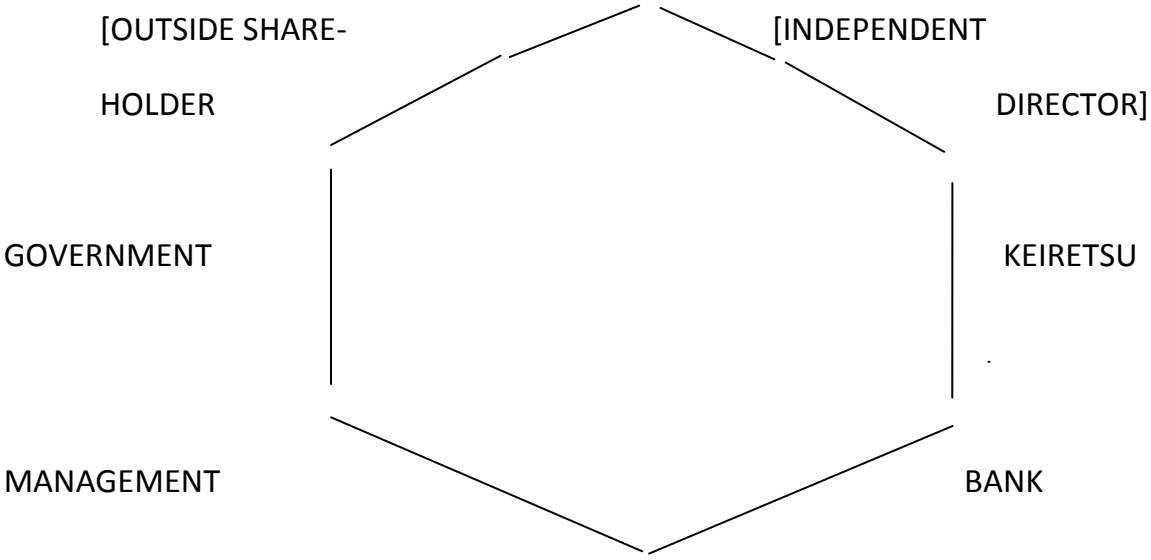
The Japanese system of corporate governance is many sided, centring on a main bank and a financial/ industrial network or keiretsu. The four key players are: main bank (a major inside shareholder), affiliated company or keiretsu (a major inside shareholder), management and the government. It should be noted that the interaction among these players serves to link relationships rather than balance powers, as in the case of Anglo-US Model. Also, in contrast with the Anglo-US Model, non-affiliated

[210] EWMI/PFS Program/Lectures on Corporate Governance-Three Models of Corporate Governance, December, 2005.doc., pp.1-14. Retrieved from http://www.emergingmarketsesg.net/esg/wp-content/uploads/2011/01/Three-Models-of-Corporate-Governance-January-2009.pdf. accessed 26-11-2013.

[211] Industrial groups linked by trading relationships as well as cross-shareholdings of debts and equity.

shareholders have little or no voice in Japanese governance. As a result, there are a few truly independent directors, that is, directors representing outside shareholders.

The Japanese model may be diagrammed as an open-ended hexagon as follows:



The base of the figure with four connecting lines represents the linked interests of the four key players; government, management, bank and keiretsu. The open lines at the top represent the non-linked interest of non-affiliated shareholders and outside directors, because these play an insignificant role.

2.5.2.2 Share Ownership Pattern in the Japanese Model

In Japan, financial institutions and corporations formerly hold ownership of the equity market. In the Japan and German Models, banks are the key shareholders and develop strong relationships with

corporations, due to overlapping roles and multiple services provided. This distinguishes both models from the Anglo-US Model, where such relationships are prohibited by anti-trust legislation. Instead of relying on a single bank, United States and the United Kingdom corporations obtain financing and other services from a wide range of sources, including the well-developed securities market.

2.5.2.3 Composition of the Board of Directors in the Japanese Model

The board of directors of Japanese corporations is composed almost completely of insiders that are executive managers, usually the heads of major divisions of the company and its central administrative body. The main bank and members of the keiretsu may remove directors and appoint their own candidates to the company's board when the company's profits fall over an extended period. Most common practice in this model is the appointment of retiring government bureaucrats to corporate boards.[212] In the Japanese Model, the corporation of the board of directors is conditional upon the corporation's financial performance. They are generally larger than in the United Kingdom, United States and Germany.

2.5.2.4 Regulatory Framework in the Japanese Model

The primary regulatory bodies are the Securities Bureau of the Ministry of Finance, and the Securities Exchange Surveillance Committee, established under the auspices of the Securities Bureau in 1992. The latter is responsible for monitoring corporate compliance and investigating violators. Despite their legal powers, these agencies have yet exerted defacto independent regulatory influence.

2.5.2.5 Disclosure Requirements in the Japanese Model

[212]The Ministry of Finance may appoint retiring official to the bank's board.

Disclosure requirements in Japan are relatively stringent, but not as in the United States. Corporations are required to disclose a wide range of information in the annual report and or agenda for the Annual General Meeting to include: financial data in the corporation (required in a semi-annual basis); background information on each nominee to the board of directors; aggregate date on compensation, information on proposed mergers and restructurings, proposed amendments to the articles of association amongst others. Japan's disclosure regime differs from the United State regime in ways such as: the semi-annual disclosure of financial data compared with quarterly disclosure in the United States; the significant differences between Japanese Accounting Standards and United States Generally Accepted Accounting Practices (US GAAP) amongst others.

2.5.2.6 Corporate Powers Requiring Shareholder Approval in the Japanese Model

In the Japanese Model, the routine corporate actions requiring shareholders approval are payment of dividends and allocation of reserves, election of directors and appointment of auditors. Other corporate actions which require shareholder's approval includes capital authorizations, amendments of the articles of association and or charter etc. while the non-routine corporate actions includes mergers, takeovers and restructurings.

2.5.2.7 Interactions among Players in the Japanese Model.

One of the fundamental characteristic of the Japanese Model is that the interaction among the key players generally links and strengthens relationships. Japanese corporations prefer that a majority of its shareholder be long-term, preferably affiliated parties. In contrast, outside shareholders represent a small constituency and are largely excluded from the process. Annual reports and materials related to Annual General Meeting (AGM) are available to all shareholders, who may attend meeting, vote by proxy or vote by mail. AGM are almost always pro-formal, and corporations actively discourage shareholder dissent.

2.5.3 The German Model

The German Model[213] differs significantly from both the Anglo US and the Japanese Model, although some of its elements resemble the Japanese Model. Banks hold long-term stakes in German corporations, and as in Japan, bank representatives are elected to German boards. However, this representation is constant, unlike the situation in Japan where bank representatives were elected to a corporate board only in times of financial distress. Germany's three largest universal banks (banks that provide a multiplicity of services) play a major role while in some part of the country, public sector banks are also key shareholders.

There are three unique elements of the German Model which distinguishes it from the other models; two of which pertains to board composition and the other on shareholders' rights. First, the German Model prescribes two boards with separate members. German corporations have a two-tiered board structure consisting of a management board (comprising entirely of insiders that is executives) and a supervisory board (comprising of labour/ employee representatives and shareholder representatives). The two boards are completely distinct and secondly the size of the supervisory board is set by law and cannot b changed by shareholders. Thirdly, in Germany and other countries following this model, voting right restrictions are legal; these limit a shareholder to voting a certain percentage of the corporation's total share capital regardless of share ownership position. Most German corporations have traditionally preferred bank financing over equity financing.

2.5.3.1 Key Players in the German Model

Corporate shareholders are the key players in the German corporate governance system. Banks usually play a multi-facet role as shareholder, lender, issuer of both equity and debt, depository (custodian

[213]The German Model governs German, Netherlands and Austrian corporations. Some elements of the model also apply in the Scandinavia. Furthermore, some corporations in France and Belgium have recently introduced some elements of the German Model.EWMI/PFS Program/Lectures on Corporate Governance-Three Models of Corporate Governance, December, 2005.doc., pp.1-14. Retrieved from http://www.emergingmarketsesg.net/esg/wp-content/uploads/2011/01/Three-Models-of-Corporate-Governance-January-2009.pdf. accessed 26-11-2013.

bank) and voting agents at Annual General Meetings. In Germany, corporations are also shareholders, sometimes holding long-term stakes in other corporations, even where there is no industrial or commercial affiliation between the two. This is somewhat similar, but not parallel to the Japanese Model, yet very different from the Anglo-US Model where neither banks nor corporations are key institutional investors.

2.5.3.2 Share Ownership Pattern in the German Model

German banks and corporations are the dominant shareholders in Germany. The institutional agents, or even individual owners, are not significant in Germany.

2.5.3.3 Composition of the Management Board (*Vorstand*) and the Supervisory Board (*Aufsichtsrat*) in the German Model.

The two-tiered board structure is a unique construction of the German model. German corporations are governed by a supervisory board and a management board. The supervisory board appoints and dismisses the management board, approves major management decisions and advises the management board. The management board is composed solely of insiders or executives. The supervisory board is composed of labour/employee representatives and shareholders representatives.

The Industrial Democracy Act and the Law on Employee Co-determination regulate the size and determine the composition of the supervisory board; they stipulate the number of members elected by labour/employees and the number elected by shareholders. The number of members of the supervisory board is set by law and cannot be changed which is one of the key differences between the German Model and the two other Models. Secondly, the supervisory board includes labour/employee representatives.

2.5.3.4 Regulatory Framework in the German Model

In Germany, both Federal and State (*Laender*) law influence corporate governance. The Federal Laws include: the Stock Corporation Law, Stock Exchange Law and Commercial Law as well as the laws governing the composition of the supervisory board which are federal laws. Regulation of Germany's stock exchange is however, the mandate of the states.

2.5.3.5 Disclosure Requirements in the German Model

Disclosure requirements in Germany are relatively stringent, but not as stringent as in the United States. Corporations are required to disclose a wide range of information in the annual report and/or agenda for the Annual General Meeting, including: corporate financial data (required on a semi-annual basis); data on the capital structure, any substantial shareholder holding more than five (5) percent of the corporation's total share capital, proposed amendments to the articles of association, names of individuals and/or companies proposed as conditions amongst others.

The disclosure regime in Germany differs from the United States regime in several notable ways, to include: semi-annual disclosure of financial data compared with quarterly disclosure in the United States; aggregate disclosure of executive compensation and supervisory board compensation, compared with individual data on executive and board compensation in the United States and significant differences between German Accounting Standards and the US GAAP. In Germany, corporations are permitted to amass considerable reserves, which enable the corporations to undertake their value. This practice is not permitted under the US GAAP.

2.5.3.6 Corporate Actions requiring Shareholder Approval in the German Model

The routine corporate actions requiring shareholder approval under the German Model are the allocation of net income (payment of dividends and allocation to reserves), ratification of the acts of the management board for the previous fiscal year, ratification of the acts of the supervisory board for the previous fiscal year, election of the supervisory board and appointment of auditors. In the German Model, if shareholders wish to take legal action against individual members of either board or against

either board as a whole, they refrain from ratifying the acts of the board for the previous year. In contrast with the Anglo –US and the Japanese Models, shareholders do not possess the authority to alter the size or composition of the supervisory board. These are determined by the law. Other common corporate actions include capital authorization (while automatically recognise pre emptive rights, unless revoked by shareholder approval), increase of the aggregate compensation ceiling for the supervisory board. Non-routine corporate actions which also require shareholder approval include mergers, takeovers and restructurings.

2.5.3.7 Interaction among Players in the German Model

The German legal and public-policy framework is designed to include the interest of labour, corporations, banks and shareholders in the corporate governance system. The system is geared towards the interest of the key players. There is nevertheless, some scope for participation by minority shareholders. The majority of German shares are issued in bearer (not registered) form. Corporations with bearer shares are required to announce their annual general meeting in an official government bulletin and forward the annual report and agenda for meeting to custody banks. The bank forwards these materials to the beneficial owners of the shares. Most shareholders purchase shares through a bank, and banks are permitted to vote the German shares they hold.

Amongst the few obstacles of shareholders includes banks' powers as depositories and voting agents, legality of voting right restrictions and the fact that shareholders may not vote by mail. Despite these obstacles, minority German shareholders are not inactive. They often oppose management proposals and present a wide range of counter proposals and proposals at the Annual General Meeting and Extra-Ordinary General Meetings of many German corporations each year.

2.5.4. The India Model

India's SEBI Committee on corporate governance defines corporate governance as the "acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own roles as trustees on behalf of the shareholders." It is about commitment to values, about ethical business conduct and about making a distinction between personal or corporate funds in the management of a company. It has been suggested that the Indian approach is drawn from the Gandhian principle of trusteeship and the Directive principle of Indian Constitution, but this conceptualization of corporate objectives is also prevalent in Anglo-American and most other jurisdiction.

2.5.5 The Nigerian Model

In Nigeria, it is a mix of both the Anglo-US and the German Models. This is because in Nigeria, there are three types of corporation; to wit: private companies, public companies and the public sector undertakings (which include statutory companies, government companies, banks and other kinds of financial institutions). Each of these corporations has a distinct pattern of shareholding; for example, in the case of companies, promoter and his family have almost complete control over the company. They depend less on outside equity capital. Hence in private companies, the German Model of the corporate governance is followed.

Under the Nigerian banking system, the Central Bank of Nigeria (CBN) in 2010 reviewed the Universal Banking (UB) model adopted in 2001. The Universal Basic Model (UBM) allowed banks to diversify into non-bank financial business, and became financial supermarkets. Following the 2004/2005 bank consolidation programme, banks became awash with capital, which was deployed to multiples of financial services. In effect the laudable objectives of the UBM were abused by banks that operated as financial supermarkets to the detriment of core banking practices. To effectively ring-fence banks from excessive intra-group transactions and refocus their activities to core banking functions, the CBN in 2010 issued a new regulation on the scope of banking activities and ancillary matters (new banking model). Under the new banking regulation policy, banks would no longer invest their capital or depositor's funds

in non-bank subsidiaries, and were expected to divest or spin off to a holding company (HoldCo), all non-bank-related businesses. This new banking model re-introduced the categorization of banks into commercial, Merchant and specialized banks (non-interest banks, microfinance banks, development banks and mortgage banks). The implementation had since began and as at end-December 2013, ten (10) banks had applied for international banking license authorization, of which only four (4) had fully, with the extant regulatory requirement and were granted license. In addition, six (6) banks applied for commercial banking license while two (2) banks were granted regional commercial banking licenses.[214]

2.6 Good/Sound Corporate Governance

Most often than not, reference is frequently made to the virtues of good corporate governance, effective corporate governance and sound corporate governance, not only in the banking sector but in organizations without defining exactly what it entails. These words: good, effective and sound mean the same thing and are often used interchangeably. The opposite is bad, ineffective and unsound corporate governance. Good, effective and sound corporate governance depending on the circumstances vary from individual organization, financial institution and so on, to another. It is imperative to note that good, effective and sound corporate governance is not all about compliance. In other words, you may comply and not succeed.

[214]Central Bank of Nigeria Brief, 2013-2013 Edition, pp.29-30. Commercial banks are licensed under three categories, namely, regional, national and international. Minimum capital requirement for regional is N15.0 billion, national-N25.0 billion and International- N50.0 billion. Regional banks are entitled to carry on banking business within a minimum of six (6) and a maximum of 12 (twelve) contiguous state lying within not more than two (2) geo-political zones of the federation and the Federal Capital Territory (FCT); national banks are authorised to carry on banking in every state of the federation and international banks are allowed to carry on banking operations in all states of the federation, in addition to establishing offshore subsidiaries.

Good corporate governance depends on the broader legal and regulatory environment prevailing in the country of domicile of a given company.[215] Effective corporate governance practices are essential to achieving and maintaining public trust and confidence in the banking system, which are critical to the proper functioning of the banking sector and the economy as a whole. Poor corporate governance can contribute to bank failures, which can in turn pose significant public costs and consequences due to their potential impact on any applicable deposit insurance system and the possibility of broader macroeconomic implications, such as contagion risk and impact on payment systems. This has been illustrated in the financial crisis that began in mid-2007. In addition, poor corporate governance can lead markets to lose confidence in the ability of a bank to properly manage its assets and liabilities, including deposits, which could in turn trigger a bank run or liquidity crisis. Indeed, in addition to their responsibilities to shareholders, banks also have a responsibility to their depositors and other recognised stakeholders. The legal system in a country determines which responsibilities a bank may have to its shareholders, depositors and other relevant stakeholders.[216]

The OECD principles defined good corporate governance as follows: "…Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring. The presence of an effective corporate governance system, within an

[215]European Bank for Reconstruction and Development, 2012. Retrieved from http://www.ebrd.com/pages/sector/legal/corporate/core.shtml accessed on the 03-06-2013

[216]The Basel Committee on Banking Supervision, Consultative Document, Principles for Enhancing Corporate Governance, Bank for International Settlement, March 2010, p.5. Retrieved from http:/www.eocd.org accessed on the 26-01-2014

individual company and group and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy." From the above definition, it is significant to point out that good corporate governance is vital in the safe and proper functioning of a bank and thus, may adversely affect the bank if wrongly implemented. Good corporate governance also ensures the protection of depositors and permits regulatory/supervisory experience to underscore the levels of accountability, check and balance in banks. Good corporate governance requires appropriate and effective legal, regulatory, institutional and environmental foundations.

Sound corporate governance also contributes to the protection of depositors and may permit the supervisors to place more reliance on the bank's internal processes. In this regard, supervisory experience underscores the importance of having the appropriate levels of accountability and checks and balances within each bank. Moreover, sound corporate governance practices can be helpful where a bank is experiencing problems, as the supervisor may require substantial involvement by the bank's board or control functions in seeking solutions and overseeing the implementation of corrective actions.[217]Sound corporate governance may permit the supervisor to place more reliance on the bank's internal processes. In this regard, supervisory experience underscores the importance of having the appropriate levels of authority, responsibility, accountability, and checks and balances within each bank, including those of senior management but also of the board of directors and the risk, compliance and internal audit functions.[218]

Good corporate governance requites appropriate and effective legal, regulatory and institutional foundations. A variety of factors including the system of business law, stock

[217]The Basel Committee on Banking Supervision, Consultative Document, Principles for Enhancing Corporate Governance, Bank for International Settlement, March 2010, p.5. Retrieved from http:/www.eocd.org accessed on the 26-01-2014

[218]Provisions 5, The Basel Committee on Banking Supervision, Corporate Governance for Banks, July 2016, pp. 3, Retrieved from http://www.bis.org/bcbs/pub/d328.htm accessed 28th December 2016.

exchange rules and accounting standards, can affect market integrity and systematic stability. Such factors however, are often outside the scope of banking supervision. Supervisors are nevertheless encouraged to be aware of legal and institutional impediments to sound corporate governance, and to take steps to foster effective foundations for corporate governance where it is within their legal authority to do so. Where it is not, supervisors may wish to consider 4 legislative or other wish to consider supporting legislative and other reforms that would allow than to have a more direct role in promoting or requiring good corporate governance.[219]

The general principles of sound corporate governance should also be applied to state-owned or state-supported banks, including when such support is temporary (for example, during some financial crises that began in mid 2007, national government and/or central banks in some cases provided capital support to banks). In these cases, government financing and ownership of a bank has the potential to alter the strategies and objectives of the bank, such a bank may face many of the same risks associated with weak corporate governance as are faced by banks that are not state-owned or supported.[220]

Exit policies from government ownership or support may present additional challenges that require attention in order to ensure good governance. Likewise, these principles apply to banks with other types of ownership structures, for example, those that are firmly-owned or part of a

[219]The Basel Committee on Banking Supervision, Consultative Document, Principles for Enhancing Corporate Governance, Bank for International Settlement, March 2010, p.6. Retrieved from http:/www.eocd.org accessed on the 26-01-2014

[220]The Basel Committee on Banking Supervision, Consultative Document, Principles for Enhancing Corporate Governance, Bank for International Settlement, March 2010, p.6. Retrieved from http:/www.eocd.org accessed on the 26-01-2014. For further guidance for the state in exercising its ownership function may be found in the OECD Guidelines on Corporate Governance of State-Owned Enterprises, October, 2006; www.oecd.org/dataoecd/46/51/34803211.pdf.

wider non-financial group, and to those that are non-listed (including, for example, cooperative banking organizations).[221]Good corporate governance is all about ensuring that the needs and interests of all of an organization's shareholders are taken into account in a balanced and transparent manner. However, good corporate governance is not just a matter of having the right policies and procedures in place. It has to be embedded into the culture of the organization from the very top-down.[222]

As Owen[223] warned: systems and structures can provide an environment conducive to good corporate governance practices, but at the end of the day, it is the acts or omissions of the people charged with relevant responsibilities that will determine whether governance objectives are in fact achieved. Good corporate governance is also no guarantee of success. It is necessary but not sufficient foundation for success as strategic factors play a more important role in determining the eventual success or failure of an organization. In the majority of large business failures, it is essentially the failure of the underlying business strategy that causes each business to fall. Corporate governance issues allow the flawed businesses to continue and amplify the magnitude of their eventual collapse.[224]

Owen expressed the view that: "Good governance processes are likely in my view to create an environment that is conducive to success. It does not follow that those who have good governance processes will perform well or be immune from failure. Risks exist to some extent at the heart of any business. Risks are taken in the search and rewards. No system of corporate

[221]Pp. 6- 7, ibid.

[222]What is Good Corporate Governance? Retrieved from http://www.succurro.com.au/articles/49-governance/85-what -is-good-corporate-governance, accessed on 05-02-2014.

[223]Owen, J., (2003). The Failure of HIH Insurance, HIH Royal Commission. What is Good Corporate Governance? Retrieved from http://www.succurro.com.au/articles/49-governance/85-what -is-good-corporate-governance, accessed on 05-02-2014.

[224]What is Good Corporate Governance? Retrieved from http://www.succurro.com.au/articles/49-governance/85-what -is-good-corporate-governance, accessed on 05-02-2014.

governance can prevent mistakes or shield companies and their stakeholders from the consequences of error. Corporate failures will occur."[225]

Good corporate governance practices are important and essential to achieving and maintaining not only the public trust and confidence in the banking sector or other corporations/organizations, but it is crucial to the proper functioning of the banking sector and the economy as a whole. Poor/bad corporate governance will contribute to failures which will trigger the public's loss of confidence, trust, credibility and reliability. This has been illustrated in the financial crisis that began in the mid 2007. Nigeria is not left out, as the CBN identified poor corporate governance as one of the major factors that led to the crisis in the financial sector.

The CBN observed that the shareholders funds in those banks were eroded from the provisioning for loan losses leading to erosion in their investments in the banks; that the industry was suffering from lax governance, relatively poor disclosure standards and weak risk management system. Good corporate governance is evident by responsibility, accountability, fairness and transparency. It can financially benefit an organization, leading to higher profit margins, greater dividend yields and larger stock repurchases. The following are some simple tips for developing good corporate governance:[226]

1) Document governance principles: when documenting a set of corporate governance principles, the roles and functions of the board and its committee should be established.

[225]Owen, J., (2003). The Failure of HIH Insurance, HIH Royal Commission.What is Good Corporate Governance? Retrieved from http://www.succurro.com.au/articles/49-governance/85-what -is-good-corporate-governance, accessed on 05-02-2014.

[226]DeCicco, M., (2011). Tips for Good Corporate Governance, Withum Smith + Brown, p.1, Sponsored by Bank of America, Merrill lynch. Retrieved from http://www.riskmanagementmonitor.com/guest-post0tips-fro-good-corporate-governance accessed 19-11-2013 .

2) Document committee charters; all committee charters should outline a committee's authority as to decision making and their roles and responsibilities. This creates accountability;
3) Within charters, a well defined plan for dealing with governance issues and resolution of issues should be communicated.
4) An audit committee should monitor public accounting firm audit work, their independence, fees and level of services and scope of both audit and non audit services.
5) A compensation committee should address remuneration levels for executive officers, fringe benefit and incentive plan.
6) The corporate governance committee should make recommendations to the board for new members, and monitor the board performance.
7) The corporate governance committee should monitor committee and executive management performance.
8) Have independent members on the audit committee, including a financial expert.
9) Minutes should be taken at all meetings and committees should report formally to the board on a regular basis.
10) Employee code of conduct policy should be documented and provided to employees.
11) Board code of conduct policy for non-employee directors should be documented and provided to board members.
12) Formalize employee performance evaluations.
13) Employee compliant procedures should be made available to all employees. Employees should be made aware of non-retaliation policy and that they can be anonymous.

Good corporate governance will help to expose and correct any issues before becoming major problems.[227] Corporate governance commentary posits that good corporate governance is an admirable but elusive legal goal. Everyone is in favour of it, but there is far from universal agreement about what it is and how to get there. Corporate governance offers a 12-step program to what we believe would be truly good corporate governance[228], namely:

1) Start at the beginning- the principal, if not exclusive, goal of corporate governance should be to enhance value creation for shareholders.
2) Recognize that most corporate governance analogies to political, economic or legal theory are rhetorical devices, not answers.
3) Don't base corporate governance policies solely on Adolf Berle's and Gardiner Means's concerns about the separation of shareholders and corporate managers.
4) Don't get caught up in a debate between short term and long term strategy and execution.
5) Affirm the board's primary role as strategic advisor to and supervisor of management, not as enforcer of regulatory and legal requirements and preventer of agency costs.
6) Limit a board's size to enhance its effectiveness.
7) Select nominees for directors for their key competencies, even at the cost of some degree of independence.
8) Select a board leadership structure that works in the context of a particular board and management team.

[227]DeCicco, M., (2011). Tips for Good Corporate Governance, Withum Smith + Brown, p.1, Sponsored by Bank of America, Merrill lynch. Retrieved from http://www.riskmanagementmonitor.com/guest-post0tips-fro-good-corporate-governance accessed 19-11-2013

[228]Governance Commentary, (2011). A 12-Step Program to Truly Good Corporate Governance, Latham & Watkins Publications, p.1;Retrieved from http://www/w.com/upload/pubcontent/pdf/pub4147-/pdf accessed 19-11-2013 .

9) Do not fall prey to calls for frequent shareholders votes in the name of accountability.

10) Remove the clutter of shareholders proposals from the annual meeting agenda.

11) Reformulate the fiduciary duty of investment advisers with respect to voting portfolio shares.

12) Recognize that investors voting with their feet are a far more efficient discipline for corporate managers than corporate governance theories, which are unproven as generators of economic value.

Good corporate governance more closely resembles art than science. What it does not resemble is a set of rigid rules derived from inept analogies to political models or to different types of legal relationships such as the laws of tangible and intangible property or agency.[229] Good corporate governance from the banking perspective demands that banks will operate in a safe and sound manner, and will comply with applicable laws and regulations while protecting the interests of depositors.[230]

2.7 THE NIGERIAN BANKING SECTOR

A bank in Nigeria is a body holding a certificate or a licence to carry on banking business issued by the Central Bank of Nigeria.[231] Thus, a bank owes its customers a duty to exercise reasonable care and skill in carrying out banking business in relation to the customer. This duty includes properly interpreting, ascertaining and acting in accordance with the instruction of the

[229]Governance Commentary, A 12-Step Program to Truly Good Corporate Governance, Latham & Watkins Publications, May 2011, p.1; http://www/w.com/upload/pubcontent/pdf/pub4147-/pdf accessed 19-03-2013.

[230]Wilson, I., (2006). Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Banking Consolidation, *Nigeria Economic Summit Group*, 12:2, p. 2. Retrieved from http://www.templars-law.com/media/regulatory%20and%20institutional%20challenges.pdf, accessed 21/4/2014.

[231]Atoyebi vs Barclays Bank Plc (2016) 15 NWLR (pt.1534) 34 @ 43 ratio 5.

customer.[232] In Gate Way Holdings Ltd vs S.A.M & T. Ltd[233] banking business by virtue of S. 66 of BOFIA is defined to mean the business of receiving deposits in current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance or such other business as the Governor of the Central Bank of Nigeria, may, by order published in the Federal Gazette, designated as banking business. Furthermore, by virtue of S.2[234] no person shall carry on banking business in Nigeria except:

a) It is a company duly incorporated in Nigeria; and

b) It holds a valid banking licence issued under the Act[235]

S. 81 of BOFIA authorizes the operation of a representative office of a foreign bank by the consent of the Central Bank of Nigeria.[236] Any person who transact banking business without a valid licence under the Act is guilty of an offence and liable on conviction to imprisonment of a term not exceeding ten (10) years or a fine of N2,000,000 or to both such imprisonment and fine.[237]

The history of banking operation in Nigeria is traceable to 1892 when the first Nigerian Bank, African Banking Corporation was established. In 1894, First Bank of Nigeria (which was known as the Bank of British West Africa then) was incorporated at Liverpool and acquired by African Banking Corporation.[238] Although, the banking business was originally started by the British colony to serve the interest of the British shipping and the trade agencies in Nigeria, the sector

[232]Conoil Plc vs Solomon (2017) 3 NWLR (pt. 1551) 50 @ 56 ratio 4. Ratio 5 defined a bank customer to include any person for whom the bank has agreed to collect items.
[233] (2016) 9 NWLR (pt. 1518) 490 @ 494-5 ratio 2.
[234]Banks and Other Financial Institutions Act Cap B3 Laws of the Federation of Nigeria 2004.
[235]Atoyebi vs Barclays Bank Plc (2016) 15 NWLR (pt.1534) 34 @ 43 ratio 5.
[236]Ibid, ratio 5.
[237]Gate Way Holdings Ltd vs S.A.M & t. Ltd (2016) 9 NWLR (pt. 1518) 490 @ 494-5 ratio 1.
[238]First Bank, Our History, 2010. Retrieved from http://www.firstbanknigeria.com/InsideFirstBank/OurHistorytabid/265/Default.aspx, accessed 29-06-2013.

has since then thrived from government regulated agency with the aim of budding and directing the local economy.[239]

Prior to 1952 when five banks began to operate legally in the country, there was no legislation governing banking in Nigeria.[240]The banks were: the Bank of British West Africa, Barclays Bank and French Bank, while the Indigenous Banks were National Bank of Nigeria and the African Continental Bank. In 1892, the British Bank of West Africa (BBWA) began its operations in Nigeria.[241] In 1917, Barclays Bank became the second expatriate bank to operate in Nigeria after BBWA.[242] In 1933, the National Bank of Nigeria, was the first indigenous bank, was founded and operated successfully.[243] After World War II, British rule over Nigeria weakened with the passage of the 1946 Constitution that gave a majority of the seats in the National Assembly to native Nigerians.[244] The Nigerian government began to regulate banking with passage of the Bank Ordinance of 1952.[245] A motivation for the passage of the 1952 ordinance was the failure of 21 of 25 Nigerian banks in the period from 1947 to 1952.[246] The period of 1994-2003 saw another round of failure in banks culminating in the withdrawal of licenses by

[239]Cowry Asset Management, Nigerian Banking Report: Following the Progress of Nigerian Banks in the last 10 years; A Concise look at the Milestones, Challenges, Successes and Outlook of the Nigerian Banking System, Cowry Research Desk, 2009, p.2.

[240]Onyeakagbu posits that prior to 1952, banking in Nigeria was largely rudimentary while legislative regulation was non-existent. See Onyeakagbu, P.A., (1997). Modern Nigerian Business Law for Business Studies, Theory and Practice. In: Adegbite, G., (Ed) Corporate Governance of Banks and the Banking Sector Reforms in Nigeria: The Issues, p.6.

[241]Fry, R., (1976). Bankers in West Africa: The Story of the Bank of British West Africa Limited. In: Duncan, A., (Ed) Nigeerian Banking Reform: Recent and Future Prospects,p.2. Retrieved from http://ssm.com/abstract=1592599 accessed 21/4/2014.

[242]Nwankwo, G.O., (1991). The Role of Capital Market in Economic Development. In: Ogwu Joy, U., & Olaniyan, O., (Ed) Nigeria's International Economic Relations: Dimensions of Dependence and Change, 1989.Barclays is the predecessor to the current Union Bank of Nigeria, p.30.

[243]Fry, R., (1976). Bankers in West Africa: The Story of the Bank of British West Africa Limited. In: Duncan, A., (Ed) Nigeerian Banking Reform: Recent and Future Prospects, p.2. Retrieved from http://ssm.com/abstract=1592599 accessed 21/4/2014.

[244]Ibid, p.181.

[245]Reforms- Expert Task CBN on Trust and Confidence, All Africa.com, March 15, 2010.

[246]ibid

the Central Bank of Nigeria and liquidation by the NDIC. The 2004 crises swept away 14 Banks. The creation of the Central Bank of Nigeria by the Central Bank Ordinance of 1958 further strengthened the bank regulatory structure of Nigeria. The Central Bank began full operation on 1st July, 1959.

The 1960s and 1970s saw more financial institutions being created and a greater role of the Nigerian government in regulating and owning banks in Nigeria. The Indigenous Enterprises Promotion Decrees of 1972 and 1977 set a policy of indigenous ownership of significant portions of the economy. As a result, the Nigerian government took ownership of 60% of the equity in expatriate banks operating in Nigeria, including First Bank, Union Bank and United Bank for Africa.[247] Until 1979, banks wholly owned by state government or banks predominantly owned by the Federal government dominated the Nigerian banking industry.After 1979, privately held banks began to emerge again in Nigeria,[248]but the Federal government dominated banking until the introduction of the Structural Adjustment Program (SAP) in the mid-1980s.[249]

In 1986, the Nigerian government as a condition of an agreement to borrow from the International Monetary Fund introduced a Structural Adjustment Program that generally required economic liberalization and decreased government regulation and ownership in much of the Economy.[250] Banks licensing requirements were significantly eased resulting in a large

[247]Ezeoha, A., (2007). Effects of Banking Industry Consolidation in Nigeria: A Review, *Journal of Banking Regulation*, 8: 174.
[248]Nwankwo, G.O., (1991). The Role of Capital Market in Economic Development. In: Duncan, A, Nigerian Banking Reform: Recent Action and Future Prospects. Retrieved from www.researchgate.net/publication/228/26029-Nigerian-Banking-Reform-Recent-Actions-and-Future-Prospects.pdfor SSRN Electronic Journal, April 2010, p.2 accessed 25/05/2017.
[249]Ezeoha, A., (2007). Structural Effects of Banking Industry Consolidation in Nigeria: A Review, *Journal of Banking Regulation*, 8: 174.
[250]ibid.

increase from 40 to 120 banks, the highest number to that point in time.[251] During this period in 1988, the Nigerian Deposit Insurance Corporation was created to offer deposit insurance to depositors in failed banks. Later in 1991, the Banks and other Financial Institutions Decree was enacted and brought the supervision and regulation of all financial institutions, not just banks, under the Central Bank of Nigeria. Prior to this time, supervision of non-banks was shared between the CBN and the Ministry of Finance.[252] The establishment of the Central Bank of Nigeria, most importantly did spiral in many of the banking reforms. Balogun[253] classified the banking reforms as follows:

The Pre-SAP (1970-1985) Reform: Balogun highlighted the features that pervaded the Nigerian banking System during the period to include, a highly regulated environment, a fixed exchange rate structures guided by official financial markets *etc*. He further posited that there was no limit to the capital base requirements for banks operating in Nigeria during the era, while indigenization policy of the Nigerian government also gave sixty percent stakes to the government in the foreign banks operating within the country. The adoption of Structural Adjustment Program in 1986 ushered in a new era of two-tier market structure which put to rest the fixed exchange rates structure.

The Post-SAP (1986-1993) Reform: this period which is referred to as the financial systems reforms brought about deregulation of the banking industry in Nigeria (in addition to its credit, interest rate and foreign exchange policy reforms). The Nigerian Banking System in the era was dominated by indigenous banks that also have over sixty percent of the Federal and State

[251]ibid ,p.160.
[252]Central Bank of Nigeria, Bank Supervision Annual Report, 2008, p.44.
[253]Balogun, E.D., (2007). Banking Sector Reforms and the Nigerian Economy: Performance, Pitfalls and Future Policy Options, MPRA; http://mpra.ub.uni-muenchen.de/3804 accessed 29-06-2013.

governments' stakes. An economic reform (that was tagged as Structural Adjustment Program-(SAP)), whose foundation could be traced to the World Bank macroeconomic policy was mounted on the Nigerian economy in response to the national financial distress experienced by the country during the era. Following the adoption of SAP in 1986, a limit of N1.0 billion was prescribed for commercial banks and about N500 million for merchant banks as capital base requirements. This was increased subsequently to N2 billion prior to 2004.

The Reform Lethargy (1993-1998): this period referred to as the reform lethargy era, was necessitated by deep financial distress witnessed in the banking sector of Nigeria at that time. To manage the distress, another round of regulation/reform was introduced.

The Pre-consolidation (1999-2004) Reform: the Pre- consolidation banking era however kicked off with the advent of democracy in 1999. This reform saw the return of financial sector liberalization being accompanied by the adoption of distress resolution programmes. This era also saw the introduction of universal banking as well as operations in all aspects of retail banking and non-banking financial markets.

Consolidation and Post consolidation Reform: the fourth phase referred as consolidation and post consolidation) eras began in 2004 to 2008. Fearing the collapse of the entire financial system due to the accumulated rot of insider abuses, poor corporate governance practices, inefficiencies etc., the Central Bank of Nigeria, with the support of the Federal Government, started a wave of consolidation in the banking industry in 2004.[254] By the year 2004, Nigeria had about 89 banks with a survey by SEC (in 2003) showing that only about 40% of the quoted companies use a recognised code of governance. More so, the ownership structures of the

[254]Cowry Asset Management, Nigerian Banking Report: Following the Progress of Nigerian Banks in the last 10 years; A Concise look at the Milestones, Challenges, Successes and Outlook of the Nigerian Banking System, Cowry Research Desk, 2009, p.2.

Nigerian Banks indicate that banks were private and basically family-owned enterprises and hence it was easy for the owners to govern the banks as they desired, coupled with weak and ineffective internal control system, poor management and weakness in corporate governance, capital inadequacy, lack of transparency and disclosure, and non performing loans alongside global financial crisis. These factors necessitated the needed reform which led to the unfortunate demise of some banks.

The major component of the reform saw the CBN increasing the minimum capital requirements for commercial banks and by 1150% in 2004 (i.e. setting the minimum capital base of each bank from N2billion to N25billion). This recapitalization actually increased the total capital base of banks from N400billion to approximately N1, 120 billion. The number of banks operating was also reduced from eighty nine (89) to twenty five (25) and finally twenty four (24) through series of capital raising exercises, mergers and acquisitions and listing of companies on the Nigerian Stock Exchange.[255] Systematic stability and Growth was therefore restored into the Nigeria's financial system in 2005 after the successful recapitalization and consolidation exercises in the banks.

Tsunami Reform (2009-till Date): also referred to as the latest reform which was and is being anchored by the Governor of the Central Bank of Nigeria, Lamido Sanusi. Mr Sanusi Lamido was appointed as Governor of the Central Bank of Nigeria in June, 2009, in the middle of the global financial crisis, succeeding Professor Soludo. Coming in at particular time when the economy falters and the banking started experiencing a crisis being triggered by the global events, (the stock market collapsed by 70% in 2008-2009 and many Nigerian banks had to be rescued in order to stabilize the system and return confidence to the markets and investors), Sanusi

[255]ibid.

initiated another round of reform which saw the Central Bank of Nigeria injecting about N620 billion of liquidity into the banking sector while executive directors of eight (8) Nigerian banks were replaced.[256]

This reforms will not only reposition the Nigerian economy to achieve its becoming one of the 20 largest economies objective by 2020, but removing the weakness and fragmentation of the financial system, strengthening corporate governance framework, and building public trust and confidence. Mr Sanusi also canvassed that the loan defaulters should face the wrath of the law. While encouraging banks to improve on the culture of risk management and corporate governance code, regulations of the banking practices have been strengthened in Nigeria while many of her banks are now reported to be in a better position.

The CBN under Sanusi has also instituted significant changes in accounting practices in the Nigerian Banking sector. By the year 2009 and till date,[257] it became mandatory for all financial institutions to adopt a uniform accounting year-end. This was because different reporting years by all banks and other financial institution made financial comparison difficult amongst banks, leading to limited transparency of financial results of banks. In January 2010, the CBN issued regulations limiting the terms of the Chief Executive Officer's (CEO) of banks to a maximum of ten (10) years which required some sitting CEOs to resign by 31st July, 2010.[258] This policy resulted due to serious corporate governance deficiencies among the insolvent banks.

The Asset Management Corporation of Nigeria (AMCON) which Act was signed on the 19th July, 2010 commenced operations. The AMCON is to ease the burden of non-performing loans on the deposit

[256]Sanusi, L.S., (2010). The Nigerian Banking Industry: What Went Wrong and the Way Forward, A Lecture delivered at the Convocation ceremony of the Bayero University Kano, p. 2.
[257]Central Bank of Nigeria Economic Report for the First Half of 2012, p. XVI.
[258]Durojaiye, R., Ighomwenghian, k., & Umeijei, E., (2010).Bank CEOs- Going, Going, Daily Independent, Lagos Retrieved from http://allafrica.com/stories/201002011487./htm

money banks, strengthen the recovery of the financial system, enhance public confidence and stimulate increased lending to the real sector.[259] In order to support government effort at growing the real sector and rejuvenate critical infrastructure of the economy, the CBN established a number of initiatives to include: N500 billion intervention fund for power, aviation and manufacturing sectors as well as A N200 billion Small and Medium Enterprises Credit Guarantee Scheme to fast track the development of SMEs; a collaboration with the Alliance for Green Revolution in Africa (AGRA) and the Bankers' Committee and the Nigerian Incentive Based Risk Sharing System for Agricultural Lending (NIRSAL), aimed at unlocking finance to agriculture across the entire commodity value chains, by introducing innovative risk sharing and mitigation mechanisms and products.[260]

In its Annual Report, financial system comprised the CBN, the NDIC, the Securities and Exchange Commission (SEC), the National Insurance Commission (NAICOM), the National Pension Commission (PENCOM), the Asset Management Corporation Of Nigeria (AMCON), 20 Deposit Money Banks (following the merger/ acquisition of four banks), 5 Discount Houses, 858 Microfinance Banks, 108 Finance Companies, 101 Primary Mortgage Banks, 690 Security Brokerage Firms, 13 Pension Fund Administrators, 7 Pension Fund Custodian, 2020 Bureaux- de- Change, I Stock Exchange, 1 Securities and Commodity Exchange, 5 Asset Bureaux, 45 Insurance Companies, 2 Re-insurance Companies and 50 Insurance Loss Adjusters.[261] Also, the first fully licensed non-interest bank in Nigeria – the Jaiz Bank Plc began business on the 6th January, 2012.

The financial system is more than just institutions that facilitate payments and extend credit. It encompasses all functions that direct real resources to their ultimate user. It is the central nervous system of a market economy and contains a number of separate, yet co-dependent, components all of which are essential to its effective and efficient functioning. These components include financial

[259]Central Bank of Nigeria Annual Report for 2010, p.XXXV
[260]ibid, p.XXXV –VI.
[261]Central Bank of Nigeria Annual Report for 2011, P.XXXIV.

intermediaries such as banks and insurance companies which act as principal agents for assuming liabilities and acquiring claims. The second component is the markets in which financial assets are exchanged, while the third is the infrastructural components, which is necessary for the effective interaction of intermediaries and markets. The three components are intertwined.[262]The Nigerian Banking System has steadily evolved, following wide and far-reaching reforms embarked upon by the regulatory authorities. Following the crisis in 2008, the CBN articulated the Project Alpha Initiative for reforming the financial system in general and the banking sector in particular. Apart from serving as the catalyst for economic growth, the Nigerian banking sector has acquired some unique features which attract the world attention. The performance of the banks in the last few years is praiseworthy. It is therefore not surprising that the Nigerian banking sector is being asked to champion the efforts being proposed to make Nigeria one of the twenty leading economies of the world by 2020.the Bank recently introduced a new policy "Cash Less Policy" as part of the on-going reforms to address currency management challenges in Nigeria, as well as enhance the national payment system.[263]

2.8 Summary

LEGAL PRINCIPLES OF SOUND CORPORAE GOVERNANCE: Summarily, the principles of corporate governance includes but not limited to effective implementation and consistent enforcement of policies as it relates to corporate governance, the rights and equitable treatment of shareholders, interest of stakeholders, integrity, credibility and ethical behaviour, role, independence and responsibility of the Board of Directors, independence and unbiased audit committee, disclosure, transparency and accountability.

[262]Sanusi , L.S., (2012). Banking Reform and Its Impact on the Nigerian Economy, Research Department of the Central Bank of Nigeria being a lecture delivered at the University of Warwick's Economic Summit, united Kingdom, Pp. 1-2.
[263]ibid, p 10.

THEORETICAL FRAMEWORK OF CORPORAE GOVERNANCE: corporate governance theories include the agency theory, stewardship theory, stakeholder theory, resource dependency theory, transaction cost theory, political theory and ethics related theory. Agency theory is the relationship between a person referred to as the agents and another called the principal, wherein the agent agrees to act in the best interest of the principal. Principal include shareholders while agents are company executives and managers.

Stewardship theory involves stewards (company executives and managers) working for the shareholders to protect and make profits for shareholders. The stewardship theory is not based on individualism as the agency theory, but on the role of top management as stewards.

Stakeholder theory being a redefinition of the organisation is any group of individuals who can affect or is affected by the achievement of the organisation's objectives. Stakeholders include customers, employees, local communities, suppliers and distributors, shareholders, the media, general public, business partners, future generations, past generations, academics, competitors, NGOs, trade unions, regulators and government.

Resource dependency theory deals with the role of the board of directors in providing access to resources needed by the firm. Transaction cost theory views the firm as an organisation comprising of people with different views and objectives.

Most theories of corporate governance use personal self interest as a starting point. Stewardship theory however, rejects self- interest. Agency theory begins from self interested behaviour and rest on dealing with the cost inherent in separating ownership from control. Managers are assumed to work to improve their own position while the board seeks to control managers and hence, close the gap between the two structures.

For stewardship theory manager seek other ends besides financial ones, in the sense that they do not necessarily do their own financial interest, because they feel a strong duty to the firm. They merge their ego and sense of worth with the reputation of the firm. Agency problem revolves around individuals considering themselves only as individuals, without any other meaningful attachments.

Stakeholder theory should not be conferred with shareholder's theory. Shareholders theory only refers to one group of shareholders, those who have invested money in the firms, while stakeholders are those who have a stake in the firm and its performance. They include customers, suppliers, employees,, community and even the government and its regulatory agencies. Since stakeholders are from large and diverse group, it makes it difficult to make the diverse group component of a workable theory of corporate governance. This is because, these groups so varies and wide that it is almost impracticable to speak with a common voice, let alone serve in an oversight capacity. The stakeholder theory argues that corporate governance does not belong to the board, the managers or even the shareholders, but a broad group of stakeholders, everybody who has a legitimate stake in the outcome of the corporation. The weakness in stakeholder theory is that its board of directors is always changing its mind and has difficulty in given management a clear direction. It rarely gets around an effective oversight.

Transaction Cost theory focuses on the individual agent. It considers that manager (or director) may arrange transaction in an opportunistic way. The problem with transaction cost theory however is not the protection of ownership rights of shareholders (as in the agency theory focus) rather the effective and efficient accomplishment of transactions by firm.

MODELS OF CORPORAE GOVERNANCE: Models of corporate governance includes Anglo-Us Model, Japanese Model and German Model. The Anglo-US model puts more emphasis on the

interest of shareholders. It is composed of a single tiered board of directors that is usually dominated by non-executive directors elected by shareholders. Hence, it is often referred to as unitary system. In the Anglo-US model, many boards include some executive from the company. Non-Executive directors are expected to outnumber executive directors and hold positions such as audit and compensation committees. In the US, corporations are directly governed by state laws while the exchange (offering and trading) of securities in corporations is governed by Federal legislation. The Anglo-US is used by the United States, United Kingdom and some common wealth countries.

Summarily, the Anglo-US, also known as Anglo-Saxon Model, is used as basis of corporate governance in the United States, United Kingdom and some common wealth countries. The shareholders appoint directors who in turn appoint managers to manage the business, thereby drawing a separation between ownership and control. The board usually comprises of the executive directors and a few independent directors. A single individual occupies both the post of the Chief Executive Officer and Chairman of the board, while the board has limited ownership stakes in the corporation. This model relies on effective communication between shareholders, board and management with all important decisions taken after getting shareholders approval through voting. This Model emphasizes the interest of shareholders. It relies on a single-tiered board of director and it is dominated by non-executive directors elected by shareholders. Because of this, it is also known as the unitary system.[264]

The Japanese Model also referred to as the Business Natural Model in which shareholders are banks, financial institutions, and large family shareholders, corporate with cross-shareholding. There is a supervisory board and the keiretsu- a form of cultural relationship among family controlled corporate and groups of complex interlocking business relationship, where cross-shareholding is common and

[264]Cadbury, Adrian, Report of the Committee on the Financial Aspects of Corporate Governance, Gee, London, December, 1992; Mallin, Christine, A., (edt), Corporate Governance Developments in the United Kingdom: Country Analysis. Second Edition, Edward Elgar Publishing, 2011.

most of the directors are heads of different divisions of the company. Outside directors or independent directors are rarely found on the board.

The German Model also called a two-tiered board mode, viz: the supervisory board and the management board. It is used in countries like Germany, Holland, France etc. large majority of shareholders can appoint only 50% of members to constitute the supervisory board while the rest are appointed by employees and labour unions. In the two–tiered board, the Executive board made up of company executives, generally runs the day-to-day operations while the supervisory board, made up entirely of non-executive directors who represent shareholders and employees, hires and fires the members of the executive board, determines their compensation and review of major business decisions.

Under the Nigerian Banking sector, the CBN reviewed the Universal Banking Model in 2010 (adopted in 2001). The UBM allowed banks to engage in non-banking financial activities which were grossly abused by banks. Thus, the CBN issued a new regulation on the scope of banking activities and ancillary matters as the new banking model. This new banking model was designed to ensure the evolution of a financial landscape that would be capable of providing a platform for sustainable economic growth and development.

GOOD CORPORAE GOVERNANCE: The essence of good corporate governance is ensuring trustworthy relations between the corporation and its stakeholders. Therefore, good corporate governance is a culture and a climate of **C**onsistency, **R**esponsibility, **A**ccountability, **F**airness, **T**ransparency and **E**ffectiveness that is **De**ployed throughout the organisation, otherwise known as the CRAFTED principles of corporate governance.[265] Good corporate governance is very

[265]Global Corporate Governance Forum, A Corporate Governance Mode: Building Responsible Boards and Sustainable Business, Private Sector Opinion, Issue 17, A Global Corporate Governance Forum Publication, P.1 Retrieved from

important for economic development, not only for the individual company, but also for the economy as a whole. Thus, quality of governance should be continuously improved and good governance should be promoted and measured on a regular basis. Good corporate governance is founded not only on the intellectual, honesty of directors and senior management but on the credibility, competence and trustworthiness of those charged with the enforcement of the said codes of corporate governance and effective and proper implementation of such codes.Good corporate governance makes for a more judicious use of resources; serves the long- term interest of shareholders and delights and attracts both local and international investors.

THE NIGERIAN BANKING SECTOR

The Nigerianbanking sector has undergone series of evolution from the advent of banking from 1892 to the present day consolidation. Banking started in Nigeria in 1892 with the establishment of the African Banking Corporation. Then, only three foreign banks and two indigenous banks were in existence. This period is also referred to as free banking was in there was no any formal or informal legislation. The first legislation was in 1952. The 1958 – 1970s was characterised by the establishment of the CBN and the promulgation of the Indigenisation Decree. This was followed by the 1986 – 1995 era, dominated by the Structural Adjustment Programme, Banks and Other Financial Institutions Decree No.24 and the Nigerian Deposit Insurance Corporation Decree No.22 now Acts.

Other stages of the growth of the Nigerian banking sector includes, reform lethargy (1993 - 1998), the pre-consolidation (1999 -2004), consolidation and post consolidation reform (2004 - 2008) and the tsunami reform (2009 – till date). During various stages of reforms in the

---

http://www.ifc.org/wps/wcm/connect/iff2c/8048a7e722daa5fef606oad5911/GCGF%2BPS%2Bissue%2B17%2B3-4-10.pdf?MOD=AJPERES accessed 10-02-2014.

development of the Nigerian banking sector, the banks at one point or the other have witnessed the enactment and the implementation of various mandatory statutory laws and soft law regimes.

CHAPTER THREE

ASSESSMENT OF THE LEGAL FRAMEWORK FOR CORPORATE GOVERNANCE IN THE NIGERIAN BANKING SECTOR

3.1 Introduction

At the centre of Nigeria's economy is an evolving banking system that has been in existence right from the colonial era to the present day. The banking industry has witnessed huge transformation in character, structure and organization. The function of the banking sector in a developed and developing economy cannot be overemphasized. It consists of financial intermediation, the administration and implementation of monetary policies, mobilisation of

financial resources amongst others. Thus, the function of the banking sector is not limited to these functions. This chapter will give a brief history of the Nigerian banking sector, the CBN as its main regulator and other regulators, and subsequently consider the legal framework for corporate governance in the Nigerian banking sector, categorized into mandatory statutory regime and soft law regime. The soft law being the Code of Corporate Governance for Banks in Nigeria Post Consolidation forms the basis of our discussion. It also considers the major determinants of implementation and enforcement. The chapter proceeds to consider the legal mandates of three functionaries in corporate governance; to wit, the board of directors, Auditors and the shareholders.

3.2 The Role of the Central Bank of Nigeria in Corporate Governance in the Nigerian Banking Sector

The world of central banking is one of a variety of structures, functions and powers, which are in themselves by-product of the economic, political and other realities prevailing in a society. Central Banks worldwide simply refer to a central monetary authority or an apex financial institution within the entire financial structure promoting monetary stability and a sound financial system.[266]In Nigeria, an inquiry under the leadership of G.G Paton was established by the colonial administration in 1948 with the view of investigating bank practices in Nigeria.

Before this inquiry, there was no control and regulation of the banking industry. The G.D Paton's report became the basis for the first legislation- the Banking Ordinance of 1952. Amidst rapid growth as a result of the Ordinance was also accompanied with disappointments which led to the failure of few banks in 1958. This necessitated a bill for the establishment of the CBN before the House of Representative in Nigeria.

[266]Money In The World.net, Central Bank of Nigeria, Brief History @ http://moneyin theworld.net/geo/Africa/banking/central_bank_nigeria accessed 16/5/2014.

The CBN is the apex regulatory authority, acting as a banker of last resort in the Nigeria financial system and financial adviser to the federal government. It was established by the Central Bank of Nigeria Act, 1958 (respectively amended in 1991, 1993, 1997, 1998, 1999 and 2007). The CBN Act 2007 of the Federal Republic of Nigeria charges the bank with the overall control and administration of the monetary and financial sector policies of the federal government. The CBN commenced operation fully on the 1st July 1959.

In April 1960, the bank issued its first treasury bills. In May 1961, the bank launched the Lagos Banks Clearing House, which provided licensed banks a framework in which to exchange and clear cheques rapidly. By 1st July, 1961, the bank had completed issuing all denominations of new Nigerian notes and coins and redeemed all of the West African Currency Board's previous money. The Banks and Other Financial Institutions (BOFI) decrees 24 and 25 of 1991, which repealed the Banking Decree 1969 and all its amendments, were enacted to strengthen and extend the powers of CBN to cover the new institutions in order to enhance the effectiveness of monetary policy, regulation and supervision of banks as well as non-banking financial institutions. It further gave the bank more flexibility in regulation and supervision of the banking sector and licensing finance companies which hitherto operated outside any regulatory framework. Unfortunately in 1997, the Federal Government of Nigeria enacted the CBN (Amendment Decree No.3 and BOFI (Amended)) Decree no.4 in 1997 to remove completely the limited autonomy which the bank enjoyed since 1991.[267]

The CBN (Amendment) Decree No.37 of 1998 which repealed the CBN (Amendment) Decree No.3 of 1997 provided a measure of operational autonomy for the CNB to carry out its traditional functions and enhance its versatility. The present legal framework within which the CBN operates is the CBN Act 2007 which repealed the 1991 Act and all its Amendments. The Act provides that the CBN shall be the

[267]Central Bank of Nigeria, About CBN, p.1. Retrieved from http://www.cenbank.org/AboutCBN/history.asp accessed 16/05/2014.

autonomous body in the discharge of promoting stability and continuing in economic management. The Act further widened the objects of the CBN to include ensuring monetary and price stability as well as rendering economic advice to the federal government.[268]

The formative CBN Act of 1958, the Banking Decree, 1969 and the various Amendments up to the CBN Act, 2007 defined the powers and functions of the bank. Under the subsisting law, the CBN Act No.7 of 2007, the principal mandates of the bank were specified as follows:[269]

1) Ensure monetary and price stability:
2) issue legal tender currency in Nigeria;
3) Maintain external reserves to safeguard the international value of the legal tender currency;
4) Promote a sound financial system in Nigeria; and
5) Act as banker and provide economic and financial advice to the federal government.

Another important function of the CBN is the responsibility of administering the Banks and Other Financial Institutions Act 1991 as amended. However, in the course of pursuing this mandates, the realities of the nature of the economy are such that attainment of the desired goals could be compromised except some developmental and structural issues are addressed. For example, the objective of ensuring monetary and price stability would be difficult to achieve with a shallow and inefficient financial system. This is because the transmission channels of monetary policy would not function efficiently under such a condition.[270] The scope of the development function of the CBN span through promoting and nurturing critical financial institutions to fill certain void in the system, providing

[268]Central Bank of Nigeria, About CBN @ http://www.cenbank.org/AboutCBN/history.asp accessed 16/05/2014. Section 12(1) -(5) of the CBN Act. To facilitate the attainment or price stability and to support the economic policy of the federal government, the monetary policy committee (MPC) was formed. Its responsibility is to formulate monetary and credit policy. It consist of the governor of the CBN as chairman, four deputy governors of the bank, two members of the board of directors, three members appointed by the president and two members appointed by the governor.
[269]CBN Briefs, 2012-2013 Edition, Research Department, p.23.
[270]CBN Briefs, 2012-2013 Edition, Research Department, p.23.

direct funding to certain sectors such as agriculture, education, power and aviation, manufacturing, *etc*.[271]

The CBN has also overtime, performed some major developmental functions (agricultural, SMEs, industrial sectors etc) in all key sectors in the Nigerian economy. Major developments in the money market included: commencement of cashless policy, adoption of single – bid auction system at OMO auctions, review of the membership of Money Market Dealers (MMDs), review of the guidelines for repurchase transactions, update of the list of Primary Dealer Market Makers (PDMMs) and the release of exposure drafts on competency framework, bank charges and financial literacy.[272]

As at December 2010, the Nigerian financial system comprised of the CBN, NDIC, the Securities and Exchange Commission (SEC), the National Pension Commission (PENCOM), 24 Deposit Money Banks, 5 Discount Houses, 866 Microfinance Banks, 108 Finance Companies, 101 Primary Mortgage Institutions, 5 Development Finance Institutions, 1959 Bureaux – de–Change, 690 Security brokerage Firms, 13 Pension Fund Administration, 5 Pension Fund Custodians, 1 Assets Management Corporation, 1 Stock Exchange, 1 Commodity and Securities Exchange and 73 Insurance Companies.[273] At end-December 2013, there were twenty-four (24) banks and 861 specialized banks, comprising one (1) non-interest bank, 820 microfinance banks and 40 primary mortgage banks.[274]

In 2013, the bank further sustained the use of Open Market Operations (OMO) to repurchase transactions, standing facilities and discount windows as the major tools of its monetary operations. The bank also amongst other pursued the implementation of its activities on development financing, such as the N235 billion intervention funds for refinancing and restructuring of the bank's loan to the

[271]ibid, p.24.
[272]Central Bank of Nigeria Annual Report 2012, p.49.
[273]CBN Briefs, 201-2013 Edition, Research Department, p.30
[274]Central Bank of Nigeria Annual Report for 2010, p.57.

manufacturing/SMEs sector, the N200 billion SME (Credit Guarantee Scheme Fund (SMECGs)) and the N300 billion Power and Airline Intervention Fund (PAIF), etc.

This functions and mandates it has not carried out alone but through its various departments. The CBN complemented by the Nigerian Deposit Insurance Corporation (NDIC)[275] and the Federal Ministry of Finance[276] to provide the necessary oversight function to ensure the efficiency and effectiveness of the payment system. Also the Nigerian Stock Exchange plays a dominant role in the Nigerian payment and settlement landscapes as the trading in equities is conducted on the floor of the exchange based on encompassing laws and regulations. The CBN is the main institution that regulates the payment system. Banks, discount houses, Nigerian Inter-bank Settlement System (NIBSS), NSE cards and switching companies remain the key players in the Nigerian payment system.

In 2010, the CBN launched its restructuring program tagged Project ACE with a view to repositioning and reinventing the CBN for sustainable improvement of overall accountability, communication, efficiency and effectiveness.[277] Thus, there are twenty five departments in the CBN, grouped under five directorates in order of related performance and job description to facilitate smooth operations and management of those departments with 91 divisions and 198 offices. Theses directorates include the Governor's, Corporate Services, Economic Policy, Financial System Stability and Operations. The Governor's directorate consist of Corporate Secretariat, Governor's department Internal Audit, Risk

[275]CBN Briefs, 2012-2013 Edition, Research Department, p.5. The NDIC was established through the promulgation of Decree No.22 of 15th June, 1988. The corporation supervises banks so as to protect depositors' fund to ensure monetary stability, promote effective and efficient payment, and engender competition and innovations in the banking system.

[276]ibid, Pp.5-6. The Federal Ministry of Finance was established in 1958 by the Finance (Control and Management) Ordinance, to replace the finance department. The ministry is charged with the administration of federal government fiscal policies, planning and managing of government projects, national budgets, incomes and liabilities accruable to the federal government of Nigeria. The ministry collaborate with CBN on monetary/financial matters. The government through it fiscal actions influence the level of liquidity in the money market. The Federal Ministry of Finance continues to interact with the CBN, it interfaces with the money market through its function of mobilizing domestic financial resources for the development purposes of the Federal Government.

[277]Central Bank of Nigeria, About CBN: Department. Retrieved from http://www.cenbank.org/AboutCBN/department.asp accessed 16/05/2014.

Management and Strategy and Performance. The Corporate Services consists of Finance, Human Resources, Legal Services, Medical Services, Procurement and Support Services and Security Services. The Economic Policy comprises of the Financial Markets, Monetary Policy, Research, Statistics and Trade and Exchange. The Financial System Stability consists of Banking Supervision, Other Financial Institution Supervision, Financial Policy and Regulation and Development Finance. The Operation Directorate consists of Banking and Payment System, Branch Operations, Information Technology and Reserve Management.[278]

The CBN is run by a board of directors, headed by the governor of the CBN. Each directorate is headed by a deputy governor. The present Governor of the CBN is Mr. Godwin Emefiele. The CBN has its headquarters in Abuja, Nigeria, with branches all over the country and its official website is *http://www.cbn.gov.ng*. The CBN was instrumental in the growth, credibility and financial worthiness of the Nigerian commercial banks by ensuring that all the deposit money banks have a capital base. This policy didn't go down well with some banks has it led to failed bank, as some banks could not meet up with the requirement of the capital base to the tune of N25,000,000,000.00. Some of the banks folded up and other banks merged in order to raise the capital base. This to a long way solidified the money (commercial) deposit banks in Nigeria and rendered it impossible for individuals or other organisations without financial stability and viability to operate banks in Nigeria. The health of the banks improved with successful recapitalization of the CBN- intervened banks by AMCON.[279] The CBN fired CEOs of eight banks and their respective board of directors; replaced fired executives with the CBN appointed CEOs and board of directors and injected N420 billion into the banks. The CBN also ensured that all banks in Nigeria have a uniform year end.

[278]Central Bank of Nigeria Restructures into 25 departments Retrieved from http://www.cenbank.org/out/2000/publication/pressRelease/Gov/CBN%20Restructurespdf. accessed 16/05/2014.
[279]Central Bank of Nigeria Annual Report 2010, p.13.

The CBN has introduced a new policy on cash based transactions which stipulates a 'cash handling charge' on daily cash withdrawals or cash deposits that exceeds N500,000.00 for individual and N3,000,000.00 for corporate bodies. The new policy on cash based transaction (withdrawals and deposits) in banks aim at reducing (not eliminating) the amount of physical cash (coins and notes) circulation in the economy and encouraging more electronic-based transaction (payment for goods, services, transfers etc).[280] The cashless policy was pioneered by Lagos State on 1st January, 2012 and further implementation of the policy commenced in all the states of the country including the FCT, Abuja on 1st July, 2014.[281] Exemptions were granted to Ministries, Departments and Agencies (MDAs) of the federal, state and local governments on lodgements for accounts operated by them, for the purpose of revenue collections only. The policy also excluded specialized international institutions (embassies, diplomatic missions as well as multilateral and donor agencies) from penalties on withdrawal and deposit limits as Nigeria is a signatory to several treaties, which exempt institutions from all fees, charges and taxes in the host country.[282] Penalties also waived on the cash limit for primary mortgage institutions and microfinance banks.

The CBN is also required to maintain at all times a reserve of external assets consisting of all or any of the assets specified in the Sections.[283] The bank shall use it best endeavours to maintain external reserves at level considered by the bank to be appropriate for the country and the monetary system in Nigeria.[284] In 2010, in addition to stabilising the banking sector, the financial system and restore public confidence, the Asset Management Corporation of Nigeria (AMCON) Act (which was signed into law by President Goodluck Ebelle Jonathan on the 19th July 2010) commenced operation. AMCON is saddled with the responsibility of easing the burden of non - performing loans on the deposit money banks;

[280]Retrieved from http://www.cen,bank.org/cashlessaccessed on the 15/5/2014.
[281]CBN Briefs, 2012-2013 Edition, Research Department, p.13.
[282]Ibid, p. 49. The international practice is that sovereign states do not impose financial penalties on other sovereign states.
[283]S.24 of the Central Bank of Nigeria Act.
[284]S.25, ibid.

strengthen the recovery of the financial system, enhance public confidence and stimulate increased lending to the real sector.[285] It is a multipurpose vehicle to purchase non-performing loans from deposit money banks and recapitalize affected banks through the issuance of appropriate securities in the domestic financial market.[286]

The CBN also signed additional memorandum of understanding (MOU) for cooperation and information-sharing in cross border supervision with regulations in other jurisdictions.[287] This was signed in order to ensure a more comprehensive supervision and surveillance of the banking sector. The CBN has power to restructure the Nigerian currency (Naira) through direct approval from the Nigeria President.[288] Naira notes and coins are printed and minted by the Nigerian Security Printing and Minting Plc (NSPM) and other overseas printing and minting companies and issued by the CBN. Currency is issued to deposit money banks through the branches of the CBN and old notes are returned through the same channel. Currencies deposited in the CBN are sorted. The clean currencies are re-issued while the dirty currencies are destroyed. The role of the CBN as the driver of the payment system involves processing payment documents, running clearing houses (first established in May 1961) and owning and operating large value transfer system. The CBN issues notes and coins which constitutes the legal tender in the country. The National payment system is the channel through which financial resources flow from one segment of the economy to the other. The objective of the National payment system includes promoting efficiency, safety, migration of cash-less modes of payment, transparency, public acceptance and confidence and integration with the financial infrastructure. It therefore represents the foundation of the modern market economy.[289] Summarily, the supervisory function of the CBN is structured into three

[285]Central Bank of Nigeria Annual Report 2010, p.XXXV.
[286]CBN Briefs, 2012-2013 Edition, Research Department, p.76.
[287]Ibid, p32.
[288]S.19 (1) of the CBN Act 2007.
[289]About CBN @ http;//www.cenbank.org/paymentsystem, accessed 17/05/2014.

departments, namely, (a) Financial Policy and Regulation; (b) Banking Supervision Department; and (c) Other Financial Institutions Supervision Department.

The Financial policy and Regulation Department develops and implements policies and regulations aimed at ensuring financial system stability. It also licenses and grants approval for banks and other financial institutions. Banking Supervision Department carries out the supervision of deposit Money Banks and discount houses while Other Financial Institutions to include Microfinance Banks (MFBs), Finance Companies (FCs), Bureaux de-Change (BDs), Primary Mortgage Institutions (PMIs) and Development Finance Institutions (DFIs). The supervisory powers of both departments involve both on-site and off-site arrangements.[290]

To keep up with International Standards, the CBN (as well as the NDIC) continued to emphasize risk-focused bank supervision in Nigeria. It has adopted the 25 core principles for effective banking supervision as enunciated by the Basel Committee on Banking Supervision as the pivot of the framework for bank supervision.[291] Other integral features of its bank supervision include regular contact with bank management, consolidated supervision of banks with non-bank financial affiliates and independent validation of supervisory information. The CBN uses On-site examinations and Off-site surveillances by its inspectors to achieve this regulatory and supervisory obligation.

The apex bank has also introduced the banking system stability which relates to the resilience of banks to unanticipated and adverse shocks while ensuring unfettered functioning of the intermediation process in a given financial system. Thus, the essence of the banking system stability is to enable banks to withstand unfavourable events and promote healthy competition among them for smooth development of the financial system.[292] The CBN has taken steps to integrate the banking system into

[290]About CBN: Supervision: http//www.cenbank.org/supervision accessed 17/05/2014.
[291]About CBN: Department. Retrieved from http//www.cenbank.org/AboutCBN/departmentasp accessed 17/05/2014.
[292]CBN Briefs, 2012-2013 Edition, Research Department, p.75.

global practice in financial reporting and disclosure through the adoption of the International Financial Reporting Standards (IFRS) in the Nigerian banking sector. Also, the Universal banking model adopted in 2001 allowed banks to diversify into non banks financial businesses.[293]

3.3 The Legal Framework of Corporate Governance in the Nigerian Banking Sector

The spate of failure that have occurred in the past two decades involving companies such as Enron, WorldCom, Global Crossing, Adelphia Communications, HHI, Tyco, Vivendi, Royal Ahold , Northern Rock, HBOs, AIG Investment Bank, Washington Mutual and Wachovia and the Central Bank of Iceland confirms the need for sound corporate governance practices worldwide. These crises have drawn great attention to corporate governance. In Nigeria, cases of failed corporations include Union Dicon Salt, Lever brother (now Unilever Plc), Cadbury Nigeria Plc and banks such as Oceanic Bank, Bank PHB amongst others.

The framework for corporate governance structure differs from one country to another because of the differences in the economic climate and the historical experience of each country. Nevertheless, the objectives of corporate governance share common denominator worldwide.[294] In Nigeria, the Companies and Allied Matters Act, 1990[295], a product rigorous process is the principal statute regulating companies. It contains innovations such as greater accountability by directors and effective participation and control through meetings. At the time CAMA went through rigorous reforms by the Nigerian Law Reform Commission, the concept of corporate governance was at the rudimentary stage.

---

[293]Sanusi L. S., (2012). Governor CBN, Being A Lecture Delivered at the University of Warwick's Economic Summit, United Kingdom, prepared by the Research Department of the Central Bank of Nigeria, p.8.

[294]Okike, E.N.M., (2008). Towards Better Corporate Governance & Financial Accountability in a Developing Economy: A Nigerian Case Study, PhD Thesis, University of Sunderland, Sunderland. In: Adegbite, G., (Ed) *Corporate Governance of Banks and the Banking Reforms in Nigeria: the Issues*, p.8. Retrieved from http://paper.ssrn.com/5013/paperscfm?abstract_id=2277986 accessed 8/5/14.

[295]now Cap. C20 Laws of the Federation of Nigeria, 2004.

Soon after the coming into force of the CAMA 2004, the World economy was hit by an unprecedented financial and economic crisis in 2007-2009. That resulted in global recession. The crisis led to the collapse of many worlds –renowned financial institutions.[296] As a result, some countries started a review of their corporate governance practices. This resulted in some countries issuing corporate governance codes to address issues neither specifically nor sufficiently addressed by their legislation.[297]

However, globally, few codes of corporate governance are cited and referred to in the development of national codes for corporate governance. These are the OECD Principles of Corporate Governance 1999 by the Organisation for Economic Cooperative and Development, Principles of Corporate Governance by the Commonwealth Association (CACG) and the Bank for International Settlement (BIS). In Nigeria, its foremost corporate governance code can be traced to the Code for Banks and Other Financial Institutions in Nigeria. It was issued by the Bankers' Committee, an outcome of the Bankers' committee's sub-committee on corporate governance. Its initiative was due to the financial crises which envelop the banks in the early 1990s as a result of weak and poor corporate governance. This code was applicable to all banks and other financial institutions, predicated on 11 principles; but it was not free from weaknesses. Its major weakness was that it was issued by the Bankers' committee and not even a regulator.

Two months after, the Code of Best Practices in Corporate Governance in Nigeria by the Securities and Exchange Commission was issued, thereby, making it the first corporate governance code to be issued by a regulator in Nigeria. The SEC code was the outcome of the 17-member committee headed by Mr. Peterside Atedo in collaboration with the Corporate Affairs Commission. The SEC code was developed

[296]Sanusi L. S., (2012), Banking Reforms and the Impact on the Economy, University of Warwick's Economic Summit, United Kingdom, p.3.

[297]The Corporate Prof, Historical development of Corporate Governance in Nigeria. Retrieved from http://thecorporateprof.com/historical-development-of-corporate-governance-in-nigeria, p.3 accessed 15/5/2014.

based on the United Kingdom combined code and the Sarbanes-Oxley in the United States. It emphasises the role of the board of directors and management, shareholders' rights etc. Soon after the coming into force of the SEC Code 2003, numerous changes and challenges evolved in the corporate world, thereby making the SEC Code inadequate and not sufficient in the face of recent development and contemporary changes.

In 2006, the Central Bank of Nigeria issued a Code of Corporate Governance for Banks in Nigeria Post Consolidation. Although, some of the corporate governance challenges addressed by the CBN codes were outside the purview of the SEC Code, it was also not free from series of challenges. Proposed by the CBN in 2012 is the Guidelines on Nigeria Sustainable Banking Principle (NSBP). With the coming into force of the NSBP, there is no doubt that many banks would need to reassess their objectives and thereby creating more/new strategies to attain their desired objectives. The BSBP include three principles on business activities Environmental and Social Risk Management, Human Rights and Financial Inclusion amongst others.

The failure of the CBN to eradicate the identified challenges as enumerated in PART 1 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 and to develop sound banking institutions in Nigeria implies that there are still numerous challenges to corporate governance in the Nigerian banking sector. These challenges have shown that the CBN Code was either not complied with completely by the banks or its enforcement and implementation is compromised by the CBN, SEC and other regulatory agencies.

The SEC Code remained in force until April 2011 when the Securities and Exchange Commission issued the Code of Corporate Governance in Nigeria 2011. Although, from its provisions, it is adjudged to be quite comprehensive, but still ridden with certain flaws, loopholes and gaps. It was amended as a result of contemporary corporate governance issues such as independent directors, directors' appointment,

tenure, remuneration, general disclosure, transparency issues amongst others. The 2011 Code applies to all public companies, including those whose securities are listed on a recognised exchange in Nigeria and companies seeking to raise funds from the capital market through issuance of securities or listing by introduction.

It should be noted that in Nigeria, the issue of corporate governance has been accorded serious attention by various sectors of the economy. Following the reforms in the Pension sector, in 2008, the National Pension Commission (PENCOM) issued the Code of Corporate for Licensed Pension Operators. The code outlines minimum corporate governance requirements, meant to ensure that governance policies are enshrined in the companies. There are also recent developments in the corporate governance scene not covered by the PENCOM Code 2008, hence the need for continued amendment.

Also, the NAICOM- National Insurance Commission in 2009 issued the Code of Corporate Governance for the Insurance Industry. It is aimed at unleashing the hidden potential of the insurance sector for the maximum impact with a view to including strong economic growth in Nigeria.

Suffice it to say that four regulators have been active in the Corporate Governance scene in Nigeria. They include the Central Bank of Nigeria, the National Pension Commission, the National Insurance Commission and the Securities and Exchange Commission; each issued a corporate governance code to address corporate governance issues peculiar to respective sectors. The key feature of corporate governance includes composition of board of directors, independent directors, multiple directorship, board of directors committee, accountability and transparency, and mandatory and self regulatory requirements of the provisions of the codes. It should be noted the major aspects that are relegated to the background in some of this codes is implementation and enforcement. The proliferation of codes of corporate governance in Nigeria (the SEC Code 2003 now 2011, the CBN Code 2006 (revised by the 2014

Code), PENCOM Code and NAICOM Code 2009) will impact negatively on the economy and affect both the enforcement and implementation in general and compliance in particular.

3.3.1 Mandatory Statutory Regime of Corporate Governance in the Nigerian Banking Sector

It is outside the scope of this work to attempt detailed consideration of the strict statutory regime of corporate governance in the Nigerian banking sector. However, it is not out of place to note the strict statutory regime.[298] It is not intended to make detailed analyses of the relevant statutory provisions. Thus the relevant statutory framework that impact or drive corporate governance systems in the Nigerian banking sector include:

a) Asset Management Corporation of Nigeria Act (AMCON),[299]
b) Banks and Other Financial Institutions Act (BOFIA),[300]
c) Bank Employees Etc (Declaration of Assets) Act (BEA),[301]
d) Central Bank of Nigeria Act (CBN),[302]
e) Companies and Allied Matters Act (CAMA),[303]
f) Financial Reporting Council of Nigeria Act (FRC),[304]
g) Investments and Securities Act (ISA),[305]
h) Nigeria Deposit Insurance Corporation of Nigeria Act (NDIC).[306]

[298] See above, p. 32.
[299] 2010.
[300] Cap B3 Laws of the Federation of Nigeria 2004.
[301] Cap B1, ibid.
[302] No 7, 2007.
[303] Cap C20, ibid.
[304] No 6, 2011.
[305] 2007.
[306] No 16, 2006.

However, the efficacy of the statutory regime is sharpened by the soft law regime, which performs gap filling role, by making provisions for areas left behind by the statutory regime.[307] To bring out the impact of statutory regime on corporate governance in the Nigerian banking sector, one can consider briefly BEA, BOFIA and CAMA.

(1) Specific Provisions of BEA

The overall objective of instituting and pursuing a sound system of corporate governance in companies is to discourage and fight insider related fraud. With respect to the Nigerian banking sector, the BEA constitutes one of the legal instruments to combat insider related fraud in banks. The principal object of the law is to regulate the lifestyle of bank employees by ensuring that they live within their means. Under this law, every employee of a bank must within 14 days of assuming duty make a full disclosure of all his assets in the manner prescribed in the Declaration of Assets Form and executed before and attested to by the Registrar of a High Court.[308] The declaration must include not only what the employee is owner qua owner, but whatever is held by him in trust for other persons, to the exclusion of a wife or a husband. On completion and execution, the employee shall submit the Form to the Chief Executive of his bank, who shall submit the Form, within the time limited by the Act, to the appropriate authority,[309] defined to be the Secretary to the Government of the Federation.[310]

The Act defines employee to include the governor, the chairman and members of the board, managing director, director, general manager, manager, examiner, inspector, controller, agent, supervisor, officer, clerk, cashier, messenger, cleaner, driver or any other category of workers of the CBN, a bank or other financial institutions of whatever title or designation, whether general or peculiar to the bank. In fact, employee includes a person engaged as part time, casual or temporary worker, for instance students on industrial attachment. It is however submitted that those undertaking their NYSC with a bank may not

[307]See below, "Soft law regime of corporate governance."
[308]Sections 1 and 2 BEA.
[309]Section 3, ibid.
[310]Section 15, ibid.

be included. The Act defines bank extensively to include the CBN, commercial banks, merchant banks, acceptance houses, discount houses, financial institutions or any other authorised dealer appointed under the Second-Tier Foreign Exchange Market Act.[311]The law created offences and provided penalties for any breach, which declares it an offence for a bank employee to own assets in excess of his legitimate, known and provable income and assets.[312]

As an instrument for maintaining a sound system of corporate governance in Nigerian banks, Goldface-Irokalibe[313] identified two commendable features of the Act, namely provision of stiff penalties for offences under the Act and portrayed the Act as an uncompromising weapon for fighting (insider related) banking fraud and its capacity to leach onto all illegitimately acquired and thus tainted assets of the employee convicted under the law. Onamson[314]added thatthe law is objectively intrusive as it punishes any person who acts as a front for any bank employee, or who does or omits to do anything or acts in a manner likely to defeat the objects of the Act. However, it has been decried that this instrument of corporate governance remained in the books and has never been given effect. Identifying the major source of the problem of non-implementation of the law Onamson states that:

> ...the choice of the secretary to the government of the federation (SGF) as the appropriate authority is a misplaced one. The office of the SGF is a political one, and to situate such powers in an official who ordinarily must be preoccupied with political trivialities and civil service chores meant that the law, *ab initio***,** was programmed for failure. Another knotty issue with this law is that it is the chief executive of the bank that must collect the forms and submit to the appropriate authority. In the meantime the chief executive must himself declare his assets.[315]

[311]Now repealed by Foreign Exchange (Monitoring and Miscellaneous Provisions) Act CAP F34 Laws of the Federation of Nigeria 2004.
[312]Section 7 BEA .
[313]Goldface-Irokalibe, I.J. (2007). Law of Banking in Nigeria. Lagos: Malthouse Law Books, p. 194.
[314]Onamson (2009). The Nation Newspaper.
[315]By Section 13 BEA, the Act is applicable to the Director, Deputy Director, Assistant Director, Chief Collector, Principal Collector, Collector and other officer, staff or employee of the Department of Customs and Excise and the President has powers to extend its application to any other private or public institutions in Nigeria. In line with this the Comptroller-General of Customs directed all officers to comply with the law. This is commendable and it is expected that the banks will take a cue to enhance corporate governance systems in the banks.

In other words, the major failing of the Act is the designation of the Secretary as the appropriate authority for the purposes of its implementation. Since the Governor and staff of the CBN are within the web of the law, the CBN cannot be the appropriate authority. This is similarly the case with respect to the nomination of the chief executive as the person administering the Asset Declaration Form each year on each and every employee of the bank. Preferably the company secretary or external auditors should assume the role of the chief executive under the Act. Equally, it is submitted that any amendment of the law should offer opportunity for a more comprehensive of the provisions including considering and making provisions for whistleblower protection provisions.[316]

(2) Specific Corporate Governance Provisions under BOFIA

The BOFIA is the principal legislation regulating banking and other financial institutions in Nigeria. One of the important role of the law is that it has provisions which are directed at promoting and encouraging a sound system of corporate governance in the Nigerian banking sector. Thus in order to combat the incidence of insider fraud, the lawprovides that a bank shall not without the prior approval in writing of the CBN permit to be outstanding, unsecured advances, loans or unsecured credit facilities, of an aggregate amount in excess of N50,000.00 to its directors or any of them whether such advances, loans or credit facilities are obtained by its directors jointly and severally.[317]Similarly, the law prohibits a bank from permitting to be outstanding, without prior written approval of the CBN, to its officers and employees, unsecured advances, loans or unsecured credit facilities, which in the aggregate for any one officer or employee, is an amount which exceeds one year's emolument to such officer or employee. In fact, it is a mandatory requirement of the law that any director of a bank who is interested in the grant of any facility or accommodation, whether overtly or covertly, must declare such interest, and to ensure compliance, the declaration shall be made or read at the board of directors meeting of the bank and

[316]Whistle blower provisions under the CBN Code are discussed in Chapter four.
[317]Section 20(2)(a)(i) BOFIA.

recorded in the minutes of meeting at which the declaration was made or read.[318] It is doubtful if these safeguards are complied with by the management of Nigerian banks, going by the details or stories surrounding some nonperforming loans of the failing banks.

Further another provision bordering on sound system of corporate governance ordains that a bank shall not, without the prior approval in writing of the Bank, grant to any person any advance, loan or credit facility or give any financial guarantee or incur any other liability on behalf of any person so that the total value of the advance, loan, credit facility, financial guarantee or any other liability in respect of the person is at any time more than twenty per cent of the shareholders fund unimpaired by losses or in the case of a merchant bank not more than fifty per cent of its shareholders fund unimpaired by losses; and for the purpose of this paragraph all advances, loans or credit facilities extended to any person shall be aggregated and shall include all advances, loans or credit facilities extended to any subsidiaries or associates of a body corporate.[319] Known as a single obligor rule the provision is directed at avoiding cases whereby a bank is overly exposed to a single company or individual because over-exposure to one borrower or corporate group can result in bank failure. In other words, the provision seeks to encourage even spread of risk. It also ensures that all the bank's eggs are not, as a matter mandatory regulatory stipulation,loaded in one basket. However, it would appear that the law did not provide against over-exposure in particular markets or economic sectors.

(3) Specific Corporate Governance Provisions under CAMA

Apart from devolving corporate powers between members in general meeting and the board of directors[320], CAMA specifically makes provisions respecting the management of companies including

[318]Section 18 BOFIA.
[319]Section 20, ibid.
[320]See section 63 CAMA. On corporate organisational structure under CAMAas against the Code Provision on organisational structure in the Nigerian banking sector, see below, Chapter four.

appointment, qualification, removal and composition of directors[321] and provisions on meetings. It makes provisions respecting appointment and qualification of external auditors.[322] This means that except an auditor or a director meets the requirement as to qualification. By way of comparison, the CBN 2006 Code made no provision respecting meetings. Since the CBN Code is silent on qualification of external auditors, the provision of CAMA in this respect will regulate it.

Specifically with respect to directors, the central governance role of the directors under CAMA is to promote the interest of the company as a whole. To procure the discharge of this central duty, the law places the directors in a fiduciary relationship towards the company. The first result of placing the directors in a fiduciary relationship is that the directors must always act bona fide in the interest of the company.[323] Although the fiduciary duty is not owed to the creditors where the company is a going concern,[324] it is not for individual advantage of the directors but for the interest of the company's employees and members.[325]

Generally, the fiduciary position of the directors is directed at procuring that they discharge their corporate governance-based duties of conflicts and interests,[326] which implies that the directors must not make secret profits or derive unnecessary benefits,[327] or mischievously misuse the property of the company.[328] It entails circumscribing the directors to their duty of care and skill,[329] itself implying that

[321]For instance, Sections 246, 257, 262 CAMA.
[322]For instance see sections 357 and 358, ibid.
[323]Peskin vs Anderson (2001) 1 BCLC 373.
[324]Multinational Gas and Petrochemical Co vs Multinational Gas and Petrochemical Services Ltd (1983) Ch 258.
[325]Section 279(4) CAMA; Okeowo vs Migliore (1979) 11 SC 138.
[326]Section 280 CAMA.
[327]Sections 280(2) and 287, ibid; Keech vs Sandford (1726) Sel Cas Ch 61; Bray vs Ford (1896) AC 44; and Regal (Hastings) Ltd vs Gulliver (1967) 2 AC 134.
[328]Cook vs Deeks & Ors (1916) 1 AC 554; Regal (Hastings) Ltd vs Gulliver (supra).
[329]Section 282 CAMA.

the directors must exhibit competence and reasonable care as they go about this duty[330] and avoid negligence and individual responsibility in the course of this duty.[331]

Further, the non-provision for meetings by the CBN Code exposes the naivety of its drafters as to the critical role of meetings as a veritable tool for procuring sound system of corporate governance in the Nigerian banking sector. Generally, there are various types of meetings ordained by CAMA. Thus, every public company (and all banks in Nigeria are in this category) must hold a statutory meeting within six months from the date of its registration.[332] Every company registered in Nigeria, whether public or private, must convene and hold annual general meeting once in each financial year.[333] The annual general meeting affords shareholders the opportunity to exercise their residual or interventionist powers as far as the management of the company is concerned. In critical situations the board of directors, or a member or members who meet the shareholding threshold, can convene an extraordinary general meeting.[334] The board of directors hold meetings where resolutions are considered and taken for the purpose of discharging their duties to the company. Every director must be served with notice of the meeting[335] and non-service vitiates the transactions at such directors' meeting.[336]

3.3.2 Soft Law Regime of Corporate Governance – the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 vis-a-vis the Code of Corporate Governance for Banks and Discount Houses 2014

[330]As to the standard for measuring this duty, see Re City Equitable Fire Insurance Co Ltd (1925) 1 Ch 407 and Shonowo vs Adebayo (1969) 1 All NLR 170. Compare Re Barings Plc & Ors (No. 5) (1999) 1 BCLC 433.
[331]Ashurst vs Mason (1875) LR 5 Ch App 763. For cases where negligence can give rise to derivative action suit, see section 300(f) CAMA and Foss vs Harbottle (supra).
[332]Section 211 CAMA.
[333]Section 213, ibid..
[334]Section 215, ibid.
[335]Section 266, ibid.
[336]Longe vs FBN plc (supra).

In Nigeria, the soft law regime of corporate governance in the banking sector is marked by general application codes and industry-specific code. The SEC Code of Corporate Governance for Public Companies in Nigeria is an example of general application and outside the scope of this work. On the other, the CBN Code of Corporate Governance for Nigerian Banks Post Consolidation 2006 (and the Revised Code) is an industry-specific Code and the central theme of this work. The most typical method of ensuring good corporate governance reforms in most countries is through the innovation of corporate governance codes which supplement existing corporate law. Corporate governance codes are documents which state the rules and procedures for governing and managing corporations.[337] Nations around the world have instigated far reaching programmes for corporate governance reform for some years now, as evidenced by the proliferation of corporate governance codes and policy documents, voluntary or mandatory both at national and international levels.[338]

In Nigeria, the banking Sector is regulated and governed by the Code of Corporate Governance for Banks and Discount Houses 2014 having replaced the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006. The CBN Code 2006 is divided into two parts respectively. The Code goes further to highlight fifteen weaknesses in corporate governance, sixteen challenges of corporate governance and eighteen principles of best practice for banks post consolidation. It was developed to complement the existing codes and enhance their effectiveness in the banking sector amidst its challenges. Its application is for all the banks in Nigeria. Prior to the enactment of the Code of Corporate Governance, there were

[337]Dabor, E.L. & Adeyemi, S.B., (2009). Corporate Governance and the Credibility of Financial Statements in Nigeria. In: Ayodele, A.A (Ed) Corporate Governance Reforms in Nigeria:Challenges and Suggested Solutions, Industrial Management Department, Yanbu Industrial College, Yanbu AL-Shinaiyah, Kingdom of Saudi Arabia, *Journal of Business Systems, Governance and Ethics*, 6(1): 39.
[338]Jill Solomon, *Corporate Governance and Accountability*, John Wiley & Sons Ltd, United Kingdom, 3rd Edition, 2010, p.4.

in existence various and disparate codes of corporate governance which regulated the activities of banks in Nigeria. However, as admitted by the CBN, these codes were manifestly ineffective and inadequate.[339]

Part 1 contains the Need for a New Code of corporate Governance and the Weakness of Corporate Governance while Part 11 deals with Code of Best Practices on Corporate Governance, Code of Corporate Governance Practices for Banks Post Consolidation, Industry, Transparency, Due Process, Data Integrity and Disclosure Requirement and the Role of Auditors. Its compliance is mandatory for all commercial (Money Deposit) Banks to include: Access Bank, Citibank, Diamond Bank, Ecobank Nigeria, Enterprise Bank Limited, Fidelity Bank Nigeria, First Bank of Nigeria, First City Monument Bank, FSDH Merchant Bank - Merchant Bank, Guaranty Trust Bank, Heritage Bank Plc, Keystone Bank Limited, Mainstream Bank Limited, Rand Merchant Bank- Merchant bank, Savannah Bank, Skye Bank, Stanbic IBTC Bank Nigeria Limited, Standard Chartered Bank, Sterling Bank, Union Bank of Nigeria, United Bank for Africa, Unity Bank Plc, Wema Bank and Zenith Bank.

Part 1 enumerates the weaknesses in corporate governance of banks in Nigeria to include: disagreements between board and management giving rise to board squabbles, ineffective board oversight functions, fraudulent and self serving practices among members of the board, management and staff, overbearing influence of chairman or MD/CEO, especially in family-controlled banks, weak internal controls, non-compliance with laid down internal controls and operation procedures, ignorance of and non-compliance with rules, laws and regulations guiding banking business, passive shareholders, poor risk management practices resulting in large quantum of non-performing credit including inside-related credits, abuses in lending in excess of single obligor limit, sit-tight directors-even where such directors fail to make meaningful contributions to the growth and development of the bank, succumbing

[339]Wilson, I., (2006). Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Banking Consolidation*, Nigerian Economic Summit Group (NESG) Economic Indicators*, 12(2): 1 Retrieved from http://iiste.org/journals/index.php/RJFA/article/viewfile/183/67 accessed 15/5/2014.

to pressure from other stakeholders e.g. shareholder's appetite for high dividend and depositors quest for high interest on deposits, technical incompetence, poor leadership and administrative ability, inability to plan and respond to changing business circumstances and ineffective management information system.[340]

The Code further emphasize the challenges of corporate governance for banks in Nigeria post consolidation to include technical incompetence of the board and management, relationships among directors, relationship between management and staff, increased level of risks, ineffective integration of entities, poor integration and development of information technology systems, accounting systems and records, inadequate Management capacity, resurgence of high level malpractices, insider-related lending, rendition of false returns, continued concealment, ineffective board/statutory audit committee, inadequate operational and financial controls, absence of a robust risk management system, disposal of surplus and transparency and adequate disclosure of information.[341]

Under Part 11 which deals with Code of Best Practices on Corporate Governance is further subdivided into sub heads such as Principles and Practice that Promote Good Corporate Governance,[342] Code of Corporate Governance Practices for Banks Post Consolidation,[343] Industry, Transparency, Due process, Data Integrity and Disclosure Requirement,[344] Risk Management[345] and Role of Auditors.[346] Suffice it to say that some of the features of the Code under Part 11 which are also embedded in the CBN Code 2014 but with great improvement include:

[340]Part 1, Code Provision 2.1 – 2.15 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.
[341]Code Provision. 3.1 – 3.16 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.
[342]Part 11, Code Provision 4.0, Ibid.
[343]Part 11, Code Provision 5.0,Ibid.
[344]Part 11, Code Provision 6.0, ibid.
[345]Part 11, Code Provision 7.0, Ibid.
[346]Part 11, Code Provision 8.0, Ibid.

a) Principles and Practice that Promote Good Corporate Governance.[347] Some of this principles include installation of a committed and focused board of directors which will exercise its oversight functions with a high degree of independence from management and individual shareholders, a proactive and committed management team, a well defined and acceptable division of responsibilities among various cadres within the structure of the organisation, the balance of power and authority so that no individual or coalition of individuals has unfettered powers of decision making, the number of non executive directors should exceed the number of executive directors, responsive, responsible and enlightened shareholders, a definite managementsuccession plan and external and internal auditors of high integrity, independence and competence.

b) Equity Ownership.[348] As a result of abuses on non-restrictive shareholding by individual, family members and government, private sector-led economy holding is also encouraged.[349] Government direct and indirect equity holding in any bank is limited to 10%[350] and equity holding above 10% by any investor is subject to CBN's prior approval.[351] Under the CBN Code 2014, an equity holding of any investor is reduced to 5% and above as against 10% subject to the CBN's approval. Where such shares are acquired through the capital market, the bank shall apply for a no objection letter from the CBN immediately after the acquisition.[352]

[347]Part 11, Code Provision 4.1 – 4.18, ibid; Provision 3.2.1 – 3.2.2 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[348]Part 11, Code Provisions 5.1 – 5.3 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.
[349]Part 11, Code Provision 5.1.1, ibid.
[350]Part 11, Code Provision 5.1.2, ibid.
[351]Part 11, Code Provision 5.1.3, Ibid; Provision 3.2.2 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014
[352]Provision 3.2.1 2 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

c) Executive Duality.[353] The responsibilities of the Chairman, head of the Board is to be clearly separated from that of the head of management, such that no one individual /related party has unfettered powers of decision making by occupying two positions at the same time.[354] No two members of the same extended family should occupy the position of chairman and executive officer or executive director of a bank at the same time.[355] In other words, there must exist a separation of power.[356] Provision 2.3.2[357] provides that where the bank is a member of a holding company, not more than two extended family members shall be allowed to serve in the boards of the bank and the holding company.

d) Quality of Board Membership.[358] Institutions must be headed by an effective board composed of qualified individuals that are conversant with its oversight functions,[359] who must undergo regular training.[360] The number of non executive directors should be more than that of executive directors subject to a maximum board size of twenty directors.[361] Two non executive directors at least must be independent directors appointed by the bank on merit[362] who do not represent any particular shareholder interest and hold no special business interest with the bank.[363]Provision 2.7.4[364]enjoins banks to have remuneration policy which shall be disclosed to

[353]Part 11, Code Provision 5.2 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006; Provision 2.3.1 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014

[354]Part 11, Code Provision. 5.2.1, ibid; Provision 2.3.3 of the Code of Corporate Governance for Banks and Discount Houses 2014.

[355]Part 11, Code Provision 5.2.3, Ibid.

[356]Part 11, Code Provision 2.3 of Code of Corporate Governance for Banks and Discount Houses, May 2014.

[357]ibid.

[358]Part 11, Code Provision 5.3 of Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[359]Part 11, Code Provision 5.3.1, Ibid; Provision 2.2.2 of Code of Corporate Governance for Banks and Discount Houses 2014.

[360]Part 11, Code Provision. 5.3.3,ibid.

[361]Part 11, Code Provision 5.3.5,Ibid; Provision 2.2.3 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014

[362]Part 11, Code Provision 5.3.6, ibid; Provision 2.2.4 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[363]Part 11, Code Provision 5.3.6, ibid.

[364]Code of Corporate Governance or Banks and Discount Houses in Nigeria 2014.

the shareholders in the annual report. Remuneration of executive directors is to be determined by a committee of non-executive directors.[365]Executive directors' shall not receive sitting allowance and director's fees[366] and non-executive directors' remuneration shall be limited to directors' fees, sitting allowances for board and board committee meetings and reimbursable travel and hotel expenses. They shall also not receive benefits, salaries etc whether in cash or in kind, other than those mentioned above.[367] Where there is e remuneration committee, the membership should comprise Non-Executive Directors only while the Board Governance and Nomination Committee shall have a combination of Executive and Non Executive directors. However, where both committees are combined, its membership shall be drawn only from Non Executive directors.[368]Failure to comply strictly with the existing Code of Conduct for bank Directors will lead to the imposition of sanction including removal of erring director from the board.[369] Non-executive directors are to remain on the board of a bank continuously for more than 3 terms of four years each to ensure both continuity and injection of fresh ideas.[370]

e) Industry Transparency, Due Process, Data Integrity and Disclosure Requirement.[371] Full disclosure of service providers or suppliers should be made to the CBN.[372] Both the CEOs and the Chief Finance Officer of banks should certify on each statutory return submitted to the CBN attesting to the effect that, as signing officers, they have reviewed the reports; that the reports does not contain any untrue statement of a material fact and that the information in the

[365]Part 11, Code Provision 5.3.7, Ibid; Provision 2.7.5 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[366]Provision 2.7.6 of the Code of Corporate Governance or Banks and Discount Houses in Nigeria 2014.
[367]Provision 2.7.7 2 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014 .
[368]Provision 2.7.12, ibid.
[369]Part 11, Code Provision 5.3.8 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006.
[370]Part 11, Code Provision 5.3.10, Ibid.
[371]Part 11, Code Provision 6.0,ibid; Provision 5.0 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[372]Part 11, Code Provision 6.1.2 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

financial statement fairly represent, all material respects for the periods presented in the report.[373] False rendition to CBN shall attract very stiff sanction of fine plus suspension of the CEO for six months and thereafter removal and blacklisting. Erring staff are also to face the professional disciplinary body.[374]The Revised Code 2014 encourage banks to make robust disclosure beyond the statutory requirements in BOFIA 1991 as amended, CAMA 1990 and other applicable laws in order to foster good corporate governance.[375] The material information t be contained in the annual reports include but not limited to major items that have been estimated in accordance with applicable accounting and auditing standards; rationale for all material estimates; details of directors (the bank's remuneration policy for members of the board and executives, total Non-EDs remuneration including fees, total executive compensation, board of director's performance evaluation, details of directors, shareholders and their related parties etc); corporate governance (governance structure and composition of board committees including names of chairman and members of each committee); risk assets (concentration of assets, liabilities and off balance sheet engagements by sector, geography and product, loan quality, related party transactions, insider-related credits in accordance with the extant CBN circular); risk management (all significant risks and risk management practices indicating the board's responsibility for the entire process of risk management as well as a summary of external auditors' observed lapses thereon); information on strategic modification to the core business; all regulatory/supervisory contraventions during the year under review and infractions uncovered through whistle blowing, including actions taken thereon; regulatory sanctions and penalties; capital structure/adequacy; any service contracts and other contractual relationships with related parties; frauds and forgeries; contingency planning framework and any matter not

[373]Part 11, Code Provision 6.1.3 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.
[374]Part 11, Code Provision 6.1.4, ibid.
[375]Provision 5.1.1 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

specifically mentioned in this code but which is capable of affecting in a significant form, the financial condition of the bank or its status as a going concern[376]

Furthermore, all insider applications pertaining to directors and top management and parties related to them, irrespective of size, should be sent for consideration and approval to the Board Credit Committee.[377] This Board Credit Committee shall have neither chairman nor MD as chairman[378] and must be composed of members knowledgeable in credit analysis. The Chief Compliance Officer and the CEO of each bank must certify each year to the CBN that they are not aware of any other violation of the corporate governance code apart from 6.1.14.[379] The practice of the board chairman serving simultaneously as chairman/member of any of the board committees is against the concept independence and sound practice of corporate governance and should be discontinued.[380]

f) Whistle Blowing.[381] Banks are to establish whistle blowing procedures to encourage all stakeholders to report any unethical activity/ breach of the corporate governance code using among others, a special email or hotline to both the bank and the CBN. This is a mechanism for implementation. However, the Code made no provision for the protection or reward of the whistle blowers.

As specified in S.3.3 and 3.4 of the Whistle Blowing Guidelines May 2014, the CBN has provided an email address: anticorruptionunit@cbn.gov.ng for whistle blowing reports to the CBN. It is also stated that the Code of Corporate Governance for Banks and Discount Houses May 2014 supersedes the one issued in

[376]Part 11, Code Provision 5.3.7, Ibid; Provision 5.1.2 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[377]Part 11, Code Provision 6.1.6 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006.
[378]Part 11, Code Provision 6.1.7, ibid.
[379]Ibid.
[380]Part 11, Code Provision 5.3.13, ibid.
[381]See below, Chapter Four "Code Provision on Whistle Blowing"

March 2006 and the Whistle Guidelines shall be deemed to take effect from October 1, 2014.[382] Under the new code,[383] the policy shall contain mechanism, including assurance of confidentiality that encourages all stakeholders to report any unethical activity to the bank and/or the CBN. A whistle blower is a person (s) including the employees, management, directors, depositors, service providers, creditors and other stakeholders of an institution who reports any form of unethical behaviour or dishonesty to the appropriate authority.[384]

The procedure for whistle blowing are contained in SS.3.1 – 3.8 under the Code of Corporate Governance for Banks and Discount Houses, May 2014; while SS. 4.1 – 4.2 contains the provisions for the protection of the whistle blower. S.2 deals with the scope of the policy, whistle blowing to include amongst others:

i) All forms of financial malpractice or impropriety or fraud;

ii) Failure to comply with the obligation or statutes;

iii) Action detrimental to health and safety or the environment;

iv) Any form of criminal activity;

v) Insider abuses, non disclosure of interest connected transactions etc.

g) Risk Management.[385] Banks should also put in place a risk management framework including a risk management unit, headed by a Senior Executive, and must be in line with the directive of the Board Risk Management Committee.[386] External auditors should render reports to the CBN

[382]Introduction to Guidelines for Whistle Blowing for Banks and Other Financial Institutions in Nigeria, May 2014, p.3.
[383]Code Provision 5.3.2, Code of Corporate Governance for Banks and Discount House, May 2014.
[384]Introduction to Guidelines for Whistle Blowing for Banks and Other Financial Institutions in Nigeria, May 2014, p.3.
[385]Part 11, Code Provision 7.0, Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006; Provision 6.1.1 – 6.1.9 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[386]Part 11, Code Provision 7.1.2 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

on banks' risk management practices, internal controls[387] and level of compliance with regulatory directives.[388]

More elaborate is Provision 6.0 of the Revised Code 2014. It stipulates that every bank shall have a risk management framework specifying the governance architecture, policies, procedures and processes for the identification, measurement, monitoring and control of the risk inherent in its operations.[389] The board shall satisfy itself that management has developed and implemented a sound system of risk management and internal control.[390] Risk management policies shall reflect the bank's risk profile and appetite and clearly describe all elements of the risk management as well as its internal control system, and clearly describe the roles and responsibilities of the board, Bank Risk Management Committee (BRMC), management and internal audit function.[391] The composition of the BRMC includes at least two (2) Non-Executive directors and the executive director in charge of risk management but must be chaired by a Non-Executive director.[392]

h) Internal Auditors.[393] Internal auditors are to be largely independent, highly competent and people of integrity.[394] The head of the Internal Audit is to report directly to the Board Audit Committee while forwarding a copy of the report to the MD/CEO of the bank.[395] The Audit

[387]Part 11, Code Provision 7.1.3 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation; Provision 6.1.9 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[388]Part 11, Code Provision 7.1.4 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006.
[389]Provision 6.1.1 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[390]Provision 6.1.2, ibid.
[391]Provision 6.1.5, ibid.
[392]Provision 6.1.8, ibid.
[393]Part 11, Code Provision 8.1.0 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006.
[394]Part 11, Code Provision 8.1.1, ibid.
[395]Part 11, Code Provision 8.1.4, Ibid.

Committee will be responsible for the review of the integrity of the bank's financial reporting and oversee the independence and objectivity of the external auditor.[396]

i) Sanction.[397] Returns on the status of each institution's compliance with the code is to be rendered to the CBN at the end of every quarter or as may be specified from time to time by the CBN.[398] Compliance with the provisions of the code is mandatory.[399] Failure to so comply will attract appropriate sanction in accordance with S. 60 of BOFIA 1991 as amended or may be specified in any applicable legislation or regulation.[400]

These are compelling features of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, but there are questions. How practicable are these features? What is the level of compliance? How competent and knowledgeable are those to be appointed into various positions as contained in the Code? To what extent are the auditors independent? How competent are the auditors? Are they not given money in form of bribes in envelopes to cook and give false representation of accounts? Outside the competence of the board, other major determinants of corporate governance are board diversity, compliance with corporate governance code, laws and regulations, implementation and enforcement. To proffer answers to the above raised questions, the researcher shall consider the roles/legal mandates of the key functionaries of corporate governance, implementation and enforcement.

3.4 The Implementation of Corporate Governance in the Nigerian Banking Sector

[396]Part 11, Code Provision 8.1.5 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.
[397]Provision 8.0 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[398]Provision 8.1.2 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014. Code Provision 5.1.15 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006.
[399]Prosion 8.1.1 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014; Code Provision 6.1.14 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006.
[400]Provision 8.1.3 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

Implementation ensures that the organisation's goals, aims, mission and objectives are achieved. Every good implementation entails a review of the internal power process, behavioural patterns and output of organisational members.The implementation of the CBN Code of Corporate Governance for Banks in Nigeria was faced with series of challengeswhich are considered in the next chapter of this work. Meanwhile, it is sought to identify and consider specific provisions of the CBN Code of Corporate Governance for Nigerian Banks 2006 Post Consolidation with the view to discovering the extent Nigerian banks have been faithful in implementing the provisions.

3.4.1 Code Provision on Organisational Structure

The CBN Code of Corporate Governance for Banks Post Consolidation states that:

> The responsibilities of the head of the Board, that is the Chairman, should be clearly separated from the head of Management, i.e. MD/CEO, such that no one individual/related party has unfettered powers of decision making by occupying the two positions at the same time. No one person should combine the post of Chairman/Chief Executive Officer of any bank. For the avoidance of doubt, also no executive vice-chairman is recognised in the structure. No two members of the same extended family should occupy the position of Chairman and that of Chief Executive Officer or Executive Director of a bank at the same time.[401]

How do the above provisions pan out in practice? First the wisdom behind the above provisions should not be lost. It is directed at ensuring that power is not concentrated in one person with the tendency that the person will grow so powerful as to overpower the control of the board. This is a present danger considering that (even in situations where the positions are kept separate) the probability of the Chief Executive Officer capturing and pocketing the board is always high. This explains why the board of Nigerian banks in many cases are negatively active, which effectually compromises the arm's length model of boards. With this state of affairs, the atmosphere at board meetings will be characteristically one of "courtesy, politeness and deference at the expense of truth and frankness..., reflecting a general

[401]Code Provision 5.2.1, 5.2.2 and 5.2.3 of the CBN Code 2006.

reluctance of confronting a CEO regarding management decisions, which is seen as both a symptom and cause of failure in the control system."[402]

Fundamentally, the CBN Code provision on organisational structure fell short of the basic statutory prescription in this direction. To this extent, it stands in sharp contrast to the provisions of CAMA on structural patterns of companies in Nigeria, of which banks are included. Thus, the corporate organisational structure, the statutorily prescribed framework for giving effect to the objects of the company,[403] since the company, though a legal person has no mind of its own,[404] is made up of three principal organs. These are the members in general meeting, the board of directors and the executive management, headed by the Managing Director. At this juncture, it is apposite to consider, briefly, the role and relevance of the three principal organs of the company; in our case Nigerian banks, as far as corporate governance is concerned. This will be undertaken with the view to discovering whether the non-inclusion of the members in general meeting by the CBN Code provision on organisational structure is justified by any reason.

(1) Members in general meeting

The body of members in general meeting play significant corporate governance role as far as managerial misbehaviour is concerned. Their role is remedial, because the cases in which they can interfere with the governance of the bank is restrictively understandable. Accordingly, where the members of the board of directors become disqualified under the law[405] or where there is deadlock making it impracticable to conduct the business of the company[406] or where the entire members of the board are dismissed.[407] By

[402]Jensen, M.C., (1993), "The Modern Industrial Revolution, Exit and the Failure of Internal Control Systems" *Journal of Finance*, 48:3, p. 863. In: Marnet, O., (Ed) Behaviour and Rationality in Corporate Governance, Routledge, London, 2008, p. 132.
[403]Onamson, F.O. (2011). A Critical Appraisal of Remedies for Corporate Maladministration under Companies and Allied Matters Act 2004. LL.M Thesis. Faculty of Law, Ahmadu Bello University, Zaria, Nigeria, p. 21.
[404]Lennards Carrying Co Ltd vs Asiatic Petroleum Co Ltd (1915) AC 705; HL Bolton (Engineering) Co Ltd vs TJ Graham & Sons Ltd (1957) 1 QB 159.
[405]Section 63(5)(a) CAMA.
[406]Barron vs Potter (1914) 1 Ch 895.
[407]Section 262 CAMA.

reason of the remedial nature of the powers, it has been decried that members in general meeting do not have any meaningful role to play in governance of banks since the directors are not bound to obey or carry out the instructions of the members in general meeting.[408]

However, it is not totally correct to insist that members do not play corporate governance role in the management of Nigerian banks. As pointed out, the other organs (board of directors and executive management) in disobeying the instructions and directors of the members in general meeting must have exercised their power intra vires the CAMA or the articles and must have done so in good faith which reflected the degree of care that a prudent person would take in the circumstances. In other words, where the other organs "acted bona fide and with due diligence and the action amounted to disobedience of instructions or directions of members, the only sense that... can be made of such a situation is that the members desired the corporate management (that is the board of directors and executive management) to commit an unlawful act, since an act cannot be bona fide and mala fide at the same time."[409]

(2) Board of Directors, headed by the Chairman

The CBN Code on organisational structure merely provided for the separation of the responsibilities of the head of the Board from that of the head of the executive management. Generally, the board is responsible for corporate strategy, vision and direction of the bank. The Board generates the drive on which growth of the bank depends. The board, therefore, is the watchdog against corporate maladministration. It is placed in an intermediating position in which it must impartially manage the tension between the investors and the executive management.

In this fundamental role, the board may be negatively or positively active. Where the board is negatively active, there is collusion and unholy alliance between it and the executive arm to pillage and outstrip the

[408]Section 63(4), ibid.
[409]Onamson, op cit, p. 23.

company.[410] For example, an incidence of negative activity with respect to the role of the board played itself out in a case where the assets of the company were grossly undervalued. The directors caused the company to sell it to one of their own. Four years later, the director caused the company to repurchase the land at twenty eight times the amount it was sold to the director.[411]

On the other hand, the board might be positively active in the discharge of its role. In this case, the role of the board becomes positively reinforcing as far as corporate governance in the bank is concerned. Accordingly, the executive management will be kept on its toes while the investors can go home with the confidence that their investments are in safe hands. This must have informed the basis of the law in preventing members from interfering in the corporate governance of the bank. However, it has been observed that the board might be overly and impatiently active in its bid to cure gross executive infraction resulting in Longe Effect.[412] This refers to a situation where the board insistent and determined on punishing managerial slack or opportunism, commits a fundamental breach of due process leading to unpalatable results against the victim company.

Critically, the CBN Code provision failed to impact on the statutory provision respecting board of directors. It did not state matters which are or should be reserved for the board as against those that should be reserved for the executive management. This is not different from the non-provision for members in general meeting. In fact the failure to provide distinctly the responsibilities of the chairman of the board as against the managing director is a serious drawback for corporate governance in Nigerian banks. Without more, the Code creates room for possible exploitation by unconscionable players in the governance of the banks, depending on where the real power lies. If the power lies with managing director, critical decision points could be devolved to him. This effectively leaves the chairman as a lame duck sitting officer.

(3) Executive Management, headed by the Managing Director

[410]Onamson, ibid, p. 26.
[411]Daniels vs Daniels (1978) Ch 406.
[412]Onamson, op cit, p. 26; Longe v FBN Plc (2010) 6 NWLR (Pt 1189) 1 SC.

As noted earlier, the CBN Code recognises the position of the managing director/chief executive officer as the head of the executive management. However, it did not make any provision respecting the position of executive directors and other officers of the company who are involved in the management and administration of the company. Such other officers, rightly recognised under CAMA with corporate governance responsibilities, include the manager[413] and secretary.[414] The role of the manager cannot be lightly esteemed because in some cases he could be under the same fiduciary duties to the company as a director.[415] Although the secretary owes no fiduciary duties to the company, where he acts as the company's agent fiduciary responsibilities will attach to him. In other words, the secretary can act for, and be able to lawfully bind, the company.[416]

Generally, the managing director is a person to whom the board may delegate all or any of its powers.[417] Although appointment as a managing director is not automatic,[418] one must first of all be a director before he can be subsequently appointed a managing director. However, this does not mean that one can be a director and a managing director at the same time. Both offices cannot be held concurrently by one person.[419] In other words, one is either a director qua director or a managing director.

As to the office of executive directors, the position of the law is that there is no provision for non-executive directors as the statutory definition of directors, per Oguntade JSC, "does not recognise the nomenclature raised by the Court below as between executive and non-executive directors". Despite the position of the Court, the appointment of the executive director is usually contractual, the terms of which may be fixed by the articles and complemented by a separate employment contract.[420]

---

[413]Section 567 CAMA.
[414]Section 293, ibid.
[415]Green vs Bestobel Industries Pty Ltd (1982) WAR 1.
[416]Panorama Developments (Guildford) Ltd vs Fidelis Furnishing Fabrics Ltd (1971) 2 QB 711.
[417]Section 64(b) CAMA; Nelson vs James Nelson & Sons Ltd (1914) 2 KB 770.
[418]Orojo, J.O. (2008). Company Law and Practice in Nigeria, 5th edition. Durban: Lexis, p. 261
[419]Longe vs FBN plc (2006) 3 NWLR (Pt 967) 263.
[420]Yalaju-Amaye vs AREC Ltd (1992) 4 NWLR (Pt 145) 422; Iwuchukwu vs Nwizu (1994) 7 NWLR (Pt 357) 379.

Citing sections 64(b), 282(4) CAMA and English Companies Act 1985, Onamson believes that the non-provision for executive directors under CAMA might not have been the intention of the legislature in all probability.[421] However viewed, the position remains that the executive director is a member of the board of directors and has the collective duty of the management of the company.[422] Potentially therefore he can be a source of managerial profusion. This is why the non-provision for their position and role under the CBN 2006 Code is indeed a serious drawback of the Code.

(4) Shortcoming of the Code Provision on Organisational Structure

From the foregoing it is clear that the CBN Code provision on organisational structure has failed in its task of filling any gap which the statute must have left. Instead, it is replete with gaps which cannot make for sound corporate governance regime in the banking sector. Thus, apart from the problem of board capture which could whittle the corporate governance efficacy of the Code Provision, the CBN might run into troubled waters if it purports to enforce the provision. This is because the Code Provision offends the express provisions of CAMA which allows directors to elect one of their own to the office of the Managing Director.[423]

Furthermore, the law without limiting any director likely or capable of being appointed provides that the board shall elect one of their own as the chairman at board meetings.[424] Further, the statutory regime allows for multiple directorships[425] that the Code abhors. These contradictions introduce uncertainty into the extent of practicality of the Code. This means that the CBN must be ingenious in enforcing the provisions of the Code on organisational structure. This ingenuity will make it difficult for the banks to the use law to evade the provisions.

(5) The Relevance of the CBN Code Provision on Organisational Structure

[421]Onamson, op cit, pp 28-30.
[422]Olufosoye vs Fakorede (1993) 1 NWLR (Pt 272) 747.
[423]Section 64 CAMA.
[424]Section 263(4), ibid.
[425]Section 281, ibid.

However, the above shortcomings should not rub off on the import and relevance of the role of code of corporate governance, irrespective of the culture, is to perform a gap filling role by providing watertight protection to the investors.For example, the law (external rule) provides for disclosure, duties of directors and provisions respecting protection of minorities. On the other hand, regulations (the national codes like the CBN Code of Corporate Governance for Banks Post Consolidation 2006[426]and the SEC Code of Corporate Governance for Public Companies in Nigeria 2011),[427] preferring substance over form, will go to the details and specifics of these provisions and so clear any doubt as to its application and applicability:

> For example, the law provides that the managing director should come from the body of the directors,[428] and equally gives the directors free hand to elect a chairman of their meetings and determine the period for which he is to hold office.[429] This means that in fact and in law, there is nothing wrong having one person holding both positions. However, the code (a regulation) will insist that doing that will amount to over concentration of power in one individual and thus will insist that the two offices have to be kept distinct and separate.[430]

This layer-filling role elevates corporate governance and makes it a holistic concept. Secondly, as to national codes, this includes the Codes of various industry-specific regulators, likethe SEC Code of Corporate Governance in Nigeria 2011; extant CBN Code of Corporate Governance for Banks and Discount Houses; and Code of Corporate Governance for Licensed Pension Operators by the National Pension Commission (PENCOM). The SEC Code 2011 is an improvement to its forbear, the 2003 Code, as it applies to all public companies in Nigeria. However, the level of compliance with the Code depended on whether the company is a publicly quoted entity or not. Where it is the former, it must comply compulsorily with the principles and provisions of the Code as a minimum standard of corporate

[161]There is now Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[162]The Financial Reporting Council of Nigeria recently released, among other National Codes, "**Exposure Draft of National Code of Corporate Governance (Private Sector Code) 2015.** It is yet to come into effect and when it does, it is expected to replace all existing industry-specific codes in the country, including the CBN Code.
[163]Section 64(b) CAMA.
[164]Section 263(4) CAMA.
[165]Onamson, op cit, p. 148.

behaviour. Where it relates to a public company which is not quoted but which seeks to raise funds from the capital market, it must demonstrate sufficient compliance with the principles and provisions of the Code.

However, as between the SEC Code 2011 and the CBN Code of Corporate Governance for Banks and Discount Houses 2014 (which reviewed and replaced the CBN Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006), which should take precedence? It is thus submitted that the multiplicity of codes in corporate governance in Nigeria has made the corporate governance climate unwieldy and disjointed. In order to bring sanity in the system, the Directorate of Corporate Governance was established pursuant to the relevant Act.[431] Among others, the objectives of the Directorate include to develop principles and practices of corporate governance; promote the highest standards of corporate governance, encourage sound systems of internal control.[432] To achieve these objectives, the Directorate is seized with the functions of assessing the need for corporate governance in the public and private sector, issuing the code of corporate governance and guidelines, developing a mechanism for periodic assessment of the code and guidelines.[433]

Initially, it is hoped that the regulatory agencies will forge a common front and work for the institutionalisation of uniform code of corporate governance in Nigeria. However, the recent events between the Central Bank of Nigeria and the Financial Reporting Council of Nigeria (FRC) tended to show that we are yet to commence the journey towards nationally accepted and harmonised corporate governance code like that of the UK Combined Code 2008. In late October 2015 the FRC cited Stanbic-IBTC Bank for misstatements in its financial statements and, in exercise of its powers, imposed penalty on the bank and suspended the licence of the auditing firm that prepared the financial statement. However, the CBN incongruously reversed the FRC ruling and encouraged the erring bank to not comply with the penalty. Subsequently, the bank went to the court to challenge the validity of the penalty and

[166]Part VI Directorate of Corporate Governance, Financial Reporting Council of Nigeria (FRC) Act (No 6) 2011.
[167]Section 50(a)-(g) FRC Act 2011.
[168]Section 51(a)-(e) FRC Act 2011.

the powers of the FRC to make the ruling and impose the fines. The action of the CBN was in bad taste and stands to be deplored.

3.4.2 Code Provision on Quality of Board Membership

The Management and Boards of Banks are expected to be composed of men of character, responsibility and professionalism. Against this background the CBN Code provides among others that:

> Institutions should be headed by an effective board composed of qualified individuals that are conversant with its oversight functions. Regular training and education of board members on issues pertaining to their oversight functions should be institutionalised and... the Board should have the latitude to hire independent consultants to advise it on certain issues.[434]

The above Code provision is informed by the need to ensure that the Banks have the right skills set at the highest level at all times. It is directed at discouraging managerial slack, which is defined lapses in managerial competence or effort, managerial entrenchment or empire building, and excessive managerial compensation consumption.[435] Practically, it is doubtful if the Code Provision has been brought to bear in the activities of the banks. For instance, in 2009 the Nigerian banking crisis decimated the psyche of Nigerian banks, imploded some of them and left others scavenging for survival. The crisis in large measure has been traceable to failure of corporate governance in the banking sector, of which the management and boards of the banks are unfortunately complicit.

3.4.3 Code Provision on Risk Management System

Risk management represent one of the most visible indications for the practice and implementation of the code of corporate governance in banks post consolidation. This is because the intractable problem of risks and uncertainties has been the greatest challenge to humanity on this planet from time

[434]Code Provision 5.3.1, 5.3.3 and 5.3.4 CBN Code 2006.
[435]Traintis, G.G. and Daniels, R.J., (1995), "The Role of Debt in Interactive Corporate Governance" California Law Review Vol. 83 p. 1073. Available online at http://repository.upenn.edu/law_series/12 (Accessed 15/04/2014).

immemorial.[436] This problem has remained unresolved despite the great advances that we have witnessed in the areas of science and technology over the years. Dionne defines risk management as "a set of financial or operational activities that maximise the value of a company or a portfolio by reducing the costs associated with cash flow volatility". This means that risk is an opportunity. If risk is an opportunity, it means it is inherent in business for without an opportunity, no business has hope of a better future. In this light, Smerdon states that:

> ... we are in business to take risks; a company takes risks to pursue opportunities to earn returns for its owners. Striking a balance between risk and return is the key to maximising shareholder value. Risk when it is well managed is a good thing. Risk management is the systematic addressing of the dangers associated with achieving an advantageous balance of risks and reward.[437]

On the other hand, management refers to the process of organising and controlling the affairs of a business. Taking together, one can define risk management as the methods, ways, means and processes by which a bank control risks which attend to its business and in so doing attempt to balance the possibility of gains for the business. This definition establishes a causal link between corporate governance, which is concerned with yielding positive returns to the investors and risk management which has to do with controlling events to assure the desired result. Thus, risk management is central to good corporate governance. To underscore this centrality, extant codes of corporate governance have recognised this and have encouraged proper management of risk.

For instance the UK Combined Code 2006 Code Provision 2.1 states that "the board should, at least annually, conduct a review of the effectiveness of the group's system of internal controls," which "should cover all material controls, including financial, operational and compliance controls and risk management systems."[438] The Nigerian SEC Code 2011 in Code Provision 10.1 requires that "the Board may establish a Risk Management Committee (RMC) to assist it in its oversight of the risk profile, risk

[436]For a history of risk management, see Dionne, G., "Risk Management: History, Definition and Critique". Retrieved from http://ssrn.com/id=2231635 (Accessed 29 /6/2015.

[437]Smerdon, R., *A Practical Guide to Corporate Governance*, Third Edition, London: Sweet & Maxwell, 2007, p. 309.

[438]The UK Revised Combined Code 2008 has similar provision.

management framework, and the risk reward strategy determined by the Board". Although the use of the word 'may' may impute permissive discretion on the part of the Board of the public company, it is submitted that in the case of Nigerian banks the use of the word 'may' denotes peremptory mandate which cannot be departed from.[439] Justifying this view, the CBN Code 2014 at Code Provision 6.1.1 provides that "every bank shall have a risk management framework specifying the governance architecture, policies, procedures and processes for the identification, measurement, monitoring and control of the risk inherent in its operations." In other words, if a bank argues, incompetently of course, that the SEC Code Provision is discretionary, it cannot make any case of discretion with respect to the CBN Code Provision above. Further, the CBN Code 2014 Code Provision 5.1.2(f) encourages banks to disclose in its annual report material information on all its significant risks and risk management practices showing the responsibility of the Board for the entire process of risk management. What are the implications of all these?

One, it means that risk management is an integral part of corporate governance framework. This means that companies cannot be well directed and controlled if the Board is negligent in the matter of risk management. Two, there cannot be efficient risk management system without effective corporate governance system in the firm. In other words, corporate governance is the police of the risk management function, such that without effective corporate governance system or framework, the whole task of risk management fails. In other words, "corporate governance and risk management are related... in the sense that good corporate governance ensures proper risk management,"[440] because that is the only way risks can be well controlled for the benefit of the company. Three, it implies that even though risk management is core corporate governance activity, the level of risk management activity as between firms is relational. That is, the risk which faces ABC Company may not be the same

[439]See R vs Tithe Commissioners (1850) 14 QB 474; Ifezue vs Mbadugha (1984) SC.
[440]Ajogwu, op cit, p. 199.

risk that XYZ Company faces. If the companies are not in the same industry the case becomes even starker. In other words, the criticality of risk management is dependent on the firm's industry.

Four, most bank failures are attributable to deficient or inadequate risk management systems.[441] This point, rightly of course, supposes that risk is an important driver of corporate governance. Thus corporate managers in their governance function must "identify and manage the risks they face in the knowledge that without risk there is unlikely to be meaningful reward."[442] However, some organisations including banks still focus more on the bottom-line and in the process compromise risk management function.Mindless pursuit of profit could create overload in risk management. In any bank or company where profit making drives its operations, contradictions will characterise the corporate governance function, particularly with respect to risk management:

> (Usually) pressure was through top management to approve deals with only cursory examination and any challenges from risk managers were overruled. Risk management was not seen as a real function but as a decoration to appeal to external parties, such as shareholders and auditors. Risk managers were seen as gadflies, not goalkeepers.[443]

From the foregoing, there is correlation between corporate governance and risk management. Accordingly, as will be seen in the preceding discussion, where there is effective corporate governance system in any bank there will be efficient risk management system. However, every case of corporate governance failure may not necessarily mean total failure of risk management, since there are other factors apart from risk management that can bring a company to its knees. For instance, in a case of auditor's complicity, the accounting firm of KPMG knew of "the non-GAAP provisions of Fannie Mae accounting practices and policies, but still issued unqualified opinions on Fannie Mae's financial

---

[441]Examples of such banks whose failures were traced to governance failure with respect to risk management include the UK Barings Bank which collapsed in 1995, the French Societe Generale which collapsed in 2008. In Nigeria there were the cases of Oceanic Bank, Intercontinental Bank, Bank PHB, Afribank and Spring Bank all of which collapsed in 2009.

[442]Davies, A., *The Globalisation of Corporate Governance: The Challenge of Clashing Cultures*, Gower Publishing, England, 2011, p.54.

[443]"Confessions of a Risk Manager" in The Economist, August 2008, cited in Davies, ibid, p.54.

statements for the years 1998-2003."[444] Despite any factor that might have been responsible for failure of corporate governance, it is submitted that there will always be a scintilla of compromised risk management function in every case of corporate governance failure. These indicate the criticality of risk management in Nigerian banks.

(A) Types of risk facing Nigerian banks

Smerdon[445] identified three categories of risk. These are:

> **strategic risk –** sometimes referred to as business risk; the risks associated with strategic decisions such as where to invest. New markets, new product lines, new territories, new factories, etc; **financial risk** – the remit of the corporate treasury department; usually including credit risk, market risk and cash management; and **operational risk** – risks associated with the tactical, day to day activities of doing business, and with processes, systems and people; included here would be business continuity risks, as well as legal and regulatory risks.

On the other hand, Donne[446] identified five main risks, which are:

> **pure risk** (insurable or not, and not necessarily exogenous in the presence of moral hazard); **market risk** (variation in prices of commodities, exchange rates, asset returns); **default risk** (probability of default, recovery rate, exposure at default); **operational risk** (employee errors, fraud, IT system breakdown); **liquidity risk** (risk of not possessing sufficient funds to meet short-term financial obligations without affecting prices).

With respect to banking and in view of the concern of this paper, it is preferable to classify risks into two categories of **financial risks** and **non-financial risks**.

(i) Financial risks: Risks falling into this category include credit risk which can further subdivided into borrower (counterpart or credit) risk, industry (intrinsic) risk, portfolio (concentration) risk[447]; and market risk with interest rate risk, liquidity risk, currency (Forex) risk and hedging risk falling into this subcategory.[448] A common financial risk which banks faces and one which led to the implosion of

---

[444]Marnet, O., Behaviour and Rationality in Corporate Governance, Oxford: Routledge, 2011, p. 157.
[445]Smerdon, op cit, p. 313.
[446]Donne, op cit, p. 9.
[447]Section 20 BOFIA CAP B3 LFN 2004 on single obligor rule.
[448]Goyal K.A. and Agrawal, S., "Risk Management in Indian Banks: Some Emerging Issues". *Int. J. Res,*2010, 1:1, p. 103. Retrieved from http://www.ijeronline.com., accessed 31/5/2015.

Nigerian banks during the 2009 banking crisis was **credit risk**. Credit risk is the possibility of a borrower's failing to meet his obligation to repay the facility advanced to him by the bank as at when due, whether the interest or principal or both.

(ii) Non Financial Risks: The risks in this category will include operational risk, strategic risk, funding risk, political risk, reputational risk, and legal risk. Nigerian banks have had to experience one or more of these risks at one time or another. For example, funding risk occurred during the period 2004 to 2005, the era when the CBN increased the capital base of Nigerian banks to a whopping N25 billion. Many Nigerian banks stymied as they could not meet the funding requirement; while most other banks consolidated or merged their operations with other banks. Legal risk could occur when the legal framework of conducting banking business in Nigeria is reviewed by the government or regulator. For example, following the spate of bank failures, the legal regime was drastically altered and this affected the way banking business was conducted.[449]

(B) Approaches to Risk Management in Banks

Principally, risk management function can be approached from two perspectives. These are the Basel Committee approach (identified in this paper as the Basel-based approach) and the Central Bank of Nigeria approach (Code-based approach in this paper). As will be seen shortly, both approaches are concerned with the one and the same goal. That is, the goal of ensuring that banks have in place a comprehensive risk management framework.

(i) Basel-based Approach**.** The Basel-based approach is developed by the Basel Committee on Banking Supervision (BCBS), which is a committee of banking supervisory authorities established in 1974 by the central bank governors of the G10 countries.[450] The G10 is made up of eleven industrialised countries of Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United

[449]The resulting legislations were Banks and Other Financial Institutions Decree No 25 1991 (Now Act CAP B3 LFN 2004); Failed Banks (Recovery of Debts) And Financial Malpractices In Banks Decree No. 18 1994 (Now Act CAP F2 L.F.N. 2004).

[450]Basel Committee on Banking Supervision. Retrieved from https://en.wikipedia.org/wiki/Basel_Committee_on_Banking _Supervision accessed 21/7/2015

Kingdom and the United States. However, the membership of the Basel Committee has expanded to 28 member countries. South Africa is the only African country member of the Committee.[451] The goal of the BCBS is to encourage convergence toward common approaches and standards and thereby significantly improve the quality of banking supervision globally.

In line with the above objective, the BCBS issued the Basel I (known as the Basel Capital Accord) in 1988. It is targeted at addressing credit risks in banks and in 1996 was expanded to address other market risks like foreign exchange risk.[452] In 2004 the BCBS issued Basel II (known as the New Capital Framework).[453] The Basel II comprises of three pillars. Pillar I deals with Minimum Capital Requirement (which is aimed at leveraging the Capital Accord); Pillar II deals with Supervisory Review (which reviews the bank's capital adequacy ad internal assessment processes) and Pillar III is concerned with Market Discipline (which encourages effective use of disclosure as a basis for strengthening market discipline and encouraging sound governance practices in banking). Hence, it has been well surmised that the Basel II is a sound framework for measuring and quantifying the risk associated with banking operations.[454] Since the Basel-based approach is inapplicable to Nigeria, it is outside the scope of this paper to go into detailed analysis of the mechanics of operation of the risk management framework based on the Approach.

(ii) Code-based Approach.The Code-based Approach derives its being from the provisions of the Code of Corporate for Banks. In this there are two Codes – the 2006 Code of Corporate Governance for Banks in Nigeria (Post Consolidation) (CBN Code 2006) and the CBN Code 2014. Understandably, the CBN Code 2014 in Code Provision 6.0 with eight succeeding paragraphs is a remarkable improvement on the CBN Code 2006. The CBN Code 2006 in Code Provision 7.0 with four succeeding paragraphs was not

[451]Basel Committee Membership. Retrieved from http://www.bis.org/bcbs/membership.htm (Accessed 21/7/2015.

[452]History of the Basel Committee" Retrieved from http://www.bis.org/bcbs/history.htm (Accessed 21/7/2015.

[453]It was first proposed by the Committee in 1999.

[454]Goyal and Agrawal, op cit, p. 104.

comprehensive and could not have assured a robust risk management framework in the banks. In this connection, the CBN Code 2014 Provision is preferred and has formed the basis of the discussion of the Code-based Approach in the work.

The CBN Code 2014 puts in place a risk management framework, as Provision 6.1.1 requires that every bank must have a risk management framework which specifies "the governance architecture, policies, procedures and processes for the identification, measurement, monitoring and control of the risk inherent in the bank's operations. Further, the CBN Code 2014 in Provision 6.1.7 places the duty of formulating the framework on the board of the bank. Deriving from the Code Provisions, it is submitted that the risk management framework includes Risk Policy; Risk Management Procedure; and Risk Management Process.

(C) Risk Management Policy

There must be a risk policy in place. That is the starting point in the risk management framework. In this the Board of the bank has two principal roles to play. One, the board is responsible for the formulation of the bank's risk policy. Accordingly, the CBN 2014 Code Provision 6.1.2 states that the board is responsible for the bank's policies on risk oversight and management. Every risk management policy of the bank must "reflect the bank's risk profile and appetite and clearly describe all elements of the risk management as well as its internal control system".[455] Furthermore, the policy must "clearly describe the roles and accountabilities of the Board, Bank Risk Management Committee, management and internal audit function."[456] On his part Smerdon suggests what should be the usual content of a typical risk management policy:

> Objective of Risk Management within the Organisation; Commitment of the Board; Scope of Risk Management in Terms of Activities and subject to Risk Policy; Statement of Responsibilities – covering all levels in the organisation; Categorisation of Types of Risk Covered by the Policy (e.g. financial, operational, strategic); High level description of the Methodology adopted.[457]

[455]CBN Code 2014 Provision 6.1.3; but compare CBN Code 2006 Provision 7.1.2.
[456]Provision 6.1.5 , CBN Code 2014.
[457]Smerdon, op cit, p. 315

It is submitted that Smerdon's usual contents of typical risk management policy is not materially different from the Code Provision. For example, the Code Provision talks about risk profile and risk appetite, which is the same thing as risk categorisation; the elements of risk management in the Code Provision is the same as high level description and risk management scope; while responsibilities for implementation in the Code Provision is represented by Board commitment and statement of responsibilities covering all levels in the bank in Smerdon's narration.

Generally, risk management is much like any other business activity. This means that it requires "a process with a clear purpose, reliable inputs, well-designed activities and value-added outputs."[458] In other words, the elements of risk management are the various activities which go to make the discharge of that function efficient and effective in satisfying the governance needs of the bank. This naturally means that the elements of risk management will include risk profile and risk appetite, risk management procedure and process, and responsibilities for implementation of the risk management function in the bank. It equally means that the Code Provision on risk management envisages enterprise risk management (ERM) in banks which is the holistic or systemic management of risk. The ERM is said to be "gold standard in risk management in the business world."[459] Thus, the Code could have not envisaged any standard less than this. The various elements of ERM will now be considered.

(i) Risk profile and risk appetite.Risk profile centres on the types of risk which the bank faces or will face. Risk appetite has to do with the level of risk which the bank is prepared to carry. Giving an insight into how these can be reflected in the policy, Chambers reveals that the policy could provide that the bank will only take risks which are within the scope of the bank's objectives, and where such fall outside its objectives, it could be taken subject to the approval of the board.[460] It is submitted that a good risk

[458]DeLoach J., "Key Elements of the Risk Management Process", Corporate Compliance Insights, January 2012. Retrieved from http://corporatecomplianceinsights.com/key-elements-of-the-risk-management-process/. Accessed (18/5/2015.
[459]Smerdon, op cit, p. 312.
[460]Chambers, op cit, p. 156.

management policy will provide for what action the bank will take in order to efficiently manage any significant new risks.

(ii) Risk Management Procedures and Processes**.** Although the Board is responsible for developing the bank's risk policy, it is the primary responsibility of the management to develop the procedures and processes for implementing the risk policy. Albeit, the board has duty to procure that this is done. Accordingly, the second ambit of the CBN 2014 Code Provision 6.1.2 provides that the board must "satisfy itself that management has developed and implemented a sound system of risk management and internal."

The word 'procedure' means an established method of doing something; the word 'process' means a series of actions directed toward a specific aim. In terms therefore, it is submitted that procedure or process of risk management is one and the same thing and is therefore viewed in that light in this paper. However, the word 'process' is preferred and is hereby adopted. Writing on risk management process, Ajogwu states that the process starts with identifying the risks which are likely to face the bank, analysing the risks, estimating the possible impact of the risk and finally managing the risk.[461] On the other hand, DeLoach stated that "risk management requires a process with a clear purpose, reliable inputs, well-designed activities and value-added outputs. The risk management process typically includes such activities as the identification, sourcing, measurement, evaluation, mitigation and monitoring of risk."[462] Essentially, both categorisations are not dissimilar. For example, identifying risk will equally involve sourcing the risk; estimating risk means measurement and evaluation; and managing risk means evaluating, mitigating and monitoring risk. In this wise, Ajogwu's classification is preferred and adopted for analysis.

[461]Ajogwu, Corporate Governance and Group Dynamics, p. 216.

[462]DeLoach J., "Key Elements of the Risk Management Process", Corporate Compliance Insights, January 2012. Retrieved from http://corporatecomplianceinsights.com/key-elements-of-the-risk-management-process/, accessed 18/5/2015.

(a) Identifying the risk. Earlier the risks which a bank faces has been identified and categorised into financial and non-financial risks in this paper. Once the bank has identified the relative risks it faces, it will now go further to prioritize the risks. To prioritize risk means to give weights to each and every risk the bank faces. For example, in a bank where the bank management are complicit in the insider dealing, it simply means that there is tendency that credit risk will be high because the executives will most likely disburse loans to themselves in contravention to the bank's credit risk management policy. This means that credit risk will take the centre stage in such a bank and will be accorded the highest priority. Source risk has to do with tracing the root causes of the risks because such an understanding will make it "easier to design risk metrics and proactive risk responses at the source."[463]

(b) Analyzing the risk.Risk analysis involves checking if any of the identified risks apply to the bank; considering the bank's systems and structures and assessing how they could be applied to the potential risk; and sharing opinions between the board and management of the bank.[464] In other words analysis has to do with the response of the bank to the identified risk. In this four categories of responses have been identified. These are Avoid, Accept, Reduce and Share. Relative to accept, for instance, if a first loan applicant applies for loan and he has not been in the banking relationship for up to six months, it is the duty of the bank to decide whether to grant the loan (in which case it accepts the risk) or to avoid it (in which case it rejects the application). It may nevertheless accept if there is any efficient strategy for procuring that the default will be averted. If there is none, it means that the risk is undesirable as an off-strategy.

(c) Estimating the risk. DeLoach reminds us that of an old adage which says that "if you can't measure risk, you can't manage it". He goes on to offer how to measure risk, which may be "risk rating or scoring, claims exposure and cost analysis, sensitivity analysis, stress testing and tracking key variables in relation to an identified exposure".

[463]ibid.
[464]Ajogwu, Corporate Governance and Group Dynamics, p. 215.

A common measurement methodology applied by Nigerian banks is the 'bank stress test'. The stress focuses on key risks facing the banks like credit risk, market risk and liquidity risks. It has been defined as "an analysis conducted under unfavourable economic scenarios which are designed to determine whether a bank has enough capital to withstand the impact of adverse developments."[465] The bank can internally stress itself or, in most cases, the Central Bank of Nigeria will conduct the test.[466] Where the CBN conducts the test it will either cut across all banks or specific banks whose health or status is in doubt.

(d) Managing the risk. In managing the risk two principal activities are involved. These are monitoring and mitigation. If the bank goes ahead to advance the facility to the first time loan applicant with no credit history, it must manage the risk. One way is to monitor the borrower. In this case it can monitor the borrower by requiring the debtor to supply certain periodic information to the bank, or by requiring the debtor to domicile all payments to the bank or even by extracting the power to hire and fire a director of the debtor.[467]

On the other hand, the bank might manage the risk by mitigation. Mitigation has to do with putting in place machinery for reducing or ameliorating the impact of the risk if it occasions. For example in the case of the grant of loan to a first loan applicant with no credit history, the bank can manage the risk by adopting strategies aimed at mitigating the likely impact of the risk. The need for mitigation is important because there may be "gaps in risk management capabilities of the bank."[468] One way of doing this is to ask the debtor to maintain a certain minimum credit balance on its account with the bank or for the bank to floating charge security on the fixed deposit of the customer with the bank or it could ask for

[465]"Bank Stress Test" Retrieved from http://investopedia.com/terms/b/bank-stress-test.asp, accessed 10/06/2015.
[466]Stress Test: CBN Declares Nigerian Banks are Sound" ThisdayLive (9/3/2015) Retrieved from htt://thisdaylive.com/articles/stress-test-cbn—declares-nigerian-banks-are-sound/203661/, accessed 23/6/2015.
[467]Section 41(3) CAMA.
[468]DeLoach J., "Key Elements of the Risk Management Process", Corporate Compliance Insights, January 2012. Retrieved from http://corporatecomplianceinsights.com/key-elements-of-the-risk-management-process/, accessed 18/5/2015.

any other form of security. Thus, when the bank approved the loan on the security furnished by the debtor, the security is a mitigating mechanism.

(D) Bodies responsible for implementing risk management policy

Four bodies are responsible for implementing the risk management policy. The Board is responsible for the overall oversight. To be effective at this duty, the Code requires the Board to have in place Bank Risk Management Committee (BRMC), composed of two non-executive directors and the executive director responsible for risk management function in the bank.[469] The Board through the BRMC oversees the management in its implementation of the risk management policy. For example, the BRMC as a standing committee of the Board could have and exercise the role of authorising, on behalf of the Board, loan applications of a certain threshold. Before such a loan is approved the BRMC will have to consider the report of the executive management through the executive director in charge of credit risk management function.

The last body is external, that is the external auditors. It is submitted that the external auditors through their reports checks the bank, which includes the board and the management. Writing on the role of auditors, Ajogwu suggested that "the code should have further required the boards of banks and not just external auditors to report to the Central Bank of Nigeria on the bank's risk management process."[470] With respect, this call is not necessary because the auditors will not likely submit anything different from the board. This is because the auditor's report is a marked script of the performance of the board and its duty of governance relative to the risk management function. There is also the likelihood that external auditors could be compromised. This is exactly what happened with Enron as the accounting firm of Arthur Andersen was judged to "disingenuous in its treatment of many off-balance sheet vehicles set up by Enron" and uncharitably gained the "reputation for cutting corners."[471]

(E) Analyzing the Code-Based Approach to Risk Management

[469]CBN Code 2014 Provision 6.1.8.
[470]Ajogwu, op cit, p. 210.
[471]Marnet, O., Behaviour and Rationality in Corporate Governance, Routledge, Oxford, 2011, p. 169.

A consideration of the Code-based Approach shows that the banks have no reason to fail on account of risk management. In other words, where any Nigerian bank has adopted robust risk management framework in line with the 2014 Code, it is not likely that the bank will fail. Consequently, it means that where any bank distress is traceable to risk management failure it means that it must have compromised on the risk management approach prescribed by the CBN Code 2014. In other words, the corporate governance architecture is weak, to the extent that one of the implementing bodies is lax or complicit in its risk management role. For example, the case of the British Barings Bank failure in 1995 can be cited and the recent failure of Nigerian banks in 2009 is fresh in our minds. Specifically, the CBN minced no words in stating that the banks failed principally due to "pervasive corporate governance failures."[472]

Therefore, notwithstanding the indubitable fact that the CBN Code 2014 is based on Enterprise Risk Management framework, it is submitted that the Code Provision is actually a toothless bulldog that can bark and not bite. This is why despite the existence of the 2006 Code, Nigerian banks failed miserably in 2009 of which risk management was a factor. In fact, the risk management function was its lowest ebb in one of the imploded banks that the Managing Director single-handedly and unilaterally approved and disbursed a loan facility which the BRMC declined on not less than occasions.[473] At times the failure of management survives and festers where the board is compromised. This was the case of Enron, where in the presence of conflict the Board "suspended on several occasions the company's code of conduct."[474] Hence experience has now shown us that failure of any of the body responsible for risk management function is failure of corporate governance. Here the connection between the two is inextricably established.

---

[472]Sanusi L.S., "The Nigerian Banking Industry: What went wrong and the way forward" Retrieved from htt://cenbank.org/OUT/ SPEECHES/2010/the Nigerian banking industry what went wrong and the way forward_final_260210.pdf, accessed 12/06/2015.

[473]Onamson, F.O., "Legal Implications of Banking Sector Reform", Law & Economy: The Nation Newspaper, Vol. 4, No. 1159, Tuesday 22/09/2009; Vol. 4, No. 1166, Tuesday, 29/09/2009 and Vol. 4, No. 1173, Tuesday, 06/10/2009.

[474]Marnet, op cit, p. 165.

Similarly, it is for the same reason of weak risk management model that the UK Barings Bank controls and monitoring procedures were insufficient as Nick Leeson with "relatively little experience" was "given the dual position of General Manager and Head Trader, being in charge of the actual trading (on the stock exchange floor) and of the trading accounts. This was against generally accepted principles, as it gave him much control – it is similar to the problems of the same person acting as chief executive and chairman of a company."[475] In the end the bank founded in 1762 lost about £830 million and consequently collapsed just for losing site of its risk management because the management failed to do its work.

3.4.4 Code Provision on Whistle Blowing

Whistle blowing has to do with exposing the activities of any of the organs of the company, in our case the bank, which tend to impact negatively on the interests of the corporation. Under the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006a whistleblower is a person(s) including the employees, management, directors, depositors, service providers, creditors and other stakeholders of an institution who reports any form of unethical behaviour or dishonesty to the appropriate authority.[476] In other words, the whistleblower is an informant in an organisation who witnesses behaviour by members that is either contrary to the mission of the organisation, or threatening to the public interest, and who decides expose, with intent to stop, continued wrongdoing in the bank.[477]

The role of the whistleblower is critical in sustaining corporate governance systems in the banks. The chief preoccupation of the whistle blower is to expose corporate corruption or create managerial

[475]Solomon, J., Corporate Governance and Accountability, third edition, London: Wiley, 2013, p. 55.
[476]Introduction to Guidelines for Whistle Blowing for Banks and Other Financial Institutions in Nigeria, May 2014, p.3..
[477]Biegelman, M.T. and Bartow, J.T. (2006). Executive Roadmap to Fraud Prevention and Internal Control. New Jersey, USA: John Wiley, p. 257.

opportunism at the highest levels in public or private organisations. The unenviable job of whistle blowing is best undertaken by persons with inside knowledge of the company. For instance, "the long-time secretary or bookkeeper who has been with the company for ages may know where all the "bodies are buried" and if given the opportunity will give valuable information."[478] The persons who can step into the role of whistle blowing include employees, officers, directors, customers, service providers, creditors, contractors, and other stakeholders. Whistle blowers have been variously called confidential informants, confidential sources, informed employees or sentinels.

(2) Contents of the CBN Code on Whistle blowing

The CBN Code relating to whistle blowing require Nigerian banks to establish whistle blowing procedures to encourage all stakeholders to report any unethical activity/ breach of the corporate governance code using among others, a special email or hotline to both the bank and the CBN.[479] In 2014, the CBN issued guidelines on whistle blowing. The guidelines greatly altered the 2006 Code. As specified in S.3.3 and 3.4 of the Whistle Blowing Guidelines May 2014, the CBN provided an email address**:** **anticorruptionunit@cbn.gov.ng** for whistle blowing reports to the CBN. It is also stated that the Code of Corporate Governance for Banks and Discount Houses May 2014 supersede the one issued in March 2006 and the Whistle Guidelines shall be deemed to take effect from October 1, 2014.[480]

Under the new code,[481] the policy shall contain mechanism, including assurance of confidentiality that encourages all stakeholders to report any unethical activity to the bank and/or the CBN. The procedure for whistle blowing under the Code of Corporate Governance for Banks and Discount Houses, May 2014 is contained in SS.3.1 – 3.8, while SS. 4.1 – 4.2 contains the provisions for the protection of the whistle blower. S.2 deals with the scope of the policy, whistle blowing to include amongst others:

[478]Ibid, p. 255.
[479]Provision 6.1.12 CBN Code 2006.
[480]Introduction to Guidelines for Whistle Blowing for Banks and Other Financial Institutions in Nigeria, May 2014, p.3.
[481]S.5.3.2, Code of Corporate Governance for Banks and Discount House, May 2014.

i) All forms of financial malpractice or impropriety or fraud;

ii) Failure to comply with the obligation or statutes;

iii) Action detrimental to health and safety or the environment;

iv) Any form of criminal activity;

v) Insider abuses, non disclosure of interest connected transactions etc.

The requirement for establishment of whistle blowing procedures is commendable. However it must be noted that, unlike the United States (US) jurisdiction, the provisions on whistle blowing requirement for Nigerian banks do not have statutory backing. Under the US regime whistle blowing provisions are provided for under the Sarbanes-Oxley Act.[482]For instance, section 806 of the Act made provision for civil action that employee whistle blowers can take against victimisation for exposing corruption in their organisations; and section 1107 of the Act criminalises retaliation against a whistle blower who provides assistance to law enforcement agents. It attracts up to 10 years on conviction.[483] Comparatively, the whistle blower in the US has assurance of security of employment as against his Nigerian counterpart who can be subjected to scapegoat treatment for daring to expose.[484]

(3) Shortcomings of the CBN Code Provision on Whistle Blowing

(a) Non-revolutionary provisions

The objective of whistle blowing is to deter unethical behaviour of corporate managers by encouraging, through provisions in that respect, reporting of such cases of managerial misbehaviour. By so doing it is expected that the company's exposure to damage from managerial slack will be minimized. Against this background, the CBN Code on whistle blowing fell short of minimum standards. It did not specify the standard of information which the whistle blower must meet. This is important to protect against frivolities as far as reportage of corruption in the organisation is concerned. Generally, any information

[482]Sections 301, 404, 806 and 1107 Sarbanes-Oxley Act 2002.
[483]See Title 18, United States Code, Section 1513.
[484]This is discussed further below on "dangers in whistle blowing".

tending to expose misbehaviour should, as a minimum, show that wrongdoing has been committed; or that the person against whom the information is made has acted in breach of any laws or that that the wrongdoing person has failed to comply with internal policies and procedures of the company.

Such a requirement is not out of place if whistle blowing is to achieve its purpose of guarding corporate governance systems in the bank. For instance under CAMA are precedent conditions which any member who wishes to sidestep the rule in *Foss vs Harbottle*[485]must first satisfy. The purpose is to prevent abuse by members of a company. For instance, where a member applies to remedy a wrong against the company, the court will be moved to restrain the act complained if the directors, among others, are entering into any transaction which is illegal or ultra vires[486] or committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done[487] or the directors are likely to profit or benefit, or have profited or benefitted from their negligence or from their breach of duty.[488]

Secondly, it failed provide yardsticks to measure the quality of information provided by the whistle blower. Generally, the whistle blower should be free to disclose to the relevant internal authority in the bank or to the external regulator, the CBN in our case, any information which exposes graft in the bank. However, it is not any information that a whistle blower provides that must be acted upon if certain criteria are not met. Accordingly, it is submitted that the CBN Code on whistle blowing should have established thresholds for receipt of information from a whistle blower. In this regard, the provision should have, like its FRC kindred, required that the disclosure by the whistle blower must be in respect

[485](1843) 2 Hare 401.
[486]Hogg vs Cramphon Ltd (1967) Ch 254.
[487]Cook vs Deeks & Ors (1916) 1 AC 554.
[488]Section 299 and 300 CAMA.

of matters which he believes to be true. In addition to the presence of such belief, the disclosure must have been made on reasonable grounds, in good faith and it must be capable of being investigated.[489]

The absence of the above safeguards is a grave shortcoming of the CBN Code provision on whistle blowing because of the possibility of falsehood and misrepresentation on the part of the whistle blower. The employee-whistle blower might have a personal agenda or scores to settle with a particular person. In the United States, if a disclosure is found to be frivolous or bad faith is disclosed, the whistle blower exposes himself to liability by both the government and the victim company.[490] What an agenda for the CBN Code!

(b) Absence of protection against victimisation and retaliation.

Understandably, there are dangers to whistle blowing. They include the possibility of being perceived as "disgruntled" or being called "rats, stool pigeons, snitches, betrayers" to the worse cases of "being fired" from the job or even separation from valuable "business and professional colleagues." The worst danger of whistle blowing is eventual loss of "friends and families (leading some to turn) to alcohol to ease their personal pain and depression."[491] The position is a precarious one as the "lone wolf whistle-blower is often set up against a powerful corporate or government entity with more resources and power."[492] The stiff opposition and intense calumniation faced by whistle blowers express themselves in victimisation and retaliation. These could be in the form of discharge, demotion, suspension, threats or even outright dismissal.

One is naturally bound to ask, at what gain or benefit would one go through the traumatic experiences just to blow the lid off the stinking cupboard? Unfortunately, there is no legal framework for protection

[489]Provision 18.9 FRC Private Sector Code 2015.
[490]The Whistleblower Program. Occupational Safety and Health Administration (OSHA), United States Department of Labour. Online at http://www.osha.gov/dep/oia/whistleblower/index.html.
[491]Biegelman and Bartow, op cit, p. 255
[492]Nusbaum M.A. (2002). Blowing the Whistle: Not for the Fainthearted. New York Times. B10, In: Biegelman & Bartow,(Ed) ibid, p. 256

of whistle blowers in the Nigerian banking sector while the CBN Code provision is conspicuously curiously silent on this danger.[493] The only semblance of protection for whistle blowers can be found in the FRC Code[494] which discourages employers from subjecting whistle blowers to any detriment by reason of any disclosure exposing corporate corruption. But this provision is not statutory and cannot command the force of law.

Nigeria has witnessed the unenviable position to which the innocent and helpful whistle blower is and can be subjected to. For instance, as early as 2014 (24th February) the former Governor of CBN blew whistle on clear government corruption with respect to oil receipts. In a show of executive lawlessness, the Government responded by suspending him from office, and later removed on the 2nd June, 2014, even in the face of statutory provision which bars the President from exercising such power. In comparison, the United States regime took cognisance of the critical role of whistle blowers and as early as 1863 enacted the United States False Claims Act with a *qui tam*[495] provision that "encourages private citizens to uncover and disclose fraud" by filing lawsuits in the name of the United States Government charging false claim violations by government contractors, health care providers and other businesses and persons who receive or use government funds."[496] Thus, the whistle blower in the US, as against his Nigerian counterpart, has the necessary legal buffer, and knowing this he can he staunchly commit to exposing fraud and corruption wherever it rears its head.

(c) Absence of whistle blower relief

The CBN Code on whistle blowing has no direct or indirect provision on relief for the whistle blower who is connected to the bank. Generally, it is expected that the CBN Code provision on whistle blowing should have made provisions which supports compensatory damages to a good faith whistle blower

[493]Sections 301, 404 and 1107 Sarbanes-Oxley Act.
[494]FRC Code Provision 18.11-15.
[495]Meaning "who sues on behalf of the king as well as himself".
[496]Biegelman & Bartow, op cit, pp. 276-277.

who is subjected to victimisation or retaliation. Such relief will include reinstatement, if the employee's contract is with statutory flavour; payment of lost salary with interest at the current prevailing rate; and consequential damages including costs of action.

In comparison, the FRC Code made provisions for relief. Accordingly, any employee who has suffered any detriment, whether by way of victimisation or retaliation, is entitled to reinstatement and payment of compensation to the fullest extent possible. The FRC Code provision is commendable and is to be preferred. However it must not noted that it is merely a soft law and not a statutory provision. Thus, notwithstanding the FRC provision which encourages reinstatement, the best it does it that it entitles the affected employee to damages, where the detriment results in the employee being dismissed, terminated, retired or declared redundant. Since the employee is not statutory employee, the remedy of reinstatement in his former job position cannot be available.[497]

(d) Mechanism of operation

The CBN Code failed to provide the means or mechanics of operation of whistle blowing in the context of the Nigerian banking sector. First, the Code merely stated that the Chief Operating Officer of the bank should make monthly returns to the CBN on all whistle blowing reports. This cannot, in practice, be efficient. For example it did not state who takes ownership for developing and implementing the policy and procedures on whistle blowing. The FRC Code, preferably, places such responsibility on the head of the internal audit who reports to the Audit Committee on reported cases. The US Sarbanes-Oxley Act places the responsibility to establish the mechanism of whistle blowing on the Audit Committee.[498]

Second, the provision failed to identify or spell out specific activities which go to make whistle blowing an efficient sentry against corporate maladministration. For example the FRC specifically stated that

[497]Western Nigeria Development Corporation vs Jimoh Abimbola (1966) ANLR 150; U.N.T.H.M.B. vs Nnoli (1994) 8 NWLR (Pt 363) 376; Francis Adesegun Katto vs Central Bank of Nigeria (1999) 5 SC (Part II) 21; Central Bank of Nigeria & Anor vs Mrs Agnes M. Igwilo (2007) 4-5 SC 154.
[498]Section 301 Sarbanes-Oxley Act.

there shall be telephone hotlines, email address and other electronic communication methods that could be used, even anonymously to report illegal or unethical practices.[499] These reporting mechanisms are not provided for in the CBN Code. Thirdly and consequent upon failure to establish reporting mechanisms, the Code failed to provide guidelines to answering calls on the hotlines. For instance, what kinds of calls should the hotline take; what are the likely questions callers on the hotlines should be asked; and should the administration of the hotline be outsourced to external third-party vendors for the purpose of transparency?

3.5 Enforcement of Corporate Governance in the Nigerian Banking Sector

Enforcement, which can either be deterrent or complaint based is the lifeblood of any regulatory regime.[500] To achieve transparency in the financial sector in general and the banking sector in particular, there must be strict disclosure requirements and thorough enforcement. The banking system serves as the nerve centre of any modern economy, being the repository of people's wealth and supplier of credits which lubricates the engine growth of the entire economic system.[501] The failure experienced in the sector over the years can be captured by the number of failed banks, the debts and extent of required capitalization, the protection of non-performing loans, loss of depositor's funds and the impact on the economy, all of which underscores the imperative of the sector.[502]

---

[499]FRC Code Provision 18.5.

[500]Azinge, E., (2014). *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, p.95.

[501]Nworji, I.F, Adebayo, O., & Adeyanju, O.D., (2011). Corporate Governance & Bank Failure in Nigeria: Issues, Challenges and Opportunities, *Research Journal of Finance and Accounting*, 2(2): 2 Retrieved from http://iiste.org/Journals/index.php/RJFA/article/viewfile/183/67ISSN 2222-1697 (paper), ISSN 2222-2847 (On Line), accessed 15/5/2014.

[502]Nworji, I.F, Adebayo, O., & Adeyanju, O.D., (2011). Corporate Governance & Bank Failure in Nigeria: Issues, Challenges and Opportunities, *Research Journal of Finance and Accounting*, 2(2): 2 Retrieved from http://iiste.org/Journals/index.php/RJFA/article/viewfile/183/67ISSN 2222-1697 (paper), ISSN 2222-2847 (On Line), accessed 15/5/2014.

The legal enforcement of corporate governance in banks is backed by the CBN Act 2007, Banks and Other Financial Institutions Act (BOFIA) 1991 (as amended), the Nigerian Deposit Insurance Corporation (NDIC) Act 2006, the Companies and Allied Matter Act (CAMA) 1990 and the Economic and Financial Crimes Commission (EFCC) Act 2004. These legal documents and other internally generated codes of the banks provide the framework for identifying and enforcing the compliancewith best practical codes.[503] Much has not been done with regards to enforcement. Given the level of development and reforms embarked in the banking industry, it is imperative to enforce good practice as elucidated in the code. The regulators and enforcers must not shy away from proper enforcement and implementation sanctions were it arises. Thus, it poses a challenge as to how both the banks and its regulator who are charged with the responsibility of enforcing the tenets of the code are well governed, responsible, accountable and competent.

One school of thought is that board members are regulated by the free executive labour market and when they fail, the market will ensure discipline. The idealistic premise of relying on market regulation of governance is elusive. The free market is open to abuse as non-performing board members with solid networks can remain in the market or resign when the company is going bust.[504] Thus it is advised that legal claims are brought against board members. Various academics are of point that the law is the only constraint that regulates behaviour.[505] They recognise that the absence of a strong legal protection will drive away investors for fear of expropriation.

---

[503]CBN Briefs, 2012-2013 Edition, Research Department, p.124.

[504]Fahlenbrach, Low and Stulz, (2010). The Dark Side of Outside Directors:Do They Quit When They Are Most Needed?, In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, p.95.

[505]Brain R. C., (2005). Does Law Matter? The Separation of Ownership and Control in the United Kingdom. In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, p.95-96.

The CBN possesses an arsenal of administrative and civil sanctions, which it can employ. In working towards achieving market integrity, it can fine, imprison[506] name and shame[507] prohibit an approved person from undertaking controlled functions and further institute a case against such person. CBN can initiate criminal actions against the board members for a broad range of offences that undermine the financial system and threaten the interest of depositors and investors.[508] This sanctions should however be reserved for severe cases. It's however one thing for the CBN to cause a case to be instigated against an erring board member and quite another for the judiciary to ensure dispensation of justice. The Nigerian Judiciary has been ineffective in resolving disputes and ensuring quick dispensation of justice. This inefficiency to a large extent is as a result of insufficient laws present in the system. A classical example is the case of Cecilia Ibru where despite the claims levied against her, which she was guilty of, for a forfeiture of N150 billion in assets and cash, all she got was 6-months jail term.[509]

This idea of criminal penalties has been criticized for various reasons. Various scholars have stated that criminal penalties will deter expert board members from taking up this role,[510] and cause current NEDs to be more risk averse[511] thereby slowing down economic growth and interfering with profitability. It is

[506]S. 50, Banks and Other Financial Institutions Act 1999 now Cap B3 LFN, 2004. In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, 2014, p. 96.

[507]News24Nigeria, CBN Names, Shames Errant Directors @ http://m.news24.com/nigeria/News/CBN-names-shames-errant-banks-20131009 accessed 1/3/2014

[508]Azinge, E., (2014). *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, p.96.

[509]Azinge, E., (2014). *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, p.97.

[510]Welsh, M., (2009). The Regulatory Delimma: The Choice between Overlapping Criminal Sanctions and Civil Penalties for Contravention of the Directors Duty Provisions, 27 C&SLJ, 2009, p.372.

[511]Black, J., and Kershaw, (2013). Sactions For Bank Directors. In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, p.96.

also criticized on the basis that imposing criminal penalty is a costly means of applying regulation[512] given the high burden of proof required.[513] Moreover, criminal penalties cannot compensate employees and shareholders who have either lost their jobs or investment.[514]

The imposition of criminal penalties has its advantages. Criminal sanction has a wider range of penalties as opposed to civil liability. It deters board members from permitting excessive risk taking. It goes further than plainly losing one's job, banning a board from participation causes reputational damage and removes him from circulation through imprisonment. Criminal sanction should be followed up by a civil claim for effective retribution. This route will no doubt promote confidence in the robustness of the capital market framework.[515]

The regulatory framework in place to some extent seems sufficient. However, without effective supervision and enforcement, the tenets of the code will be defeated. Enforcement strength amidst regulatory strength should be reviewed and empowered to meet up with contemporary growth. Failure will occasion loss of confidence and lack of compliance by the banks, which will go a long way to dampen its prospect.

3.5.1 The Nigerian System and Non-Compliance Culture

[512]Tang, X.,(2006). Revision of Laws and Corporate Governance in China: With the Treatment of Tunnelling as an Example , presented at a symposium on Corporate Governance in East Asia, Culture, Psychology, Economics and Law. In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, p.97.

[513]Cogliance, C., Healey, T.J., Keating, E.K., & Michael, M.L., (2004). The Role of Government in Corporate Governance. In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, p.97.

[514]ibid.

[515]Azinge, E., (2014). *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, p.98.

The legal system of any country plays a major role in the effectiveness and management control of corporate governance. The foundational structures for which a robust banking system is based would be an effective legal system that adequately protects, enforces and ensures compliance of the codes and laws. The Nigerian legal system is yet to meet up with this task. Being that the Nigerian legal system is characterised by the culture of non-compliance for the rule of law, implementation and enforcement, the banking sector being a part of the system is not an exception. Banks pay lips services to Codes and laws are violated. There are weak penalties and sanctions for non-compliance or violation.

3.5.2 Disclosure and Transparency

Transparency and disclosure are key pillars of a corporate governance framework, because they provide all the stakeholders with the information necessary to judge whether or not their interest are being served. However, lack of transparency and adequate disclosure of information undermines the ethics of good corporate governance and the prospect or effective contingency plan for managing systemic distress. It thus obscure the way many financial and economic activities are conducted and contributes to the alarming proportion of economic/financial crimes in the financial industry.[516] Continuous concealment of information to prevent timely detection of unhealthy situations in the banks may continue as a result of lack of transparency, disclosure and pressure to boost income. Although, transparency and disclosure are key attributes, there are many deficiencies in the information disclosed particularly in the area of risk management strategies, benefits, terms and conditions, risk concentration, performance measures amongst others.

3.6 Legal Mandates of Functionaries in Corporate Governance in the Nigerian Banking Sector

[516]CBN Briefs, 2012-2013 Edition, Research Department, p.88.

Key functionaries involved in corporate governance include the board of directors, management and shareholders as internal shareholders and the external stakeholders to include creditors, auditors, suppliers, customers, government agencies and the community. We shall consider the legal mandates of the board of directors, auditors and shareholders in corporate governance. These key functionaries have a long term reputational effect among the key stakeholders of any company, institution/organisation and the banking sector either internally or externally. Bearing in mind that confidence of the investor (both local and foreign), the customer, government agencies and the community is imperative, there is a greater need for intellectual honesty, integrity, transparency and accountability which form the basis of sound/ good corporate governance. Suffice it to say that it is not enough for banks to merely be profitable, but also to demonstrate good citizenship through environmental awareness, honesty, integrity, ethical behaviour, professionalism and other sound practices of corporate governance. In looking at the mandates, recourse shall be made to the Code of Corporate Governance of Bank in Nigeria Post Consolidation 2006 and the Code of Corporate Governance for Bank and Discount Houses in Nigeria 2014.

3.6.1 The Board of Directors in Corporate Governance

Every institution is headed by an effective board that can lead, direct and control. Governing boards share many legal precepts such as the oversight roles, the duties, decision making power, meetings, quorum, mandates, and their place in the organisational structure, accountability and their members' fiduciary duties. This poses certain questions such as are the board members fund raisers? Are they merely rubber stamps to legitimize the actions and decisions of the executives? Do they run the organisation with due diligence, honesty, accountability and transparently to the extent staff is unable? Are they merely window-dressers? How often do they attend board meetings and are such meetings compulsory or merely persuasive?

In any organisation, good corporate governance starts with the board of directors. The board's role, mandate and legal obligations is to oversee the administration and management, ensure the set goals, mission, aims and objectives are fulfilled and has the power to make decision regarding matters and issues relating to policy, direction, strategy and governance. Board is elected by the shareholders and is responsible for the stewardship and affairs of the bank and any company. Theses board may be elected by the shareholders to buy expertise, they are not to represent a particular constituency or themselves for selfish ambition and interest. The overall interest of the company as a whole must be paramount at all times. Thus the board must act honestly, in good faith and in the best interest of the bank and its shareholders. Who are directors? Various definitions under statutes and judicial decisions have been given to the word director, but for this research we shall consider the definition under the Companies and Allied Matters Act. Director refers to a rank in management. Directors of a company are persons duly appointed by the company to direct and manage the business of the company.[517]

(1) Composition of the Board of Directors.

Nigeria operates a single-tier board of directors composed of executive directors (EDs) and the non-executive directors (NEDs).[518] The board of directors is composed of the chairman,[519] other executive and non executive directors which should be more than the executive directors subject to a maximum board size of 20 (twenty) directors,[520] of which two (2) non executive board members are independent

[517]S. 244 of the Companies and Allied Matters Act Cap.C20 Laws of the Federation of Nigeria 2004.

[518]Olusola, A. Akinpelu, Corporate Governance Framework in Nigeria: An International Review, 2011, p.378. it should be noted that the non- executive director are often tines referred to as independent directors.

[519]Code Provision 5.1.1 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[520]Code Provision 5.3.5, ibid.

directors appointed by the bank on merit.[521] Unlike the SEC Code, it requires only that membership of the board should be not less than five (5). In the new Code which becomes effective from the 1st day of October 2014, the size of the board of any bank shall be limited to a minimum of five (5) and a maximum of 20 (twenty).[522] The board shall consist of executive and non-executive directors. The number of the NEDs shall be more than that of the EDs.[523]

(2) Qualification of Board of Directors

The composition of the board is determined based on applicable legal requirements. The quality of the board requires that the head must be qualified individuals who are conversant with its oversight functions[524] and people of proven integrity, who are knowledgeable in business and financial matters.[525] The board members should undergo regular training and education on oversight functions, which should be institutionalized and budgeted for annually by banks.[526] In essence, the mandate of the board requires contemporary knowledge, skills, risk management, integrity and expertise to enhance their ability and capability in contributing to the achievement of the bank's objectives.

(3) Appointment of the Board of Directors.

[521]Code Provision 5.3.6, ibid.

[522]Code Provision 2.2.1, Code of Corporate Governance for Bank and Discount Houses in Nigeria, May 2014.

[523]Code Provision 2.2.3, ibid.

[524]Code Provision 5.3.1 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[525]Code Provision 5.3.2, ibid.

[526]Code Provision 5.3.3, ibid.

Provision 5.3.2[527] and Code Provision2.4.2[528]provides that the CBN guidelines on appointment of the board of financial institutions should continue to be observed. The CBN in its determination to ensure that only "fit and proper persons" are approved for the appointment to board, top management/executives and critical operational positions in banks in particular, discount houses and other financial institutions, reviewed its circular referenced FPR/DIR/CIR/GEN/01/016 dated 21st June 2011, on the Criteria for board and top management position in the banks.[529] The objective is to provide a board framework for assessing a person's capacity as "fit and proper" for the position which he is being considered for and its applicability to all banks (Regional, National and International), merchant banks, non – interest banks, primary mortgage banks, discount houses, development finance and other financial institutions under the purview of the CBN.[530]

In assessing a candidate's integrity and suitability, elements to be considered include:[531]1) breach of SS.19 (1) (a) and 44 of the BOFIA 1991 (now 48 of BOFIA, Cap.B3 LFN 2004) where such a candidate is or has been:,

a) of unsound mind or as a result of ill-health is incapable of carrying out his duties or
b) declared bankrupt or suspends payments or compounds with his creditors including his bankers or
c) convicted of any offence involving dishonesty or fraud or
d) guilty of serious misconduct in relation to his duties or

[527]Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[528]Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[529]S. 1.0 of the Revised Assessment Criteria For Approved Persons' Regime for Financial Institutions, Circular to All Banks and Other Financial Institutions on Approved Persons' Regime, FPR/DIR/CIR/GEN/05/014. 15th October, 2015 and took effect from 1st January 2016.

[530]S. 1.2, ibid.

[531]S. 2.0, ibid.

e) disqualified or suspended from practicing a profession; or

f) a director of a financial institution or any candidate directly involved in the management of a financial institution under the purview of the CBN which has been wound up bt the Federal High Court.

And whether:

2) the candidate is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any impending proceedings or any investigation, which might lead to such proceedings. However, this provision will not apply where a person involved in such proceeding has been exonerated;
3) such appointment would result in conflict of interest thus contravening the provisions of SS. 19 (2) and (3) of BOFIA 2014;
4) the candidate, or any business in which he has controlling interest or exercises significant influence, has been investigated, disciplined, suspended or criticized by a regulatory or professional body, a court or tribunal, whether publicly or privately;
5) the candidate has been the subject of any justified complaint relating to regulated activities;
6) the candidate has been dismissed, asked to resign from employment or from a position of trust, fiduciary appointment or similar position because of questions about his honesty and integrity;
7) the candidate has ever been disqualified under BOFIA or CAMA or any other legislation or regulation, from acting as a director or serving in a management capacity;
8) the candidate deliberately misled (or attempts to mislead) by act or omission a client, the institution and/or the regulators;
9) The candidate deliberately falsified documents to mislead a client, the institution and/or regulators;

10) The candidate has deliberately failed to inform the client, institution and/or regulator, without reasonable cause, of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding;
11) The candidate had deliberately failed to disclose the existence of falsified documents;
12) The candidate has deliberately prepared inaccurate or inappropriate records or returns.

S. 4.0[532] provides the general guidelines for All Financial Institutions, candidates must meet the following:

i) Submit a completed "Approved Persons Regime" questionnaire to be administered by the CBN;
ii) Provide a satisfactory status report from the candidate's last place of work, not later than six months after engagement;
iii) Satisfy the CBNthat he/she is able to meet personal financial obligations/commitments on a continuous basis and demonstrate satisfactory discharge of fiduciary responsibilities; and
iv) Provide three reference letters, two of which must be from the last place of work, in the last five years and from persons below the rank of a director.

For Non-Executive directors, the three reference letters should be from individuals of reputable standing in the country (e.g civil servants of grade level 15 and above or their equivalents in the armed forces or police, senior clergyman, fellows of professional bodies such as ICAN, CIBN, etc). Where the appointee is a representative of an overseas technical partner, financier or agency, a reference letter from the home country financial sector regulator or any other person of reputable standing (as stated above) in that jurisdiction suffice; and

[532]Revised Assessment Criteria For Approved Persons' Regime for Financial Institutions, Circular to All Banks and Other Financial Institutions on Approved Persons' Regime, FPR/DIR/CIR/GEN/05/014. 15th October, 2015.

v) Ensure that NEDs undergo directors' training at the institution's expense, aimed at acquiring or having the prerequisite knowledge of their responsibilities and duties as the institution's NEDs.

The Revised Assessment Criteria also makes provision for fitness requirements for managing director,[533] Deputy Managing Director/Executive Director,[534] General Manager,[535] Deputy General Manager,[536] Assistant General Manager,[537] NEDS[538] and Independent Directors.[539] The requirement for a managing director includes:

i) A minimum of first degree or its equivalent in any discipline plus a higher degree or professional qualification in any business related discipline;

ii) Candidates must also have a minimum of 20 years post graduation experience, out of which at least 15 must have been in the banking industry and, at least 2 as the DMD/ED, with responsibility in several areas of banking operations including business development and customer relationship management. For non-interest banks, the candidates should in addition possess a requisite knowledge and experience/training in Islamic banking and finance.

The Deputy Managing Director/ Executive Director shall possess:

[533]S. 5.1 of the Revised Assessment Criteria For Approved Persons' Regime for Financial Institutions, Circular to All Banks and Other Financial Institutions on Approved Persons' Regime, FPR/DIR/CIR/GEN/05/014. 15th October, 2015.

[534]S. 5.2, ibid.

[535]S. 5.3, ibid.

[536]S. 5.4 of the Revised Assessment Criteria For Approved Persons' Regime for Financial Institutions, Circular to All Banks and Other Financial Institutions on Approved Persons' Regime, FPR/DIR/CIR/GEN/05/014. 15th October, 2015.

[537]S. 5.5, ibid.

[538]S. 5.6, ibid.

[539]S. 5.7, ibid.

i) a minimum of first degree or its equivalent in any discipline plus a higher degree or professional qualification in any business related discipline;

ii) candidate must also have a minimum of 18 years post- graduation experience, out of which at least 13 must have been in the banking industry and, at least 2 as General Manager. Evidence of experience in several areas of banking operations including business development and customer services management;

iii) a Deputy Managing Director/Executive Director must have served for a minimum of two (2) years for him/her to be qualified for appointment as a Managing Director.

For non-interest banks, the candidate must possess requisite knowledge and experience/training in Islamic banking and finance.

The requirements for General Manager include:

a) A minimum of first degree or its equivalent in any discipline plus a relevant higher degree or professional qualification;

b) Candidates must also have a minimum of 15 years post graduation experience, out of which at least 12 must have been in the banking industry and at least 2 as Deputy General Manager. Evidence of experience at least three (3) major areas of banking operations, while for non-interest banks, in addition, requisite knowledge and experience/training in Islamic banking and finance.

Non-Executive Directors without prejudice to the provisions of the Code of Corporate Governance must possess:

a) a first degree or its equivalent in any discipline plus membership of any other relevant and recognised professional institute;

b) a minimum of eight (8) years post graduation experience;

c) proven skills and competencies in their fields;

d) knowledge of the operations of banks/development finance institutions/discount houses and relevant laws and regulations guiding the financial services industry; and

e) ability to interpret financial statements and make meaningful contributions to board deliberations.

In considering nominees with limited academic/professional qualifications and industry experience, the CBN shall take into account the following:

i) direct involvement of the nominee in an established business enterprise with total assets of not less than N300million;

ii) the quality of courses and seminars attended in the last five (5) years prior to his nomination:

iii) the size, scope and complexity of the Institutions;

iv) the relevant experience and qualifications of other board members;

v) the existence and number of Independent Directors in the board;

vi) as assurance that the proposed director(s) would be exposed to accelerated training over a short period of time; and

vii) assignment of responsibilities commensurate with their experiences.

For the Independent directors S.5.7[540] provides as follows:

a) Independent Directors shall be appointed in accordance with:

i. The CBN's Circular of October 26, 2007 titled "Guidelines for

the Appointment of Independent Directors";

[540]Revised Assessment Criteria For Approved Persons' Regime for Financial Institutions, Circular to All Banks and Other Financial Institutions on Approved Persons' Regime, FPR/DIR/CIR/GEN/05/014. 15th October, 2015.

ii. The “Revised Code of Corporate Governance for Banks and

Discount Houses in Nigeria” of May 25, 2014;

iii. Section 257(1) of the Companies and Allied Matters Act

(CAMA), 1990 as amended;

iv. Any other relevant law, rules and regulations issued from time

to time by the CBN.

b) In particular, an Independent Director shall be a member of theBoard of Directors who has no direct material relationship with thefinancial institution or any of its officers, major shareholders,subsidiaries and affiliates; a relationship which may impair thedirector’s ability to make independent judgments or compromisethe director’s objectivity in line with Corporate Governance bestpractices.

c) An Independent Director shall not:

i. beyond his services on the Board of a financial institution,provide financial, legal and/or consulting services to theinstitution or its subsidiaries/affiliates or had done so in thepreceding 5 years;

ii. be a current or former employee who had served in thefinancial institution in the past and none of his immediatefamily members should be an employee or former staff of the

financial institution at the top management level in thepreceding 5 years;

iii. borrow funds from the financial institution, its officers,subsidiaries and affiliates;

iv. be part of management, executive committee or board oftrustees of an entity, charity or otherwise, supported by thefinancial institution;

v. serve on the Board of a subsidiary or affiliate of the financialinstitution.

d) An Independent Director shall have:

i. sound knowledge of the operations of listed companies, therelevant laws and regulations guiding the industry;

ii. a minimum academic qualification of first degree or its equivalent with not less than 10 years of relevant working experience; and

iii. proven skills and competencies in their fields.

e) In addition, the requirements for Non-Executive Directors statedabove shall apply.

f) For Non-interest banks, at least one of the independent directorsshould preferably be an expert in Islamic Commercial Jurisprudence(Fiqh Mu'amalat).

Notwithstanding the requirements stated above, the CBN may at itsdiscretion, approve or disapprove the appointments of candidates underspecial circumstances. Banks are to nominate/appoint the independent directors subject to the approval of the CBN. The CBN will appraise the candidates on the basis of the laid down criteria for the appointment of independent director.

(4) Mandates of the Board of Directors/Management

Under S.6.0 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006, the board of directors is to ensure industry transparency, due process, integrity and disclosure requirement[541] to the extent that members of the board are severally and jointly liable for the activities

[541]Code Provision 5.0 for disclosure and transparency; Code Provision 5.2 for transparency and integrity on reporting and Code Provision 3 for whistle blowing, of the Code of Corporate Governance for Banks and Discount Houses, May 2014.

of the bank.[542] All interest of service providers or suppliers by board of directors must be disclosed to the CBN.[543] Chief Executive Officer and the Chief Finance Officers of banks should continue to certify in each statutory return submitted to the CBN that they as signing officers have reviewed the reports, and knowledge that the report does not contain untrue statements of a material fact and that the financial statements and other financial information in the report, fairly represent, in all material respect the financial condition and results of operations of the bank as for the periods presented in the report.[544] There should be established policies on risk management.[545]

Directors occupy a fiduciary position[546] in the exercise of their management powers to include: duty to exercise power for the benefit of the company,[547] duty not to fetter freedom of exercise of discretion,[548] duty not to allow his personal interest conflict with that of the company[549] and duty of care and skill.[550] The responsibility of enforcing the mandates of the directors lies on the company. The usual way is for the directors to be removed from office,[551] petition for winding up, relief on the ground that the affairs

[542]Provision 2.1.8 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[543]Code Provision 6.1.2 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006; Provision 2.1.1 of the Code of Corporate Governance for Bank and Discount Houses in Nigeria 2014.

[544]Code Provision 6.1.3 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[545]Code Provision 7, ibid; Provision 6.0 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[546]S.279 (1) of the Companies and Allied Matters Act, 2004. Also, S.283 of CAMA provides for the legal position of directors

[547]S.279 (2) (a) – (b), CAMA.

[548]S.279 (6), ibid.

[549]S.280, ibid.

[550]S.282 (i) – (h), ibid.

[551]S.262 (1), ibid.

of the company are being conducted in an illegal and oppressive manner[552] and misconduct of proceedings against a director.

The Code[553]which is already operational, enumerates the mandates/responsibilities of the board and management to include:

i) The board is accountable and responsible for the performance and affairs of the bank specifically, and in line with the provisions of CAMA, directors owe a duty of care and loyalty to act in the interest of the bank's employees and other stakeholders.[554]

ii) the board shall define the banks strategic goals, approve its long-term and short-term business strategies and monitor their implementation by management.[555]

iii) the board shall determine the skills, knowledge and experience that members require and work effectively as a team to achieve the bank's objectives.[556]

iv) the board shall ensure that its human, material and financial resources are effectively deployed towards the attainment of set goals of the bank.[557]

[552]S.408 (e), ibid.

[553]Code Provision 2.1 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria and Guidelines for Whistle Blowing in the Nigerian Banking Industry, Circular to All Banks and Discount Houses, 16th May, 2014, fpr/dir/cir/gen/01/004@http//www.cenbank.org/out/2014/fprd/circular%20on%20code%20of%20circular%20on%20corporate%20governance%20and%20whistle%20blowing-may%202014%20(3)pdf, accessed 4/06/2014.

[554]Code Provision 2 .1.1 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria, May 2014.

[555]Code Provision 2.1.2, ibid.

[556]Code Provision 2.1.3, ibid.

[557]Code Provision 2.1.4 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria, May 2014.

v) the board shall appoint the CEO as well as top management staff and establish a framework for the delegation of authority in the bank, which must comply with the provisions of the CBN's Circular on Harmonization of Job Roles in the Banking Industry.[558]

vi) the board shall ensure that a succession plan is in place for the CEO, other executive directors and top management staff.[559]

vii) the board shall set limits of authority, specifying the threshold for large transactions which it must approve before they take place. There shall be no exception for such large transactions.[560]

viii) board members are severally and jointly liable for the activities of the bank.[561]

ix) the board shall ensure strict adherence to the Code of conduct for bank directors.[562]

Further, the roles of the board of directors and the management as contained in the CBN Briefs[563] include:

i) the board of directors (BOD) is the focal point of the corporate governance system. It is accountable and responsible for the performance of the bank and delegates the day-to-day management of the bank's affairs to the CEO and other senior management;

ii) the board acts in good faith, ensures compliance, integrity and ethical behaviour and demonstrates commitment to the bank, its business plans and long term shareholder value;

[558]Code Provision 2.1.5, ibid.

[559]Code Provision 2.1.6, ibid.

[560]Code Provision 2.1.7, ibid.

[561]Code Provision 2.1.8, ibid.

[562]Code Provision 2.1.9 ibid.

[563]CBN Briefs, 2012-2013 Edition, Research Department, p.84.

iii) the BOD approves the banks' strategic business objectives and corporate values in terms of timelines, frank discussions and delineation of authority and follow good governance and practice;

iv) the board communicates the corporate values and code of conduct (including policies and procedures) to the appropriate body;

v) the BOD ensures that senior management implements policies that prohibit (or strictly limit) activities and relationships that diminish the quality of corporate governance such as: conflicts of interest, lending to official and employees and other forms of self-dealing. For example, internal lending should be limited t lending based on market terms and to certain types of loans. Also, reports of insider lending should be provided to the board, and be subject to review by internal and external auditors;

vi) setting and enforcing clear lines of responsibility and accountability throughout the organization;

vii) effective BOD must clearly define the authorities and key responsibilities for themselves, as well as senior management. They should also recognize that unspecified lines of accountability or confusing multiple lines of responsibility may exacerbate a problem through slow or diluted responses. However, senior management is responsible for creating an accountability hierarchy for the staff, but must be cognizant of the fact that they are ultimately responsible to the board for the performance of the bank, and

viii) the Board develops sound risk management, reviews policies periodically and controls functions of senior management.

The Independent directors are to:

i. Employ neutral, specialized/expert skills towards achieving a balance knowledge, skills, judgments and other directional resources bearing a mind that neutrality of views and quality of debate are very crucial in enthroning good corporate governance practices;

ii. serve as a check on the management of banks by providing unbiased and independent views of board of banks and represent minority shareholders' interest;

iii. help the board of banks to get the most out of its businesses by providing objective inputs to strategic thinking and decision making while ensuring full compliance with statutory rules and regulations.

It becomes apt to adopt the definition of corporate governance by the Basel Committee which stipulates that "corporate governance involves... the manner in which the business and affairs of banks are governed by the board of directors and senior management". In attaining the set objective, the role of the board becomes crucial and imperative. This is because it is essential in the retention of public confidence in the banking system, in particular and the various system of the economy in general. The board and management overtime has shown lack of requisite skills and competencies to effectively redefine, re-strategize, restructure, expand and/or refocus the banks.

The board of directors is considered to be a decision control measure that reduces agency cost[564] which arises from widely dispersed ownership.[565] Professional managers, who constitute the board of directors, are employed by corporations inter alia to exploit their skills and experience in effectively

[564]Frankel, R., McVay, & Soliman, M., (2011). Non GAAP Earnings and Board Independence. In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria, 2014, p.82.

[565]Berle, A. & Means, G., (1932). The Modern Corporation and Private Property. In: Azinge, E., (Ed.) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria, 2014, p.82.

monitoring top management, making decisions regarding policies,[566]financing plans,[567] supervision of company affairs;[568]supervising and reviewing the application of corporate strategy and risk policy.[569]

(5) Remuneration of the Board of Directors

The remuneration of executive directors is to be determined by a committee of non-executive directors.[570] Non executive directors' remuneration should be limited to sitting allowances, directors' fee and reimbursable travel and hotel expenses.[571] In other words both the remuneration of non executive and the independent directors should be limited to his/her sitting allowance, fees and reimbursable(s) incurred in the ordinary course of the business of the bank. A managing director shall receive such remuneration (whether by way of salary, commission or participation in profits or partly in one way and partly in another) as the director may determine.[572]

S. 2.7.12[573] provides that where there is a Remuneration Committee in addition to the three Committees prescribed in S.2.5.1, the membership shall comprise Non EDs while the Board Governance and Nomination Committee shall have a combination of Executive and Non-Executives Directors.

[566]Talbot, L., (2008). Critical Company Law. In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria, 2014, p.83.

[567]Mohmoud, E., & Robert, W., Wearing Two Hats: The Conflicting Control and Management Roles of NED's,. In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria, 2014, p.83.

[568]Mallin, C.A., (2010). *Corporate Governance*, CUP, 3rd Edition, 2010, p.164.

[569]Anu A., (2011). The Corporate Governance Failings in Fianacial Institutions and Directors Legal Liability. In: Azinge, E., (Ed) *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria, 2014, p.83.

[570]Code Provision 5.3.7 Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[571]Code Provision 5.3.9, ibid.

[572]S.268 of the Companies and Allied Matters Act, 2004

[573]Code of Corporate Governance for Banks and Discount Houses, May 2014.

However, both Committees are combined, its membership shall be drawn only from the Non EDs. Executive director shall not receive sitting allowances and directors' fees.[574]

(6) Tenure/Removal.

The term of office of an independent director shall be four (4) years for a single term and a maximum of eight (8) years of two consecutive terms if re-elected upon the expiration of the first term. However, the independent director may resign before the expiration of his/her term. In the circumstance, the independent director shall submit a written letter of resignation spelling out the circumstances leading and surrounding the resignation, a copy of which should be sent to the CBN. The CBN may also review the appointment of the independent director if it is established that his/her independence is impaired by subsequent actions.

Non executive directors are allowed to hold offices continuously for a maximum period of 12 years (that is 3 terms of 4 years each).[575] The tenure of the CEO of a bank shall be in accordance with the terms of engagement with the bank but subject to a maximum period of ten (10) years which may be broken down into periods not exceeding five (5) years at a time.[576] Any director whose facility or that of his/her related interests remains non-performing for more than one year should cease to be on the board of the bank and could be blacklisted from sitting on the board of any bank.[577] False rendition to CBN shall attract very stiff sanction of fine plus suspension of the CEO for six months in the first instance and removal and blacklisting in the second. In addition, the erring staff would be referred to the relevant

[574]Code Provision 2.7.6, ibid.

[575]Code Provision.5.3.10 Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[576]Code Provision 2.4.5 of the Corporate Governance for Banks and Discount Houses, May 2014.

[577]Code Provision 6.1.8 Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

professional body for disciplinary action.[578] Banks should have a clear succession plans for their top executives.[579]

(7) Board Meetings

There is no provision under the Code of Corporate Governance for Banks in Nigeria Post Consolidation where mention was made as to board meetings, neither was reference to for such provision made as contained the Companies and Allied Matters Act.[580] But under the new Code which is now operational, to perform its oversight function and monitors management's performance, the board shall meet at least once a quarter,[581] of which attendance is compulsory in order to qualify for re-election.[582] The board shall disclose, in the corporate governance section of the Annual Report, the total number of board meetings held in the financial year and attendance by each director.[583]

(8) Performance Evaluation and Liabilities of Directors

(A) Performance Evaluation of Directors

The independent consultant appointed by the board under S.5.3.4[584] should review and appraise annually and directors structure and composition, responsibilities, process and relationships, as well as

[578]Code Provision 6.1.4, ibid.

[579]Code Provision 5.3.11, ibid.

[580]S.266 of the Companies and Allied Matters Act, 2004.

[581]Code Provision 2.6.1 of the Corporate Governance for Banks and Discount Houses, May 2014.

[582]Code Provision 2.6.2, ibid.

[583]Code Provision 2.6.3, ibid.

[584]Code Provision 5.4.6 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

individual members' competencies and respective roles in the board performance.[585] This view is to be presented at the AGM and a copy sent to the CBN.[586] A board must work effectively as a team,[587] determine the skills, knowledge and experience that members require to achieve the set objectives[588] and should identify and adopt, in the light of the company's future strategy, its critical success factors or key strategic objectives.[589] The independent consultant appointed by banks as spelt out in the Code of Corporate Governance for Banks in Nigeria Post Consolidation to appraise board members and board performances should equally appraise the performance of the independent directors at least once a years or more frequently as may be necessary or due to changes in circumstances that may affect individual directors' independence. In addition to the above, the CBN/NDIC Examiners should assess the performance of all directors during routine examinations.

(B) Liabilities of Directors

By S. 2.1.8,[590] members of the board are severally and jointly liable for the activities of the bank. The researcher after a careful perusal of the mandate of directors in corporate governance under the banking sector, proposes to discuss director's liability under the following broad heads; namely:

a) Non-compliance liability;

b) General liability;

c) Criminal liability; and

[585]Code Provision 5.4.5, ibid.

[586]Code Provision 5.4.7, ibid.

[587]Code Provision 5.4.4 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[588]Code Provision 5.4.3, ibid.

[589]Code Provision 5.4.2, ibid. Also see Code Provision 2.8.1 – 2.8.3 of the Corporate Governance for Banks and Discount Houses, May 2014.

[590]Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

d) Statutory liability

(C) Non Compliance Liability

A director can be held liable for non compliance with specific provisions of the Code. The extent of such liability include blacklisted, blacklisted from sitting on the board, suspension, removal and disciplinary action. Under S.6.1.2,[591]where board directors and companies/entities/persons related to them are engaged are service providers or suppliers to the bank, full disclosure of such interests should be made to the CBN. Again, S.6.1.3[592] provides that Chief Executive Officers and the Chief Finance Officers of banks should continue to certify in each statutory return submitted to the CBN that they (the signing officers) have reviewed the reports, and that based on their knowledge the reports does not contain any untrue statement of a material fact and that the financial statement and other financial information in the report, fairly represent, in all material respects the financial condition and results of operations of the bank as of, and the periods presented in the report.

S.6.1.8[593] is to the effect that any director whose facility or that of his/her related interests remains non-performing for more than one year should cease to be on the board of the bank and could be blacklisted on the board of any bank. The Chief Compliance Officer is to monitor the implementation of the code of corporate governance,[594] make monthly returns to the CBN on all whistle blowing reports and corporate governance related breaches,[595] together with the Chief Executive Officer of each bank should certify each year to the CBN that they are not (apart from 6.1.14) aware of any other violation of the Corporate

[591]Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[592]Ibid.

[593]Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[594]Code Provision 6.1.11, ibid.

[595]Code Provision 6.1.13, ibid.

Governance Code[596] and that the corporate governance compliance status report is included in the audited financial statements.[597]

(D) General Liability

Being that a director stands in a fiduciary relationship with the bank, he is prohibited from accepting commission, moneys or profit in any transaction relating/involving the bank. This is because a director is not entitled to unauthorised profits as a result of his position. Failure to exercise proper care that a reasonable man would be expected to exercise in banking affairs amounts to negligence, breach of trust, misrepresentation, dishonesty and misapplication of bank's funds will also render the director liable to make restitution or to pay compensation for such loss.

(E) Criminal Liability

A director can be held criminally liable for breach of specific provisions which could result to imprisonment or fin or suffer both imprisonment and fine. A director is guilty of an offence for failure to produce a copy of the bank's report as to enforcement and compliance upon request by the CBN within a reasonable period. Also, by virtue of S.15 (7) of the Failed Banks (Recovery of Debts and Financial Malpractices in Banks) Decree No.18 1994 as amended, execution could be levied on the personal properties of thee directors to off-set an outstanding loan and interest owed to a failed bank by the company.

Often, directors act outside their powers and without due care and diligence. Conveniently, they forget and ignore completely the nature and extent of their relationship with the bank; and abuse their position to the detriment of the bank. In recent past, the banking sector frenzied directors of banks took

[596]Code Provision 6.1.14, ibid.

[597]Code Provision 6.1.15, ibid.

actions hostile and adverse to the interest of the banks. They floated companies and lent millions of Naira without securities. They refused and forgot to use their powers honestly, wisely, judiciously and judicially in the interest of the banks in general and the shareholders and economy in particular. They wilfully failed to discharge the duties and mandates inherent in their office in good faith and in the best interest of the bank.

It is also abuse of position for any director to allow his personal interest conflict with any of his duties/ mandates as a director of any bank. Where a director accepts a bribe, a gift or commission either in cash or in kind from any person or share in the profit of that person in respect of any transaction involving the bank amounts to abuse of position. The current financial crises has resulted in public outcry as executives in bank board's who have attracted high levels of remuneration but led their banks into financial collapse or bankruptcy, walked away with little or no punishment than a scolding. Thus, directors could be criminally liable to various degrees of various offences in the line of duty.

(F) Statutory Liability

It deals with the provisions that stipulate the liability of a director for carrying out a particular act or make any omission detrimental to the bank. Thus, where a director receives money or property on behalf of a bank with the intent to defraud and misapplies such money or property, he should be made liable. Quorum as to meetings must also be formed to avoid liability.

(G) Relief from Liability

Under the Code, there is no provision for relief from liability. S.558[598] is concerned with the powers of the court to grant relief from liability in certain cases. Mention is made about an officer of a company to which a director is not excluded. Thus, the court should grant or be willing to grant relief upon cogent and sufficient evidence that the director acted honestly, reasonable and in good faith regardless of the nature of the proceedings before it and the circumstances of the proceedings/case.

In granting this relief, the court must exercise its discretion sparingly. The court's discretion shall be exercised judicially and judiciously and not arbitrarily according to his whims.[599] Thus, S. 558 has fortified the position of the courts such that it undoubtedly confers a very wide discretionary latitude in handling matters before him. It must not be forgotten thought that in the exercise of their discretionary powers, courts must act judicially and judiciously.[600] Discretion is said to be exercised judicially and judiciously where the discretion is exercised in sound principle of law based on sufficient material facts and given sufficient weight to relevant consideration. The discretionary jurisdiction must be exercised strictly on the facts and circumstances of a particular case. This must be so for no one case can be authority for another in matters of discretion and the court cannot be bound by previous decisions to exercise its discretion in a particular way because that would in effect be putting an end to the exercise of discretion.[601]

The officer in proving his case must adduce specific, categorical and unchallenged evidence to warrant the granting of the relief.[602] The officer seeking the court's discretion has the burden of presenting all the facts necessary for the exercise of the discretion. This is because the court does not exercise its

[598]Companies and Allied Matters Act, 2004.

[599]Ebong vs Ikpe (2002) 17 NWLR (pt. 797) 504 @ 513.

[600]Ofomata vs Onwuzuligbo (2002) 8 NWLR (pt. 769) 298 @ 303.

[601]Atiku vs Yola L.G. (2003) 1 NWLR (pt. 802) 487 @ 490.

[602]Elf Pet. (Nig.) Ltd vs Onyekwelu (2002) 17 NWLR (pt. 797) 461 @ 469.

discretion in vacuum but on legal evidence or material facts placed before it; and where such material facts are not placed before the court by the party seeking the exercise of its discretion, his application will fail because there is no corresponding burden on the opposing party to supply any fact or any omission in the facts supplied by a party seeking an exercise of the court's discretion to enable the court exercise it.[603]

3.6.2 The Auditors in Corporate Governance

Auditing is about governance, but, of course, only one aspect of it, albeit a vital one. It is about upholding the integrity of financial reporting and business conduct. Faith in the effectiveness of auditors is an essential element in an efficient system of corporate governance. In recent times, there has been wide criticism of auditors. This criticism is engendered by their perceived failure to detect and prevent a number of high profilecorporate financial scandals. A good example is the massive failure of Banks in Nigeria after auditors have given such banks a clean bill.[604]

Auditing is the chief corner stone of practice of good corporate governance. Auditors help organisations to achieve high level of accountability, transparency and integrity, improve operations and confidence to the general public by providing unbiased, not self centred, objective assessments of how resources are managed responsible, effectively and judiciously. S. 29[605] provides that every bank shall appoint usually an approved auditor, whose duties shall be to make to the shareholders a report upon the annual balance sheet and profit and loss account of the bank and every such report shall contain statements as

[603]Gen.& Aviation Service Ltd vs Thahal (2004) 10 NWLR (pt. 880) 50 @ 57; Dangote vs Civil Service Commission, Plateau State (2001) 9 NWLR (pt. 717) 132.

[604]Egwuonwu, R., (1997). *Interlocking Directorates & Corporate Governance*, Stride Associates Ltd, Lagos, Nigeria, p.57

[605]Banks and Other Financial Institutions Act, Cap B3 Laws of the Federation of Nigeria, 2004.

may be prescribed, from time to time by the bank.[606] For the purpose, the approved auditor shall be an auditor who is:

a) a member of one of the professional bodies recognised in Nigeria;

b) approved by the bank;

c) resident in Nigeria;

d) carrying on in Nigeria, professional practice as accountant and auditor.

Any person[607]- a) having any interest in a bank otherwise than a depositor; or

b) who is a director, officer or agent of a bank: or

c) which is a firm in which a director of a bank has any interest as part or director; or

d) who is indebted to a bank;

shall not be eligible for appointment as the approved auditors for the banks. And a person appointed as such auditor who subsequently-

a) acquires said interest; or

b) becomes a director; officer or agent of the bank; or

c) become indebted to a partner in a firm in which a director of a bank is interested as partner or director,

shall cease to be such auditor.

The bank's auditor's role supports the governance responsibilities of oversight, insight and foresight. Oversight in the sense that banks engaged their responsibilities to serve and deter corruption; insight,

[606]S.29 (1), ibid.

[607]S.29 (3) of the Banks and Other Financial Institutions Act, Cap B3 Laws of the Federation of Nigeria, 2004.

which assist the board of directors, top management and executives by providing an independent assessment of programs, policies and operation; and foresight, which envisages contemporary trends, growing concern and future/expected challenges.

Auditors in carrying out their duties rely on financial reports, accounting records,[608] performance audits, investigations and advisory services to attain their given mandates. An effective audit activity strengthens and empowers governance by increasing public confidence, trust and allegiance as to bank's accountability, transparency and disclosure. Auditors' roles in banks are crucial for promoting credibility, equity and good ethical behaviour amongst staff, while reducing the high risk of public corruption. Hence they must be empowered to act with integrity in order to yield reliable results and output.

Banks shall have a structure to independently verify and safeguard the integrity of their financial reporting which shall entail the review and consideration of the financial statements by the Board Audit Committee (BAC) and enhance the independence and competence of the bank's external auditors.[609]The audit committee is another invention to ensure effective corporate governance. The corporate Audit Committee came into existence as a response to the abuse of due process of accountability.[610] The Audit Committee can greatly strengthen the independence, integrity and effectiveness of bank activities by an independent oversight of the internal and external audit work plans and results, assessing audit resource needs and initiating the auditors' relationship with the bank.

[608]S.360 of the Companies and Allied Matters Act, 2004. Thus, every auditor shall have a right of access at all times to the company's books, accounts and vouchers and be entitled to require from the company's office such information and explanations as he thinks necessary for the performance of the auditors duties

[609]Provision 5.2 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[610]Egwuonwu, R., (1997). *Interlocking Directorates & Corporate Governance*, Stride Associates Ltd, Lagos, Nigeria, p.57.

Also, ensures that results are aired and any recommended improvement or corrective actions are addressed or resolved.[611]

The overall mandate of the Audit Committee is to assist the board regarding the integrity of financial information, the oversight of internal controls, compliance with applicable laws, regulations and codes of conduct and performance of audit functions. The internal auditors should assist in the achievement of the bank's set objectives by providing independent, objective assurance and valuable services, while the external auditors should audit annual accounts of the banks accurately and in sincerity without bribes. It should be borne in mind that the Code does not expressly provide for the remuneration, performance evaluation, tenure and removal of the Auditors and the board members. But suffice to say that the Board Audit Committee should carry out routine checks and investigation on the internal auditor s in other to ascertain their performance and compliance level. Both external and internal auditors and the Audit members should be removed when there is a breach on the line of duty which is detrimental to the image and reputation of the Banks and Other Financial Institutions Act, Cap B3 Laws of the Federation of Nigeria, 2004.

(1) Composition

The Code provides for both internal and external auditors.[612] It consists of the head of Internal Audit and other members. The Internal Audit Unit is to be adequately staffed.[613] Also to be constituted is the Board Audit Committee, who should be non-executive directors and ordinary shareholders; and one of

[611]Supplementary Guidance: The Role of Auditing in Public Sector Governance. The Institute of International Auditors, 2nd Edition, January 2012. Retrieved from hhtps://na.theiia.org/standards-guidance/Pubic%20Documents/Public_Sector-Governance_/_.pdf accessed 5/6/2014.

[612]Code Provision 8.1.1 – 8.1.7 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[613]Code Provision 8.1.7, ibid.

such ordinary shareholder is to serve as the Chairman of the Committee.[614] In the Revised Code 2014,[615] the BAC shall be structured in such a way that it:

i) consists only of Non-Executive directors; ii) is chaired by an independent director and iii) has at least three members. The BAC shall be of sufficient size, independence and technical expertise to discharge its mandate effectively.[616]

(2) Qualification

Internal auditors should be largely independent, highly competent and people of integrity.[617] The head of Internal Audit should not be below the rank of AGM and should be a member of relevant professional body. Suffice it therefore to reiterate that Non Executive directors of the Board Audit Committee must possess the same qualification as stated under the qualification of directors. They must be knowledgeable in internal control processes.[618] In addition, one member must be an audit Committee financial expert. In the selection of external auditors, individuals of good repute, educational qualification, professional competence, theoretical knowledge and expertise and practical training are necessary. Approved auditors or audit firms should be firms registered with the auditors' professional body and subjected to a system of quality guaranteed and assurance. They must be independent.

The BAC shall include members who are financially literate (that is being able to read and understand financial statements). At least one of the members shall have relevant qualifications and experience

[614]Code Provision 8.1.4, ibid; Provision 5.2.1 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[615]Provision 5.2.2 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[616]Provision 5.2.3 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[617]Code Provision 8.1.1 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006.

[618]Code Provision 8.1.4, ibid.

(that is, shall be a qualified accountant or other finance professional will experience in financial and accounting matter)[619] and it shall meet at least once every quarter.[620]

(3) Appointment/Tenure

Members of the board Audit Committee are appointed at the Annual General Meeting. Thus, appointment should be in consonance with the provisions of S. 29 of BOFIA, 2004. The Companies and Allied Matters Act made provisions for auditors to attend meetings,[621] removal,[622] resignation,[623] and remuneration.[624] An audit firm shall not provide audit services to a bank if one of the bank's top officials (directors, Chief Finance Officer, Chief Audit Officer etc) was employed by the firm and worked on the bank's audit during the immediate past two (2) years.[625] The tenure of auditors in a given bank shall be for a maximum period of ten (10) cumulative years after which the audit firm shall not be re-appointed in the bank until after a period of another ten (10) consecutive years.[626]

(4) Mandate of External Auditors

S. 8.1.3[627]stipulates that the Head of the Internal Audit shall report directly to the Board Committee but forward a copy to the MD/CEO of the bank. Quarterly reports of audit must be made to the Audit Committee, and made available to examiners on field visits. The Board Audit Committee's mandate is

[619]Provision 5.2.4 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[620]Provision 5.2.6, ibid.
[621]S.363 of the Companies and Allied Matters Act, 2004.

[622]S.362, ibid.

[623]S.365, ibid.

[624]S.361, ibid.

[625]Provision 5.2.13 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.
[626]Provision 5.2.12, ibid.
[627]Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006

the review of the integrity of the bank's financial reporting, oversees the independence and objectivity of the external auditors[628] and access to external auditors to seek explanations and additional information without management presence.[629] The CBN Briefs[630] puts the role of the audit committee to include:

a) the Audit Committee must be qualified, independent and tough-minded as it represents the most reliable guardian of public interest;
b) it undertakes, on behalf of the shareholders, responsibilities for oversight of effective internal control, reliable financial reporting, which complies with regulatory requirements and corporate code of conduct;
c) the Committee should review, not only external auditors' reports, but also most importantly the report of the internal auditors; and
d) the Committee should maintain a constructive dialogue with the external auditors and the Board and enhance the credibility of financial disclosure.

The Board Audit Committee should strive to increase credibility and objectivity of financial reports, identify, monitor and mitigate business risk, review annual and financial statement. The functions of the Audit Committee under S.359 of the Companies and Allied Matters Act are as follows:

a) Ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;
b) Review the scope and planning of audit requirements;

[628]Code Provision 8.1.5, ibid; Provision 5.2.5 of the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

[629]Code Provision 8.1.6 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation, 2006.

[630]CBN Briefs, 2012-2013 Edition, Research Department, p.84.

c) Review that findings in management matters in conjunction with the external auditors and departmental responses thereon;

d) Keep under review the effectiveness of the company's system of accounting and internal control;

e) Make recommendations to the board in regard to the appointment, removal and remuneration of external auditors of the company; and

f) Authorise the internal auditors to carry out investigations and activity of the company which may be of interest or concern to the Committee.

It is clear from the above duties that the intent of the legislature in the enactment of this law is for the Committee to be the Chief cornerstone to corporate governance financial accountability and transparency. It thus poses a rider as to how effective in practice is this committee as against theory. The audit Committee must bear in mind that there is a greater responsibility and burden placed on them to dispense accurate information to the public about the bank in particular or any establishment in general.

The primary function of the Board Audit Committee is to assist the board of directors in fulfilling its oversight responsibilities in relation to reviewing the integrity of the bank's financial statements, financial disclosure and internal controls over financial reporting; monitoring compliance with legal requirements, selecting the external auditors for shareholder's approval, independence and performance of internal auditors.

(5) Liabilities

This Code does not contain provision for failure of the Auditors to comply with the mandates. It therefore behoves on the researcher that they bear same liabilities, that is Non-Compliance Liability,

General Liability, Statutory liability, Criminal Liability and relief from liability[631] as those of the board of directors. It is established that although the auditors are the watchdogs and not bloodhounds, they must also plan and conduct their work in an entity's financial statements to give themselves reasonable assurance that the financial statements do not contain material misstatements, whether as a result of their fraud or error. Auditors therefore, should direct their efforts to the areas where they consider, on the basis of their professional judgement or experience, that there is likely to be greatest risk of such misstatement.[632] In essence they must also act in good faith in carrying out their mandates and not act selfishly for their own interest (collect bribes to give false information as to true financial statements or not even investigation thoroughly into the accounts) at the detriment of the company in general and the shareholders and stakeholders in particular.Given that the compliance with regulatory requirement is normally best achieved when business practices and controls are good, most of the various matters which have an impact on the way in which a regulated entity is operated should already have caused concern to its auditors.[633]

3.6.3 Shareholders in Corporate Governance

For corporate governance framework to be adjudged as adequate, it must protect and guarantee the rights of shareholders. These rights include: the right to participate and vote at Annual General Meetings, elect members to the board, obtain timely and regular information on the company and share in the profits of the company. They also are entitled to receive a copy of the financial statement and

[631]S.368 of the Companies and Allied Matters Act, 2004. This is because auditors in the performance of their duties shall exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance(s). But where a company suffers loss or damage as a result of the failure of the auditor to discharge the fiduciary duty, he shall be liable for negligence and d directors may institute an action for negligence against him in court (Subsection 2) or any member after the expiration of 30days notice to the company of his intention to institute such action.

[632]Egwuonwu, R., op. Cit p.61.

[633]Egwuonwu, R., op. Cit p.61.

reports of the board of directors and auditors, right to dividend, right to exclusive jurisdiction to court, right to accounts and financial information from time to time. Shareholders are further entitled to information as to developments in the bank, risk management practices, board and top management appointments and executive compensation.

Shareholders must be treated equally and fairly and the protection of minority shareholder's interest guaranteed. Note withstanding the provisions of CAMA or any agreement or contract, the voting rights of every shareholder in a bank shall be proportional to his contribution to the paid-up capital of the bank.[634] Venues of general meetings should be communicated to the shareholders and be easily accessible to majority of the shareholders, meetings being the primary communicative practice of any institution which can be used to disseminate vital information, accomplish goals and solve problems. Proceedings at such meetings should am much as possible be in consonants with Part VIII of the Companies and Allied Matters Act, 2004. Although, the 2006 Code made no provision for Shareholders, the 2014 Code has embedded in it the rights and functions of shareholders,[635] equity ownership,[636] protection of shareholders' rights,[637] meetings,[638] shareholders' associations[639] and rights of other stakeholders.[640]

[634]S.10 of the Bank Other Financial Institutions Act, 2004.

[635]Code Provision 3.1 of the Code of Corporate Governance for Banks and Discount Houses, May 2014.

[636]Code Provision 3.2 of the Code of Corporate Governance for Banks and Discount Houses, May 2014.

[637]Code Provision 3.3, ibid.

[638]Code Provision 3.4, ibid.

[639]Code Provision 3.5, ibid.

[640]Code Provision 4.0, ibid.

In the course of operation, a corporate entity owes obligation to its shareholders and institutional investors. It maintains good relationship with these parties in order to enhance shareholders. Therefore, effective communication with shareholders is important in order to enable them to understand the business risk profile, financial condition and operating performance of the organisation. Other avenues for effective communication include the use of websites and establishment of investor's desks at the designated locations. Shareholders have the right to participate in the nomination and removal of directors. They should be given the opportunity to place items on the agenda and ask questions from the Board at the general meetings. The major strategic modifications and initiatives should not be finalized without shareholders' approval.[641]

A good corporate governance framework must also ensure the equitable treatment of shareholders and protection of minority interest. Academic research has produced mixed evidence of shareholder activism on corporate performance and company value. Abel[642] wrote that "the role of shareholders activism in the proper management of corporation entities has been properly established in the literature. Suffice it to say that organisations with active shareholders are most likely to adopt good corporate governance principles and ultimately, would experience better performance and greater value creation." Shareholders should be free to express their dissatisfaction in the running of the banks.[643]

[641]CBN Briefs, 2012-2013 Edition, Research Department, p.85.

[642]Abel, A.A., (2014). Corporate Governance and the Issue of Shareholders' Democracy, *The Nigerian Accountant Journal*, p.24. Retrieved from http://icanig.org/documents/TNAJan2014.pdf accessed 27/08/2014.

[643]See above at p 151 on "Code Provision on Organisational Structure".

Velasco[644] categorised fundamental rights of shareholders into four groups, to include: economic rights, control rights, information rights and litigation rights. In economic right, shareholders invest in corporations primarily for economic gains. There are two main ways in which shareholders can profit from a corporation: by receiving distribution of the company's profit and by selling all or part of their interest in the corporation. These methods correspond with the two main economic rights of shareholders to include the right to receive dividends and the right to sell shares. For control rights, one of the key characteristics of corporation is the separation of ownership and control. Although to manage the business is vested in the board of directors. Shareholders have the right to vote important matters relating to the business, which gives the same control over the corporation, the right to elect directors, who in turn manage the business; the right to cote in meetings by self or by proxy, right to vote in certain fundamental matters which gives them the voice in corporate affairs.

In information rights, the shareholders also have the right to at least some information about the banks affairs, right to inspect bank's books and record; while on the litigation right, the shareholders also have the ability to seek judicial enforcement of their rights under such circumstances. Most significantly, the right to seek enforcement of, and redress for breach of manager's fiduciary duties for the bank and its shareholders by means of derivative litigation. When directors are conflicted, shareholders have permitted to the legal action on behalf of the bank. The main mandate of shareholders is to attend meetings to ensure that directors do not go beyond their powers, abuse their powers and to pass resolution (be it ordinary or special) at the general meetings by voting through their shareholder capacity. This is relevant in that it allows the shareholder to exercise their ultimate control over the company, how it is being managed and run. The shareholders have the right to vote. The shareholder further has the mandate to remove a director from office, change the name of the bank and authorize a

[644]Velasco, J., (2006). *The Fundamental Rights of Shareholders*, pp. 413- 421. Retrieved from http://lawreview.law.ucdavisedu/issues/40/2/articles/DavisVol40No.2_Valesco.pdf accessed 8/6.2014.

service contract for a director. In general it is noted that shareholders have little power over the directors and how they run the institution.

3.7 Summary

The CBN is the apex regulatory authority of the financial system in Nigeria. It was established by the CBN Act of 1958 and commenced operations in 1959. Its traditional functions are to issue legal tender, act as banker to government, regulate and supervise deposit money banks, act as a lender of last resort and formulate and implement monetary and exchange policies. In addition to these functions, the CBN in developing the economy, undertake developmental activities.

This chapter considered the mandatory statutory regime briefly and the soft law regime of corporate governance in the banking sector which is marked by general application codes and industry specific codes. The SEC as the regulator of the Nigerian Stock Market, the NSE and Abuja Commodity and Securities Exchange has authority over the securities' trading rules and regulations and superintending commodities trading respectively; the BEA is a legal instrument used for combating insider-related fraud of bank employees, thereby ensuring that employees live within their means and declare their assets; BOFIA applicable to banks and other financial institutions, restrains a bank from permitting to be outstanding unsecured advances, loans and unsecured credit facilities without prior written consent and approval of the CBN; CAMA makes provision for the appointment, qualification, removal and composition of the board of directors and auditors. It also makes provision for the registration of companies, meetings and resignation of auditors; are examples of mandatory statutory legal frameworks. The CBN Code of Corporate Governance for Bank in Nigeria Post Consolidation 2006 is an example of an

industry specific code. Despite its presence, banks still encountered crisis in 2008-2009. It contains well elucidating features, some of which are far from being practicable, and how has its provision been implemented by the banks and enforced by the CBN, the Regulator. The practice of specific provisions of the CBN Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 on organisational structure, quality of the board, risk management and whistle blowing, shows that banks have only paid lip service to the code. Furthermore, the enforcement also became impracticable due to the Nigerian system and non-compliance culture, disclosure and transparency. The implementation and enforcement witnessed challenges which shall be considered in the preceding chapter of this work. Despite the arsenal of administrative, civil and criminal sanctions possessed by the CBN, there is no provision for sanction/penalty for violation and failure to comply in the 2006 Code. Suffice to say that although the Code was enacted by a recognised regulator, its implementation by the banks and enforcement by the regulator has not been effective and the banks in turn, pay lip service to the provisions of the Code. The chapter further examined the role of the key functionaries – directors, auditors and shareholders.

The board of directors is the central link between corporate governance and performance of companies. A board of directors often plays a key role in corporate governance. It is their responsibility to endorse the organization's strategy, develop directional policy, appoint, supervise and remunerate senior executives and to ensure accountability of the company to its owners and regulators. It is incontrovertible that the boards of directors of a company are the essential fulcrum upon which the management of companies rest. The roles, duties and importance of Company Directors cannot be over- emphasized[645]Directors can

[645]Duru, O.W., Independence of the Board of Directors under the Corporate Governance Codes in Nigeria: An Overview. Retrieved from

either be executives or non executive directors. Executive directors are employees/officers of the company who hold appointments at senior levels sit and direct the affairs as head. Some advantages of the executive director is better technical background of the ban, have a better understanding of the needs and disposition of the company.

The non- executives are called honorary or professional directors are part time individuals selected to sit on the company's board for due reasons of professionalism and technical experience. In Nigeria, the NEDs have been proven ineffective as most NEDs abuse the confidence repose on them by compromising their stands for material wealth extended to them by the executive to buy their conscience, integrity, honesty and loyalty. There is a problem as to access of information. Since the NEDs are watch dogs to maintain sanity by ensuring checks and balances, there is a need to balance the number of executive and non executive directors seating on the board to ensure effective governance and deter compromise. The board should also possess a diversity of knowledge of background, knowledge and experience. Non executive directors are the independent representatives of shareholders on the board. All directors owe same duties to the company including the duty to exercise independent judgement. Given the legal mandates of the board of directors, how much time is the board given to carry out such an enormous task.

With relation auditors, weird and myriad audit activities and reporting relationships exist but the key note is that audit activities must be configured appropriately to enable the banks fulfil their duty of accountability and transparency to the public, investors, shareholders and other stakeholders while achieving their objectives effectively, culturally, economically, professionally, efficiently and ethically. Auditing must retain the defining characteristics that are the basis of credibility such as independence from the parties being audited and an objective attitude towards the subject under audit, use systemic

.http://www.academia.edu/5185469/INDEPENDENCE_OF_BOARD_OF_DIRECTORS_CODES_IN_NIGERIA_AN_OVERVIEW_By_Duru_Onyekachi_Wisdom_Ceazar accessed 9/06/2014.

processes to collect, analyze substantial and appropriate evidence, comparism criteria for formulating criticisms and use widely accepted professional audit standards. The credibility of the audit activity strengthens public governance by providing accountability and protecting the core values of the bank, which it does by accessing whether managers and officials conduct the public business transparently, fairly, honestly and in accordance with laws and regulations.

On the part of shareholders,shareholders should be encouraged to exercise their rights actively and responsibly. The bank should encourage direct and indirect execution of shareholder's rights and proper communication and accessibility of the venues of meetings, meetings being an indispensible tool of corporate governance. The shareholders on their part should not be intimidated or shy away from enforcing their mandates. Shareholder rights plan should be outlined and documented. A shareholder rights plan outlines the rights of shareholder in any given institution.

The banking sector is pivotal to the Nigerian economy. To be efficient in its role to the economy, it must be subjected to continuous reforms. The banks should ensure maintenance of reserve fund,[646] restriction of dividend,[647] disclosure of interest by director, managers and officers,[648] and prohibition of all forms of corruption and employment of certain persons and interlocking directorship.

CHAPTER FOUR

[646]S.16 of the Banks and Other Financial Institutions Act, B3, Vol.2, Laws of the Federation of Nigeria, 2004.

[647]S.16, ibid.

[648]S.16, ibid.

CHALLENGES OF CORPORATE GOVERNANCE IN THE NIGERIAN BANKING SECTOR

4.1 Introduction

Holistic reform of the banking sector began in 2004 with the consolidation programme was necessitated by the need to strengthen the bank. The policy trust at inception was to grow the banks and position them to play pivotal roles in driving development across the sector of the economy. As a result, banks were consolidated through mergers and acquisition, raising the capital from N2 billion to a minimum of N25 billion, which reduced the number of banks from 89 to 25 and later 24.[649] The sector witnessed great changes in terms of structure, size and ownerships. Some of these changes and impact of the reform includes the emergence of fewer but bigger banks, huge flow of capital into the banking sector, high capital base, dilution of ownership, improved international ranking of Nigerian banks, reduction and a fall in interest rates, greater public and investors confidence and increased competition etc.

These laudable achievements were accompanied by inevitable challenges as it relates to the integration of people, process and culture. Some of these challenges include corruption generally, corruption and incompetence of the board and management, strategy and branding problems, poor integration and development of information technology and communication system, accounting systems and records, harmonization process and procedures, poor infrastructure people and culture as it relates to synchronization of staff grading, product harmonization, customer retention, absence of robust risk management program, rationalization of subsidiaries, legal and regulatory issues, wrong perception of the intent of the reforms, reluctance of accepting positive changes in global dynamism, high cost of doing business, high growth rates, failure to consider the welfare of staff on consolidation, loss of jobs and the quality of manpower.

[649]Introduction to the Code of Corporate Governance for Banks and Discount Houses, May 2014 p.5.

The emergence of bigger banks in Nigeria was bound to task the skills and competence of the board and management in increasing shareholder-value and balance same against other stakeholder- interest in a competitive environment. These and other post consolidation issues and challenges as anticipated by the CBN informed the issuance of the Code of Corporate governance to the banking sector and the guideline on incentives after post consolidation. The Code may be unable to accomplish its objective of a sound banking system if the underlying legal, institutional and regulatory frameworks of corporate governance in Nigeria are weak, inefficient and inadequate. In this regard, questions have been raised whether the CBN is not overburdened being the sole body responsible for policy formulation, banking supervision, enforcer and at the same time, acting as a banker's bank.

In 2006, the CBN prescribed certain measures for mitigating the fifteen weaknesses that were observed in the 25 mega banks that emerged from the banking industry consolidation. Suffice it to say that the CBN has not failed in its entirety to eradicate these identified weakness and challenges because the reforms/consolidation facilitated in the development of a sound banking institution. These challenges are embedded in corporate governance environment, which will go a long way to affect the promotion of environment supportive of corporate governance. Further, the weak implementation and poor enforcement of the provisions of the Code show that either the banks are merely paying lip service to the Code or its implementation or enforcement is compromised by the regulator, the CBN.

Several years after the coming into force of the Code, the challenges identified in the Code still persist and continue to frustrate corporate governance initiatives in the banking sector. The challenges which confront the Nigerian banking sector as far as corporate governance is concerned have been categorised into four, namely the challenge of promoting a supportive corporate governance environment in the Nigerian Banking Sector, inside management related challenges of corporate governance, challenges of the body (in this case, the CBN) saddled with the responsibility of enforcing the provisions of the Code

and exogenous challenges of implementing corporate governance system in the Nigerian banking sector. These categorized challenges are discussed hereunder.

4.2 The Challenge of Promoting a Supportive Corporate Governance Environment in the Nigerian Banking Sector

The corporate terrain in Nigeria has been grasping for survival since the 1980s and 90s and even our today's world as financial distress can still be seen haunting the financial sector. In recent times, Nigeria experienced corporate failures with the most recent resulting from factors such as macro economic instability caused by large and sudden capital inflows, major failure in corporate governance practices, lack of investors and consumer protection, inadequate disclosure and transparency about the financial position of companies, critical gap in regulatory framework and regulations, uneven supervision and enforcement, unstructured governance and management process and the weaknesses in the business environment in the country.[650]

One of the first areas where companies have been encouraged to discharge a wider accountability has been the environment. Although corporate environmental reporting is a relatively recent phenomenon, there is evidence of "shadow" or external environmental reporting dating back to the early 19th Century. In recent years, environmental issues have attracted increasing attention for many sectors of the society worldwide. The seed of corporate environmental reporting were sown by organisations such as the Coalition for Environmentally Responsible Economies (CERES), who provided the first guiding principles for companies wanting to discharge accountability to the environment.[651]

---

[650]Sanusi, S.L., (2010). *The Nigerian Banking Industry: What Went Wrong and the Way Forward*, Bayero University, Kano, p.1.

[651]Jill, S., (2011). *Corporate Governance and Accountability*, 3rd Edition, John Wiley & Sons Ltd, United Kingdom, p.261. CERES was the one of the early pioneers of environmental reporting, encouraging

A country's corporate governance environment considers the impacts of the political, economic and social-cultural factors that enhance good corporate governance or prevent unethical conduct.[652] The corporate governance environment determines the context for evaluating corporations' performances, decisions, strategic choices and actions. While the political, cultural and socio-economic ramifications of the recently introduced corporate governance codes in Nigeria are still being studied, it is important to note that these codes were established as instruments for safeguarding the corporations against corruption, mismanagement and environmental abuse.[653]

The natural consequences of bad lending decisions by banks led to huge provisions and erosions in their capital, as well as challenges resulting from lack of progress in reforming the macroeconomic environment.[654] An insufficient developed infrastructure and the difficult business environment had a negative impact on the banking industry. The tortuous legal process, the absence of reliable credit rating agencies and poor infrastructure all contributed to poor banking practices. Thus, only a few banks were able to foreclose on borrowers and such constraints led to borrowers abusing the system. Lack of basic credit information on customers, underscored by the absence of a unique identifier, has held back the development of credit bureaux and hampered customer credit assessment at banks, thereby contributing to an increase in the stock of bad debt in the system.[655] Board squabbles and squabbles

---

companies worldwide to discharge this accountability reporting to the environment through the accounting framework, p.262. Retrieved from http://www.ceres.org/about/history.htm.

[652]Li, S., & Nair, A., (2007). A Comparative Study of Economic Reforms in China and India: What Can We Learn? In: Adekoya, A.A., (Ed) Corporate Governance Reforms in Nigeria: Challenges and Suggested Solutions, *Journal of Business Systems, Governance and Ethics*, 6:1, p. 40.

[653]Adekoya, A.A., Corporate Governance Reforms in Nigeria: Challenges and Suggested Solutions, *Journal of Business Systems, Governance and Ethics*, 6:1, p. 40.

[654]Sanusi, L.S., (2010). *The Nigerian Banking Industry: What Went Wrong and the Way Forward*, Bayero University Kano, p.2

[655]Financial Stability Report, January 2009 – June 2010,p.XII.

arising from knowledge gaps, harmonisation roles and salary structure creates unhealthy competition and a counter-productive working environment.

To promote an environment supportive of corporate governance in the banking sector, the reverse in the above paragraph should be the case. In addition, the banks should enhance its quality and operations by implementing risk base management/ supervision, enhance provisions for consumer protection and internal transactions amongst others, strengthening the financial stability and establish macro-prudential rules, enabling banking infrastructure for a healthy financial sector and ensuring that the banks contribute to the development of the real sector in the economy. The CBN, in collaboration with the Bankers' Committee, aims to achieve an environment where a higher and increasing proportion of transactions are carried out through cheques and electronic payments in line with global trends. The enforcement of the T+2 cheques clearing cycle is being stepped up and efforts are on going to reduce the cycle to T+1. Anybody can make payments of up to N10 million through the clearing system with a cheque.[656]

The Basel Committee recognises that primary responsibility for good corporate governance rests with the boards of directors and senior management of banks; however, there are many other ways that corporate governance can be promoted, to include:

i) Government through laws;
ii) Securities regulators, stock exchanges through disclosure and listing requirements;
iii) Auditors through audit standards on communications to boards of directors, senior management and supervisors; and
iv) banking industry associations_ through initiatives related to voluntary industry principles and agreement on and publication of sound practices.

[656]Sanusi, L.S., (2012). *Banking Reform and its Impact on the Nigerian Economy*, University of Warwick's Economic Summit, United Kingdom, p.10.

For example, corporate governance can be informed by addressing a number of legal issues, such as the protection of shareholders rights, the enforceability of contracts, including those with service providers; clarifying governance roles; ensuring that corporations function in an environment that is free from corruption and bribery; and laws and regulations (and other measures) aligning the interests of managers, employees and shareholders. All of these help to promote healthy business and legal environments that support sound corporate governance and related Supervisory activities.[657]

It is imperative that corporate governance codes should be enacted in a way to meet the needs of the Nigerian business environment. This is hinged on the fact that corporate financial reporting is essential and fundamental to all stakeholders to include the shareholders, government, creditors, regulators, government agencies, employees, suppliers and the society in general. The consequences of financial failure in the economic growth and sustainable development are undesirable and unbearable in both developed and developing countries like Nigeria. Hence, the need for a corporate governance system with high level of confidence, fairness in corporate reports, quality of information, improved recognition, transparency, disclosure and accountability in a dynamic business environment.

In promoting an environment supportive of corporate governance in the banking sector, proper measure must be taken to enhance effectiveness, attractiveness and efficiency of governance frameworks; stakeholders should be knowledgeable and abreast with relevant laws, rights, responsibilities and ethical requirements; the risk management in force should endeavour to be transparent; non compliance with the standards of financial reporting; transparency, accountability and disclosure requirements be sanctioned; non compliance with the code of corporate governance be sanctioned; executive compensation and remuneration should be regularly reviewed to avoid

[657]Basel Committee on Banking Supervision, Enhancing Corporate Governance for Banking Organisations, September 1999, p.10. Retrieved from http://info.worldbank.org/etools/does/library/156006/pillars/pdfs/bib/enhancingcorporategov.pdf accessed 14/06/2014.

misappropriation of the bank's resources; employees remuneration should be reasonable an sufficient enough to motivate them for greater performances; the scope of both the internal and external audit and the audit committee be defined to safeguard integrity.

The impact of good corporate governance in a business environment cannot be overemphasized. It promotes ethical values, accountability, transparency, disclosure, confidence, increased valuation, higher profits and sales growth, lower capital expenditure, reliable financial performance, ethical behaviours, professionalism and good business faculties/facilities. It further resolves conflicts between board/managements and shareholders; management and the company; management and employees and the employees and the company. It also strengthens the good will, reputation, survival and the stability of the financial sector. Good corporate governance ideally provides a level of disclosure and transparency regarding the conduct of corporations and their boards of directors that enables the supervision of their accountability while ensuring that the company with their legal obligations and remissions are accountable to shareholders and responsible to stakeholders including employees, suppliers, creditors, customers and communities, and act responsibly regarding the environment.[658]

In promoting an environment supportive of corporate governance in the banking sector, there must be a high level of sophistication among stakeholders especially consumers, shareholders and investors and adequate disclosure by the banks. Bank reports to the CBN and all stakeholders must be accurate, complete and contain the right information to enable the CBN, as the regulators to supervise the industry more effectively and the investors, to be informed as to making investment decisions. There should also exist effective co-ordination among the financial system regulators to provide and ensure a

[658]Suberu, O.J & Aremu, O.S., (2010). Corporate Governance and Merger Activity in the Nigerian Banking Industry,*Kamla-Raj, J Economics* 1:2, p. 91. Retrieved from http://www.krepublishers.com/02-Journal/JE/JE-01-0-000-10-Web/JE-01-2-000-10-PDF/JE-01-2-091-10-025-Suberu-O-J/JE-01-2-091-10-25-Suberu-o.j.Tt.pdf accessed 19/06/2014.

competitive and consolidated regulatory activities. Regulations and Codes must be adequate and thus, meeting the objectives of the banks it has been enacted to regulate.

Governance and internal process should be properly structured, proper supervision, adequate implementation and enforcement of relevant Codes and Regulations. A sufficient developed infrastructure and conducive business environment will necessitate a good environment for corporate governance. A functional legal process, the presence of reliable credit rating and good infrastructure promotes good corporate governance environment. Further, it must contribute to the welfare of its stakeholders and respect the rights of the constituents affected by its operations, the rights and equitable treatment of shareholders, interest of stakeholders' business entities, integrating an ethical behaviour standard, perfection on financial reporting process, the role and mandates of the board.

Promoting an environment supportive of corporate governance is a tool for development and paves way for the adherence and compliance to provisions of the Code by the banks. An Environment and Social Risk Management Systems should be put in place by all banks, aimed at promoting environmental soundness and sustainable development in a socially responsible manner. The policy will further ensure that adequate provisions for actions and cost are made to prevent, control and mitigate negative impact on the environment. Banks are enjoined to comply with environmental legislations. Where they choose to report on environmental issues, they tend to refer to their level of compliance and the system they have adopted. Other environment risk includes corruption to the tune of diverting government funds freeze on account, sanctions on banks, armed robbery on banks and the value system which places emphasis on money by all means to the extent of employing females mostly for marketing and employment persons who are under qualified or further employ persons on contract basis. Thus, an environment for financial stability and sustenance becomes imperative. A conducive social climate promotes good corporate governance, but corrupt social and economic environment breed bad corporate governance and inhibits the desired level and performance of corporate governance.

4.3 Inside Management Related Challenges of Corporate Governance

Wilson[659] noted that in the Nigeria context, it is difficult to overlook circumstances under which the 25 banks emerged at the close of the consolidation exercise. The fact that a good measure of the mergers consummated was forced and the time available limited poses great challenges for the banks going forward. The CBN acknowledged those challenges in its code of corporate governance for banks and these are;

4.3.1 Technical Incompetence of Board and Management

Bearing in mind the greatly enhanced resources of the consolidated entities, board members lack the requisite skills and competencies to effectively redefine, re-strategise, restructure, expand and/or refocus the enlarged entities in the areas of change of corporate governance entities, new business acquisitions, branch consolidations, expansion and product development. Board and management are not independent and also exhibit a degree of corruption. The overbearing influence of a particular director on the board and management of a bank could result in frequent disagreements and the breakdown of internal controls. In addition, poor management, board room squabbles, ineffective board oversight functions, poor leadership and administrative ability as well as fraudulent and self serving practices among board members, management and staff have been attributed as some of the causes of bank failures. Besides, recruitment and placement of fit and proper persons in the management of a bank, the integrity and transparency of its management will definitely impact on the performance of the bank.[660] Directors and management are running a much larger level of resources, thus, it calls for adequate management capacity to effectively, profitably and efficiently run a larger organisation.

---

[659]Wilson, I., (2006). Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Consolidation,*Nigerian Economic Summit Group, Economic Indicators*, 12:2, p.3.

[660]CBN Briefs, 2012-2013, Edition, Research Department, Pp.116-117.

The board of directors of a company has the responsibility of ensuring that the organization functions well and the interest of the shareholders is protected. Therefore, the quality and strength of the board is a key determinant of the effectiveness of corporate governance. In Nigeria, board members and top management sometimes lack the requisite skill and competencies to effectively restructure or manage the company. Board members should be held accountable and liable for their actions/inactions.[661]

4.3.2 Interrelationship Issues

Board squabbles/disagreements could also be an issue due to different business cultures and high ownership concentration especially in banks that were formerly family or one-man entities. On the other hand, squabbles arising from knowledge gaps, harmonisation of roles and salary structure could also manifest among staff and management of consolidating banks with the potential to create unhealthy competition and a counter-productive working environment.

4.3.3 Weak or Non-Existent Internal Controls

Very few banks have a robust risk management system in place. Given the expected significant increase in the level of operations, the banks will be facing various kinds of risks which if not well managed, will result in significant losses. The management of risks in a transparent and ethical way will thus present some issues bordering on corporate governance. Many banks have had to contend with portfolio improvement activities ranging from resolving litigations to aggressive recoveries, loan restructuring and dealing with cases of insider-related abuses resulting in huge non-performing insider-credits in legacy institutions, post consolidation.

[661] ibid p.88.

In Nigeria, internal controls appear to be adequate on paper but feeble in practice. Internal and external audit failures either through negligence or incompetence or through aiding and abetting, frauds or inappropriate behaviours are common practice. The corporate culture in most organizations also fosters unethical behaviours.[662] Poor risk management procedures, ignorance and non-compliance with rules, laws and regulations, violation of regulations, policies, procedures, guidelines, unhealthy competition and weak internal controls lead to banking crisis. Banks that have proper risk management and internal control systems as well as well-focused strategic objective are likely to operate normally even in turbulent situations.[663]

4.3.4 Ownership Structure

The ownership structure greatly determines its performance in the promotion of good corporate governance. The current practice in non-restrictive equity holding in some organizations in Nigeria has led to abuses in the management of such organizations. In the organizational structure, the Chairman should be clearly separated from the head of the management that is Managing Director (MD) or the Chief Executive Officer (CEO) so that no one unfettered powers for decision making and two members of the same extended family should not be allowed to occupy these two posts.[664]

4.3.5 Resurgence of High Incidence of Malpractices

[662]CBN Briefs, 2012-2013, Edition, Research Department p.89.

[663]Ibid, p.116.

[664]CBN Briefs, 2012-2013, Edition, Research Department Pp. 87-88.

To boost the income as a result of intense competition and lack of enough viable projects, malpractices may resurface post consolidation. Such sharp practices could include round-tipping of FOREX, share price manipulation, excess custom charges, and falsification of records, creative accounting etc and adoption of unethical methods to poach customers. Further more if consolidation should fail to achieve transparency through diversification in bank ownership, the pervasive influence of family and related party affiliations may continue, resulting in huge level of insider abuses, connected lending and crony capitalism.

4.3.6 Transparency Concerns and Inadequate Disclosure of Information

Key attributes of good corporate governance but there are many deficiencies in the information disclosed particularly in the area of risk management strategies, risk concentration, performance measures amongst others. transparency and disclosure of information are key pillars of a corporate governance framework, because they provide all the stakeholders with the information necessary to judge whether or not their interest is being served. However, lack of transparency and adequate disclosure of information undermines the ethics of good corporate governance and the prospect for effective contingency plan for managing systemic distress. It thus obscures the way many financial and economic activities are conducted and contributes to the alarming proportion of economic/financial crimes in the financial industry.[665] Closely related issue is the habit of concealment of information from examiners to prevent timely detection of unhealthy situations in the banks may continue as a result of lack of transparency and pressure to boost income. Continuous concealment of material issues discovered by banks during their pre-merger due diligence will also compromise good corporate governance.

4.3.7 Non-Compliance Culture, Corruption and Indiscipline

[665]CBN Briefs, 2012-2013, Edition, Research Department, p.88.

The Nigerian system is characterised by corruption, indiscipline and the culture of non compliance for the rule of law, its implementation and enforcement. Thus, the banking sector being a part of the country is not an exception. There is a high level of corruption and non-compliance with rules and regulations in the country, posing a big challenge to the enhancement of corporate governance within the organizations. It is important to adopt the principles of good corporate governance and adhere strictly to it. This would go a long way in reducing corruption in various transactions.[666]

4.3.8 Other Inside Management Related Challenges

(a) Weak regulatory environment. There is the lack of enabling environment and effective regulatory framework that would ensure good corporate governance in Nigeria. The institutional and administrative structures as well as the legal provisions are weak. It is important for government to strengthen these institutions in order to promote good corporate governance.[667] There is no penalty or sanction for failure to comply with the provisions of the code, thus, making it just persuasive in nature, a moral adumbration. Providing sanctions and penalties will help to avert its non compliance and implementation. Thus, the provisions for penalties must be commensurate with the offences.

(b)Conflicting Provisions/Conflict of Interest. Conflicting provisions of other Codes of corporate governance for example, the CAMA and the Code of Corporate Governance for Banks in Nigeria Post Consolidation etc should be resolved, leading to uniformity. Further, conflict of interest is a major obstacle to decision-making process. Effective disclosure and confidence building to resolving conflict of interest in organizations is therefore important.[668]

[666]Ibid, p.88.

[667]ibid, p.88.

[668]CBN Briefs, 2012-2013, Edition, Research Department p.89.

(c)Inadequate Infrastructure and Absence of Quality Manpower. Inadequate infrastructure hinders the effective realization of good corporate governance in the country. There is, therefore, need for adequate infrastructure to be put in place to facilitate effective transaction mechanisms.[669]Services of persons who are not knowledgeable in accounting and financial matters and corrupt individuals are usually engaged thus, rendering the committee less effective. Further, real strategic change can only take place with competent and committed workforce that is, constantly exposed to training and development. The competitive financial sector environment requires a highly skilled workforce that would effectively contribute to value creation within the financial institutions.[670] A bank with poor quality of staff and management that engages in non-publication of and non-disclosure of accounts and other performance indices can lead to inefficient performance and eventual demise of the bank.[671] Employee recruitment is merely to comply with regulatory requirements, while training was viewed as a non-revenue function that is costly and unnecessary.

4.4 Challenges Facing the Body Responsible for Enforcing Provisions of the Code

Enforcement is the hub of all corporate governance rules and principles and whereby there is little or no guarantee of corporate governance implementation and enforcement, the codes, laws and principles are largely defeated. It is believed that corporate governance challenges and short comings basically come from the mechanism for enforcement and compliance, which so far is weak and ineffective in Nigeria.[672] There is little or no penalty or sanction for non compliance, thus making it measurable, weak

[669]ibid, p.89.

[670]Sanusi, L.S., (2012). Banking Reform and its Impact on the Nigerian Economy, University of Warwick's Economic Summit, United Kingdom, p.15.

[671]CBN Briefs, 2012-2013, Edition, Research Department, p.117.

[672]Obodo, C., p. 58

and cannot deter corporate bodies from committing abuses. Some of the challenges are considered below.

4.4.1 The Nigerian System and the Non-Compliance Culture

The legal system of any country plays a major role in the effectiveness and management control of corporate governance. The foundational structures for which a robust banking system is based would be an effective legal system that adequately protects, enforces and ensures compliance of codes and laws. The Nigerian legal system is yet to meet up with this task. Thus, the banking sector is not an exception. Codes and laws are violated, and there are no or weak penalties and sanctions for non-compliance or violation.

4.4.2 Lack of an Effective Judicial System

The law and the machinery of justice forms the bedrock for the dispensation of justice, thus, where there are shortcomings/gaps in the machinery, the law and justice administration will largely be affected and flawed. The law establishes[673] and confers judicial powers on the courts[674] as machineries for the dispensation of justice. The courts therefore act as a bridge between the other organs of government, government agencies, institutions, corporations, individuals and the nation. These courts both at the federal and state levels form the judicial system. An effective judicial system is responsible for enforcing rights supportive of a sound corporate governance practice and instilling confidence in the system.

The judiciary is an essential integral arm in the governance of the nation. It is the guardian of the Constitution, charged with the sacred responsibility of dispensation of justice for the purpose of safeguarding and protecting the Constitution. The judiciary when properly invoked, has a fundamental

[673]SS. 230 - 284 of the Constitution of the Federal Republic of Nigeria, 1999

[674]S.6, ibid

role to play in the structure of governance by checking the activities of the other organs of government and thereby promoting good governance, respect for individuals rights and fundamental liberties and ensuring the achievement of the goals of the Constitution and not allow the defect of such goals and intendments. It is duty of the court to keep the government faithful to the goals of democracy, good governance for the benefit of the citizens as demanded by the Constitution. The courts have sacred duty to translate into actuality the noble ideas expressed in the basic law, give flesh and blood, in fact life, to the abstract concepts of freedom, liberty, transparency, a society free from corruption, abuse of power and all the noble goals articulated and reiterated in the constitution.[675]

The judicial system is faced with several inadequacies in its procedural set up which hinders quick dispensation of justice and resolution of disputes in courts. Most of the procedural rules of various courts calls for reform and review in other to do away with technicalities, substantial error while upholding substantial justice.[676] The longetivity of pending cases in court which takes years to resolve (if parties are still alive) does not speak well of a judicial system; lack of qualified personnel and regular trainings and poor infrastructure and technology. A lot of lawyers have taken themselves to subvert the cause of justice and deliberately set out to destroy the very foundation of the profession, undermining the ethics of the profession, with frivolous applications, frequent adjournments and delay in prosecuting cases. Furthermore, many lawyers engage in bribing their way out, present fake defendants and deliberately refuse to serve court processes to the actual defendants. Registrars of courts are not left out, as some will refuse to file cases unless they are bribed. The litigants are also fond of changing lawyers to delay proceedings, persuade the lawyers as to their choice of court and refusal to pay the lawyers well in order to diligently prosecute their case. Suffice it therefore to state that the Nigerian judiciary is plagued with problems ranging from procedural, environmental, under development, legal

[675]Per Musdapher, JSC in A.G., Abia State vs A.G., Federation (2006) 16 NWLR (pt. 1005) 265 @ 316.

[676]Morayo vs A.A.U. Akungba (2017)3 NWLR (pt. 1552) 245 @ 253 ratio 10

system and disregard for the rule of law, lack of enforcement regimes, institutional, personnel, corruption, financial, poor facilities and infrastructure, non utilization of ADR process to bar problems.

Thus to ensure an effective judicial system the judges must perform their functions without sentiments[677] and reservations; the system must be purged and corruption free; remuneration increased to minimize corruption; removal of corrupt judges and other judicial officials; make provision for whistle blowing with adequate protection; continuous training for judges, Lawyers and judicial staff; determination of the performance of judges through the return of cases; development of infrastructure and technology; adopt case management system, monitor and evaluation of courts, amongst others.

4.4.3 Lack of Capacity

Due to the overburdened task of the CBN, it becomes imperative to state here that they lack the sole capacity to also ensure compliance and monitor implementation of the code. Services of a distinct body should be engaged to carry out the sole and oversight function of monitoring compliance and implementation and ensuring effective enforcement.

4.4.4 Failure to Disclose

Both the auditors and directors of banks have failed to disclose relevant information as to the true state of affairs. The concealment of relevant information calls for more punitive, practical and realistic disciplinary measures for breaking the ethics of their various professions. It is high time both auditors and directors are made criminally liable for falsification of the company's true state of affairs. Since Nigeria has adopted the International Report Standards (IFS) for National Accounting Standards (NAS), there is a call for the Nigeria Laws and Codes to be amended to reflect these standards.

[677]Umanah (Jnr) vs N.D.I.C (2016) 14 NWLR (pt. 1533) 458 @ 469 ratio 13; Okpe vs Fan Milk Plc (2017) 2 NWLR (pt. 1549) 282 @ 291 ratio 11

4.4.5 Lack of Adequate Mechanism to encourage Ethical Leadership

Failures have shown the inadequacies and incompetence of the directors in their breach of the duty to act in the best interest of the organisations. Adequate measures and mechanism should be put in place both internally and externally as a cheque on directors' oversight functions, ensuring accountability, competence and transparency to discharge deliberate fraud, false statements of account and inaccurate reporting.

4.4.6 Weak Security Standards

Notwithstanding the measures put in place to enhance security, financial transactions are currently plagued with fraud, particularly e-payment products. Delays and suppressed transaction notifications also wakens the security standards in financial transactions.[678]

4.5 Exogenous Challenges of Implementing Corporate Governance in the Nigerian Banking Sector

A business either fails due to managerial slack or due to the ebb and flow of the business life cycle. The former is related to the inadequacies in insider management; while the latter is related to factors beyond the control of anyone. For example, competition can result in the failure of a business, despite the deployment of resources and expertise by the management. Other exogenous factors which can impact on the survival of a business include corruption, statutory compliance issues and governmental policy. In other to remain on a steady keel in the face of the competition and still remain in business, Nigerian banks face challenges which make them easily amenable to compromising the provisions of the Code. Among others, corruption, short-termism, statutory compliance matters and governmental policy

[678]CBN Briefs, 2012-2013, Edition, Research Department, p.59.

constitute some of the challenges which constrain the willingness of the banks to key into the provisions of the Code as far as governance of the banks is concerned.

4.5.1 The Challenge of Corruption

Corruption is the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud and any form of corrupt malpractices.[679] Sadly, this non-violent unconscionable criminality smoulders and festers in all aspects of our national life. This means that the banks and their management are not expected from actors who embark on and enmesh themselves in a frolic of corruption.

The greatest obstacle to the attainment of sound corporate governance is corruption. A global corruption report of 2008 by Transparency International ranked Nigeria as the 21st most corrupt nation in the world.[680] Corroborating this report, a study has proved that Nigerian banks engage in profuse corruption because it is positively correlated to profitability[681]. Equally, the collapse of Nigerian banks in the 1990s resulted from monumental "fraud committed by bank owners and managers[682] who had granted unsecured loans to themselves, their friends and family members, resulting in high level of bad

[679]Section 46 Economic and Financial Crimes Commission (Establishment) Act, No. 1, 2004

[680]Global Corrupt Report, Transparency International. Retrieved from http://www.transparency.org/publications/gcr/gcr_2009N6.1 accessed 2/8/2014.

[681]An empirical study of over 48 banks in Nigeria from 1996-2006 reveals that corruption has a significant positive impact on bank profitability in Nigeria: Toni Aburime, "Impact of Corruption on Bank Profitability in Nigeria". Available online at http://kgk.bmf.hu/system/files/Aburime_Toni.pdf, cited in Sukubo, ibid.

[682]That collapse took Nigerian financial system like a storm, and leading the military government to enact the Failed Banks (Recovery of Debts) and Financial Malpractices Decree No 18 1994 (now CAP F2 LFN 2004). But compare with the Indian regime which, instead, provides for speedy recovery of debts due to banks: see, The Recovery of Debts due to Banks and Financial Institutions Act 1993.

debts and loss of liquidity."[683]Reacting to the 2009 banking crises, the CBN minced no words in its indictment of the banks whose managerial rascality was brought to the fore when it emerged that one of the failed banks' chief executive approved and disbursed a facility which the Board of the bank declined on several occasions.[684]

Following the prevalence of corruption and the role it played in the banking crisis of the 1990s, a law[685] was enacted which compels employees of Banks in Nigeria to declare their assets. The overall wisdom being to regulate their lifestyle and constrain them to live within their means. To oversee the implementation of this law, the Secretary to the Government of the Federation (SGF) is made the relevant authority. That is, it is the duty of the SGF to see to it that officers of banks in Nigeria comply with this law. However, since its enactment over twenty years ago, the law has been good only in the books as there is no single case of compliance or questions coming before the courts as to the applicability or compliance with the law. This means that the purpose is and has been defeated. No wonder, then, that the same issue of fraud played prominently in the 2009 crisis which engulfed the Nigerian financial system. The time to give due attention to the law is now.

From the above, it is evident that observance of corporate governance standards and codes in the Nigerian banking sector has been atrophied due to the profuse corruption amongst the management of the banks. That is, the presence of corruption offers no inducement for observance of the provisions of the Code. In fact the Code will be, and can be so, viewed, as an impediment. There is no motivation to observe the Codes, since corruption has become a profitably well paying attitude that the banks latch onto to bolster profitability. Instead, the banks will seek to outdo and outsmart each other in the art of corruption. This is a shame to the Nigerian corporate environment. Ultimately, therefore, with

[683]Sukubo, J., Legal Reform and Corruption of Financial Institutions in Nigeria (e-Copy) LLM Thesis, Institute of Advanced Legal Studies, University of London, 2009-2010, p. 74.
[684]Onamson, F.O., Legal Implications of Banking Sector Reform, Law & Economy: The Nation Newspaper, Vol. 4, No. 1159, Tuesday 22/09/2009; Vol. 4, No. 1166, Tuesday, 29/09/2009 and Vol. 4, No. 1173, Tuesday, 06/10/2009.
[685]Bank Employees, ETC (Declaration of Assets) Act, CAP B1 LFN 2004

corruption being practised at the highest of the banks' management, any attempt to get compliance with the Codes will be resisted by all means and at all costs.

4.5.2 The Role of Short-termism in the Nigerian Banking Sector

Short-termism is the tendency "to foreshorten the time horizon applied to investment decisions, or raise the discount rate above that appropriate to the firm's opportunity cost of capital.[686] Most Nigerian banks tend to pursue short term strategies, otherwise known as short-termism or earnings management. Short-termism is when boards and managers forgo good long-term business opportunities simply to meet quarterly earnings targets. Short-termism destroys economic value,[687] increases systemic risks, decimates firm's competitiveness, and ultimately reduces the long-term potential of the entire economy. The major cause of short-termism is the pressure exerted upon management of the banks by its investors to deliver instant profits. Another cause of short-termism is personal interests of the management of the banks, especially where managerial compensation is based on firm performance. This is why earnings management, one of the effects of short-termism, is defined as an intentional intervention in the external financial reporting process with the intent of obtaining some personal gain.[688]

Thus, the mere thought of a possible "loss of position, esteem, and financial compensation can provide a strong motivation, a) to inflate figures and b) to do almost everything possible to maintain control" at all costs and by all means. This includes avoiding and evading the Provisions of the Code of Corporate Governance for Banks Post Consolidation. Therefore to attract and take home fat pay, the managers will focus on the short term. In other words, short-termism is a strong exogenous challenge which impact

[686] Demirag, I. and Tylecote, A. (1992) "The effects of organisational culture, structure and market expectations on technological innovation: a hypothesis", *British Journal of Management*, 3:1, pp. 7-20.

[687] Roe, M.J., "The Imaginary Problem of Corporate Short-Termism" Wall Street Journal, 17 Aug 2015. Online at http://www.wsj.com/articles/the-imaginary-problem-of-corporate-short-termism-1439853276.

[688] Marnet, op cit, p. 37.

adversely on the implementation or practice of corporate governance in the Nigerian banking sector because, like their British counterparts[689] Nigerian banks are not excluded, are involved in this self-destructive operating methodology of short-termism.

Apparently, short-termism sidesteps policies and processes in order to have its way. In this case, it will not accommodate the transparency based provisions of the Code. When the banks and their managements prefer short term strategies, they forget those great institutions, the status of which the banks must strive and aspire to attain, normally stand for something more than obsession with making money first and foremost, the very effect of short-termism. Secondly, they tend to overlook the truth that a firm's value depends on its future economic prospects, how efficiently capital is being used and on the effectiveness of control mechanisms which help to ensure that investors' funds are not expropriated or wasted on value decreasing projects encouraged by short-termism.[690]

4.5.3 Statutory Compliance Concerns

There are two statutory compliance concerns which constitute environmental challenge of corporate governance in the Nigerian banking sector in the light of the CBN Code of Corporate Governance for Banks Post Consolidation 2006. The first statutory compliance matter has to do with compromised audit and the second with failure of the Code to make provisions which accommodate the role of the company secretary.

(A) Compromised Audit Function. With respect to audit, corporate governance practice in the banking sector is bedevilled with two challenges. One is the fact that the CBN Code failed to adequately provide for strong internal audit function; and second, it did not provide stringent conditions for discharge of external audit because the external auditor unwittingly can be compromised in his function. As to the first challenge, the Code failed to define what constitutes a "relevant professional body," the

[689]Solomon, J., Corporate Governance and Accountability, Third Edition, Wiley, London, 2010, p. 9.
[690]Marnet, op cit, p. 16.

membership of which the head of internal audit is expected to be member. As to audit committee the Code merely requires that members should be "non-executive directors and ordinary shareholders appointed at AGM and some of them should be knowledgeable in internal control processes". These requirements are not competence-based. Thus persons who occupy the offices might not be adequately equipped and prepared to perform the role of the office. Consequently it becomes difficult for well prepared financial statements to be expected to be turned in by the committee. In the meantime, the work of the committee will be relied on by the external auditors to prepare the bank's financial statement.

Moreover, with respect to external audit, it must be noted that external audit is a statutory responsibility which every bank must comply with. Impliedly, persons who can be appointed are subject to statutory prescriptions. Regrettably, the Code Provision on external audit cannot efficiently strengthen the external audit. This position defeats the gap-filling role the Code is meant to serve. Since external audit gets compromised in most cases by inside management, this can work to the detriment of the bank. In fact, improperly prepared audit has contributed to the resounding failure of large corporations. Improperly handled or compromised audit played a role in the failure of Enron. For instance, the Enron's auditors, Arthur Andersen, "once one of the world's five leading accounting firms with 28,000 employees in the United States and 85,000 worldwide", was said to have "profited generously from its association with Enron," as it "received revenues in excess of $50m," over the course one year alone.[691] Confirming a clear case of compromised or improperly handled audit, it was reported that the firm "had already been disingenuous in its treatment of the many off-balance sheet vehicles set up by Enron," and consequently "gained a reputation for cutting corners and a tendency to

[691]Marnet, op cit, p. 169.

comply with the wishes of clients in its interpretation of auditing rules, as opposed to sticking to the spirit of the law."[692]

The case of compromised or improperly handled audit is not restricted to Enron alone. As recently as last month, Nigeria witnessed rumblings in the banking sector following the fine slammed on Stanbic-IBTC by the Financial Reporting Council of Nigeria (FRC) for financially misreporting its earnings. The FRC went ahead and suspended the management of the bank and withdrew the license of the Audit Firm that handled the preparation of the financial statement, KPMG Nigeria, also a world-class auditing firm. Instead of attending to the fine, the bank rode on the back of the CBN that absolved it of culpability and subsequently approached the Federal High Court and obtained restraining order. The action of the CBN was too hasty and it did not consider the relevant circumstances, which was revealed in the response of the FRC to the Governor of the CBN who wrote to the FRC. The significance of this is that the danger of compromised or improperly handled audit is a real one and the failure of the Code to provide for it is a serious shortcoming which constitutes a great challenge and can adversely affect the practice of corporate governance in the Nigerian banking sector.

(B) Company Secretary. The CBN Code did not make any provision for the role of company secretary as far as corporate governance in the Nigerian banking sector is concerned. This is a serious oversight because the management of governance issues can be most typically administered by the company secretary. In the governance architecture of any company, the prime objective of the company secretarial function is "to ensure that the board and its committees are served by competent secretarial assistance in general and with regard to meetings and statutory/regulatory (otherwise called compliance) matters."[693] A company secretary, can, when authorized, act on behalf of the company.[694]

[692]Ibid.
[693]Chambers, .A. (2008). Corporate Governance Handbook, 4th Edition, Tottel Publishing, London, p. 37.
[694]First Guarantee Pension Ltd vs N.P.C (2016) 10 NWLR (Pt 1519) 39 @ 40 ratio 1; Trenco Nig. Ltd vs African Real Estate & Investment Company Ltd (1978)4 SC 9.

The presence of a competent company secretary ensures that the directors are reminded of "their legal duties and limits, and reduced their (directors') requirements for outside legal advice."[695]

In the light of the above, it is submitted that it is a misnomer for the company secretary to be recognised, and accorded her pride of place, with the corporate governance architecture as represented by the CBN Code of Corporate Governance for Nigerian Banks Post Consolidation. One of the consequences of this failure is that the banks and their management will not appreciate the enormity of the corporate governance role. Another effect is that the banks will not see the necessity and seriousness of post incorporation compliance matters as a corporate governance responsibility. Further, the non-provision for the role of company secretary means that corporate governance has abandoned its layer-filling role, which essentially is to complement and cover grounds left out by the law.

4.6 Summary

To improve longterm shareholder value by enhancing corporate performance and accountability, while taking into account the intent of the stakeholders, corporate governance becomes critical and imperative. This chapter considered as challenges an environment supportive of corporate governance, inside management related challenges, challenges of the bodies saddled with the responsibility of enforcing the provisions of the code and exogenous challenges of implementing the provisions of the code. It was observed that the code failed to make provisions to accommodate the role of the company secretary, strong internal audit function and the role of external auditors.These challenges and insufficiency of the code, creates and leaves room for loopholes, corruption, compromised audit function, non compliance and implementation and a poor environment not supportive of corporate governance.In subsequent Codes and other reforms, the CBN must effectively and properly articulate these challenges to meet up with contemporary changes and future reforms to avoid severe negative impact.

[695]Smerdon, R., A Practical Guide to Corporate Governance, Sweet & Maxwell, London, 2007, p. 155.

Considerable care and understanding is needed when introducing a code because it is a strategic intervention into the organisation's affairs, not just a communication exercise. A code is successful only if its organisation has sound top management, an extensive consultation process and the code contains suggestions on how to make decisions, rather than being prescriptive and threatening.The era of uneven supervision of regulations and codes of corporate governance by regulators played a significant role in the crisis. Thus, not only should regulators supervise, and enact regulations and code but should ensure that the tenets of such regulations and codes are compliable and ensure proper enforcement and implementation of such regulations and codes to eliminate pervasive corporate governance failures.

CHAPTER FIVE

THE PRACTICE OF CORPORATE GOVERNANCE IN THE NIGERIAN BANKING SECTOR

5.1 Introduction

It is the usual adage that what is obtainable in practice differs from theory, the provisions of the Code is not an exception. In this light, a field research was conducted using the audited annual reports and accounts of four licensed banks in Nigeria and a foreign bank (for the basis of comparism) for 2013, 2014 and 2015; and the interview session with the Corporate Governance Team of the Central Bank of Nigeria. The core corporate governance elements such as corporate governance framework, company secretary, compliance culture, structural set up of the board, presence of independent directors, induction and continuous training, risk management, amongst others in the selected banks were considered to ascertain how the provisions of the Code pans out in practice.

5.2 The Research Technique

Further to in-depth analysis of the relevant laws and codes, textbooks, journals and other writings on the subject of corporate governance relating to the banking industry, field research was thought necessary with the view of actually proving or disproving the practice of corporate governance by the Nigerian banks in the context of the CBN Code of Corporate Governance for Nigerian Banks (post consolidation). In other words, the research would not be complete without the field research.

5.2.1 Population and Sample

The research surveyed banks duly licensed by the CBN to carry on the business of banking, the Central Bank of Nigeria and the Financial Reporting Council of Nigeria (FRC).[696] In other words, the workers in the organisations (licensed banks, CBN and FRC), constitute the 'universe' or the 'population' for this study. The limitation of time and other factors would not allow wider coverage. For the same reasons of time constraints, the population have been streamlined to manageable sample size.

In this connection, out of the 25 licensed banks in Nigeria, four banks have been randomly selected for the study after casting the list of the banks. The selected banks are Fidelity Bank, Stanbic-IBTC Bank, WEMA Bank and Zenith Bank. One bank from another but commonwealth jurisdiction was selected to allow for comparative analysis. In this case, the Standard Bank of South Africa was selected. In total, five banks were selected and studied for the research.

With respect to the FRC, the Directorate of Corporate Governance was chosen for the study. The directorate is statutorily charged with the objective of developing principles and practices of corporate governance, promoting the highest standards of corporate governance, promoting sound financial reporting and accountability, encouraging sound systems of internal control and ensuring that audit committees of public interest entities (of which the banks are included) are efficient.[697] Apart from its statutory role as the apex regulator of corporate governance in Nigeria, the interest to include the FRC became intense considering the spat between FRC and the CBN on the reported financial statements of Stanbic-IBTC Bank. While the FRC adjudged corporate governance breach and meted out sanctions against the bank, the CBN felt otherwise and sided with the Bank. As to the CBN, the directorate of banking supervision (BSD) has been selected, being that the Banking Supervision department oversees the observance by the banks of all rules, regulations and directives issued by them to the banks (of which the 2006 code is one of them). Collectively, the four banks plus one foreign bank, the directorate

[696]Sections 49 and 50 Financial Reporting Council of Nigeria Act 2011.

[697]See Appendix for the letters requesting for an interview session with the FRC and the CBN and the scope of the questions for the CBN.

of FRC and the directorate of banking supervision of the CBN are considered 'ideal sample' in relation to the subject matter of this research.

5.2.2 Technique of Data Collection

Earlier it has been stated that the research adopted doctrinal as well as empiricism to collect and collate data used. The results of the doctrinal methodology are the outcome of the four preceding chapters (Chapters one to four) of the work. In order to unearth the state of corporate of governance in the Nigerian banking sector in the context of theoretical foundations of corporate governance in general and of the 2006 CBN code of corporate governance, two principal modes were employed to collect data for the research. The first was from the audited financial statements of the selected banks over a three year-period – that is 2013, 2014 and 2015. For the banks this method was employed because, as will be seen under problems encountered, the researcher met a brick wall when she attempted to administer the questionnaire she designed and intended to use for the research.

The second method of data collection was administration of interview questions to FRC and the CBN. The interview sessions were targeted at discovering enforcement and compliance outcomes. At the FRC, the interview could not be conducted because of the reason contained in the problems encountered. At the CBN, the Corporate Governance team was interviewed. It is important to note that the same set of questions used to conduct the interview at CBN was to be used at FRC. The only difference being that necessary modifications were made to take care of the peculiar circumstances of each regulator.

Both data collection techniques adopted for the research are pictorially shown below:

FIGURE 1: AUDITED ACCOUNTS

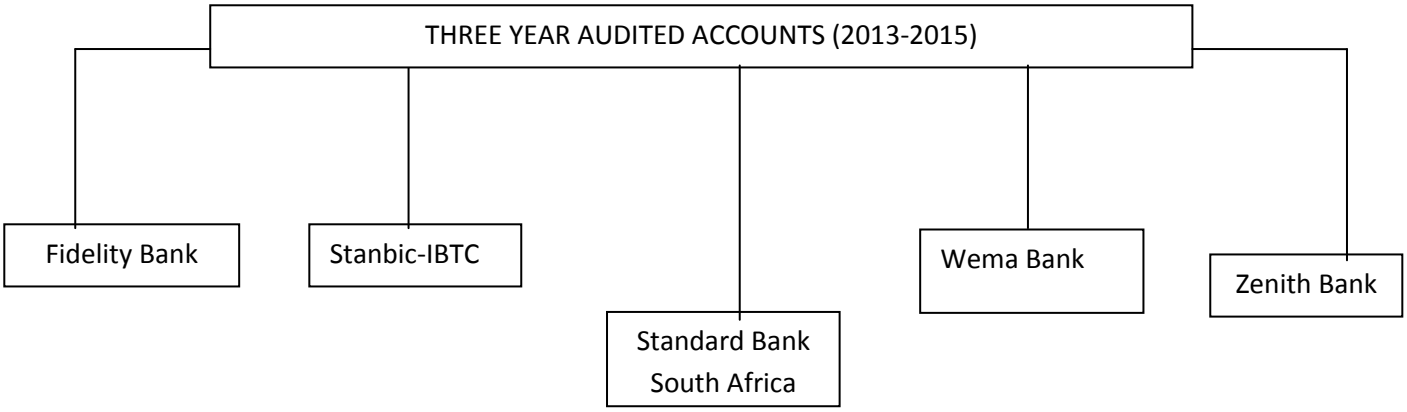
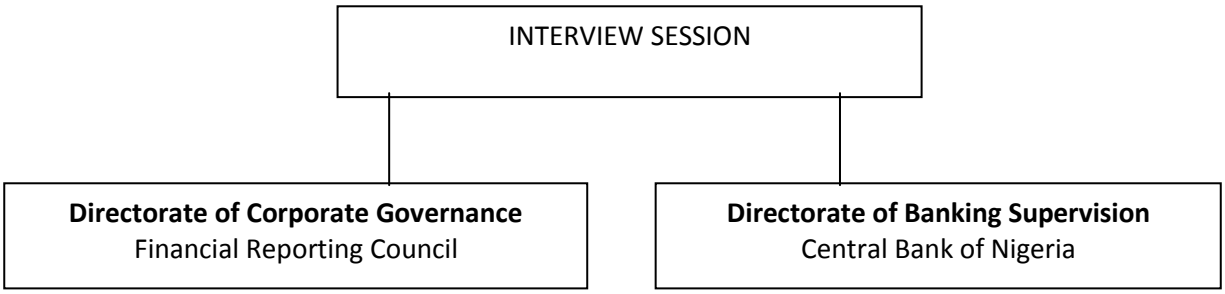


FIGURE 2: INTERVIEW



5.2.3 Problems Encountered

The problems encountered include:

1. Apathetic attitude of the banks, which led to abrupt discontinuance with administration of the designed questionnaire to analysis of audited accounts with its apparent failures or weaknesses.
2. Having to book and confirm appointment with the officers of the various directorates of the regulators is not a tea party, and thus a problem.
3. The changes that occurred at the FRC immediately after the submission of the letter for interview led to instant postponement of the interview. The changes led to the sacking of the top management of the Agency and the appointment of new ones. The top management, the

directorate of corporate governance was contacted for a rescheduled interview but they blatantly refused, insisting that the suspension of the FRC Code of Corporate Governance made the interview unnecessary. This is sad and regrettable because, as was pointed out to the FRC, the work of institutionalising, enforcing and monitoring the implementation of corporate governance in Nigeria does not start and stop with code of corporate governance although the presence of code is an essential element.

4. The unplanned and unexpected failure of the scheduled interview with the FRC meant that the overall plan for the study would be affected, although this will not affect the quality of the research in any way. But for the unavailability of time, the researcher intended, following the failure of the FRC interview, to conduct interview with the Securities and Exchange Commission (SEC), a federal government agency that regulates the operations and activities of all publicly traded companies in Nigeria, of which all Nigerian banks fell into this class.

5.3 Presentation and Analysis of Data: Audited Accounts

In this section, we present and analyse the data gleaned from the audited accounts of Nigerian banks selected for this study. In the next section (5.4), the outcome of the interview with the apex regulatory body, the CBN, was presented. As noted earlier, the banks whose audited accounts (over a three year period, 2013, 2014 and 2015) were analysed were five – four Nigerian banks and a foreign bank, the Standard Bank of South Africa. The choice of a foreign bank from South Africa is intentional and is informed by the fact that after Nigeria, South Africa is said to be the second largest economy in Africa. Therefore it will be interesting to discover the corporate governance architecture of banks in that country and make a dispassionate comparison between what obtains in that country as against Nigeria. Accordingly, with such comparison it becomes easy to see the state of corporate governance in Nigerian banks both in law and practice.

It is important to point out that the elements selected for study in the audited accounts of the banks are by no means exhaustive, but represent core elements which drive and dictate the state of corporate governance in any corporate system.

5.3.1 Corporate Governance Framework in the Selected Nigerian Banks

Bank	Internal Code	External Codes[698]	Applicable Legislative Regime			
			CAMA	CBN Act	BOFIA	SEC Act[699]
FIDELITY	YES	CBN/SEC	NI	NI	NI	NI
STANBIC	NI[700]	CBN/SEC	NI	NI	NI	NI
WEMA	NI	CBN/SEC	NI	NI	NI	NI
ZENITH	NI	CBN/SEC	NI	NI	NI	NI

5.3.2 Company Secretary and Corporate Governance in the Selected Banks

Bank	Specifically Reported	Any Indicative Criteria For Appointment		Consistency (2013-2015)
		Core	Additional	
FIDELITY	YES	YES	NO	NO – Absent in 2013 report
STANBIC	YES	YES	NO	YES
WEMA	YES	YES	NO	YES
ZENITH	NO	NO	NO	YES

[698]These are CBN Code of Corporate Governance for Banks and other Financial Institutions 2014 and SEC Code of Corporate Governance 2011. The FRC Code, having been suspended, is inapplicable.
[699]This includes SEC Rules made pursuant to the SEC Act.
[700]NI – means Not Indicated in the Report and Accounts.

5.3.3 Structural set up of Boards in the Selected Nigerian Banks

Bank	Executives	Non Executives	Composition/Size	Consistency (2013-2015)
FIDELITY	6	8	14	NO
STANBIC	1	9	10	NO
WEMA	5	7	13	NO
ZENITH	4	6	10	NO

5.3.4 Presence of Independent Directors (ID) in the Selected Nigerian Banks

Bank	Any ID in the Board	No. of ID in the Board	Any Indicative Criteria	Consistency (2013-2015)
FIDELITY	YES	ONE	YES	NO
STANBIC	YES	TWO	YES	NO
WEMA	YES	TWO	YES	NO
ZENITH	YES	ONE	YES	NO

5.3.5 Board Committees in the Selected Nigerian Banks

Bank	Number of Committees	Particulars of the Committees
FIDELITY		1) Board Credit Committee 2) Board Audit and Risk Committee 3) Board Corporate Governance Committee 4) Board Finance and General Purpose Committee 5) Board Management Committee
STANBIC - IBTC		1) Risk Management Committee 2) Remuneration Committee 3) Board Nomination Committee 4) Board Audit Committee 5) Board Information Technology Committee 6) Board Legal Committee 7) Board Management Committee
WEMA		1) Bank Risk and Audit Committee 2) Board Credit Committee 3) Board Finance and General Purpose Committee 4) Board Nomination and Governance Committee 5) Board Statutory Audit Committee
ZENITH		1) Board Credit Committee 2) Staff Matters, Finance & General Purpose Committee 3) Board Risk Committee 4) Board Governance, Nomination and Remuneration Committee 5) Board Audit Committee

5.3.6 Governance of Risk Management in the Selected Nigerian Banks

Bank	Financial Risk	Non Financial Risk	Consistency (2013-2015)
FIDELITY	1) Credit Risk 2) Liquidity Risk 3) Market Risk 4) Fair Value of Financial Liabilities	1) Operational Risk	YES
STANBIC	1) Credit Risk 2) Liquidity Risk 3) Market Risk	1) Operational Risk	YES
WEMA	1) Credit Risk 2) Market Risk 3) Liquidity Risk	1) Operational Risk	YES
ZENITH	1) Credit Risk 2) Market Risk 3) Liquidity Risk	1) Operational Risk 2) Strategic Risk 3) Legal Risk 4) Reputational Risk 5) Taxation Risk 6) Regulatory Risk	NO (In 2013 Insurance Risk was identified by the Bank)

5.3.7 Whistle Blowing Mechanism in the Selected Nigerian Banks

Bank	Email Address	Telephone Hotlines	Desk	Consistency (2013-2015)
FIDELITY	YES	YES	YES	YES
STANBIC	NI[701]	NI	NI	YES
WEMA	YES	YES	NI	YES
ZENITH	NI	NI	NI	YES

[701]NI – means Not Indicated in the Annual Reports under consideration.

5.3.8 Evaluating Board Efficiency in the Selected Nigerian Banks

Criteria	FIDELITY	STANBIC-IBTIC	WEMA	ZENITH
Induction/ Continuous training	YES	YES	Yes	YES
Average Number of Trainings in a year	Partially Indicated[702]	Not Indicated (NI[703])	NI	NI
Average Number of Board Meetings in a year[704]	6.3	5.3	4	4.3
Executive Tenure System in the Boards	Disclosed	Disclosed	Disclosed	Disclosed
Non Executive Tenure System in the Boards	Disclosed	Disclosed	Disclosed	Disclosed
Declaration of interests in material contracts	Yes	Yes	Yes	Yes
Access to independent Advice	YES	NI	NI	NI
Executive compensation and remuneration system	Disclosed	Disclosed	Disclosed	Disclosed

[702]For accounting reference periods 2013 and 2014 the number of trainings was not indicated. However, in 2015 accounting reference period, the bank indicated that it conducted a total number of twelve (12) training programmes for its executive officers and non executive directors.
[703]NI – means Not Indicated in the report and accounts for the periods under review.
[704]The average number of meetings for each bank is arrived at by adding the number of times the board of each bank met in the years under study (i.e., 2013, 2014 and 2015) and dividing the total by three. For instance, WEMA Bank reported that its board met four times in each year. This summed up to 12 times. Thus, 12 divided by 3 will give an average of 4 times.

Reported on internal control system	Yes	Yes	Yes	Yes
External evaluation of board performance	Yes	Yes	Yes	Yes

5.3.9 Interview with the Regulators: the Central Bank of Nigeria (CBN)

The interview with the CBN, after several postponements by the regulator, eventually took place on Wednesday 1st March 2017 at the Central Bank of Nigeria, Abuja. With the exception of the Chairman, who was represented by the Vice Chairman, all members of the CBN Committee on Corporate Governance attended the Interview Session. The Interview touched on critical areas of corporate governance in the Nigerian banking sector, including but not limited to ownership and shareholding patterns in the Nigerian banking sector, the role of institutions in the governance of Nigerian banks, board composition and qualification of persons, risk management and whistle blowing. The outcome of the interview session (analysed under Ownership and Shareholding Patterns, Quality of Bank Leadership in Nigeria, and Enforcement and Compliance) with the CBN has been discussed in section 5.4.2 below.

5.4 Discussion of Research Findings

The discussion of research findings have been categorised into two: the findings from the annual report and accounts and the outcome of the interview with the CBN. However it is important to note that the findings and the discussions thereof dwelt on major or prominent issues within the focus of the research. Accordingly, the major driver of corporate governance, the board of directors, is a prominent feature of the discussion with respect to annual report and accounts. On the other hand, the analysis as regards the interview with the CBN focused primarily on ownership, quality of bank leadership, compliance and enforcement.

5.4.1 Findings from the Annual Report and Accounts

Of the findings from the annual reports and accounts, emphasis has been placed on corporate governance framework, presence of independent directors, governance of risk management, and company secretary.

1) Table 5.3.1: The Legal Framework for Corporate governance

All the annual report and accounts of the banks surveyed failed to bring out the legal framework which order and underlie their corporate governance initiatives and systems. The reason for this is simple. There is apparent confusion, or rather a misunderstanding, between the legal framework for corporate governance and corporate governance structure. They are often times used synonymously and this had lead to confusion in the context of their usage.

Consequently, the legal framework for corporate governance, or corporate governance framework for short, has to do with the legal and regulatory underpinnings or infrastructure for implementing corporate governance. Thus, the legal framework for corporate governance for Nigerian banks is the relevant laws (like Central Bank Act) and regulatory instruments (like the Codes of corporate governance, Securities and Exchange Commission Rules, etc) which the banks are not at liberty to depart from. For the Nigerian banks, the legal component of the corporate governance framework includes Companies and Allied Matters Act[705]; Central Bank of Nigeria Act;[706] Bank Employees (Declaration of Assets) Act;[707] Banks and Other Financial Institutions Act;[708] and Investment and Securities Act.[709] On the other hand, the regulatory component of the corporate governance framework for Nigerian banks includes CBN Code of Corporate Governance for Banks and Discount Houses 2014 and the Securities and Exchange Commission Code of Corporate Governance for Public Companies in Nigeria 2011. The report and accounts of the banks should have properly, like it's South African counterpart, brought out, even if itemised, the laws and codes as the foundation for their implementation of corporate governance in

[705]Cap C20 LFN 2004.
[706]No 7, 2007.
[707]Cap B1 LFN 2004.
[708]Cap B3 LFN 2004.
[709]2007.

their banks.The recently introduced Private Sector National Code of Corporate Governance by the Financial Reporting Council of Nigeria (FRC) was abruptly suspended by the government and therefore did not feature in any of the report and accounts of the surveyed banks. The suspension came as a shock considering that more than any other statutory or regulatory body in Nigeria, the FRC is the only body empowered by an Act of the National Assembly to coordinate, superintend and enforce the implementation and institutionalisation of corporate governance practices, systems and architecture in Nigeria.[710]

In comparison, corporate governance structure represents the building blocks which translate the corporate governance framework into action and reality. As distinct from corporate governance framework distinguished above, it is the corporate governance chain which has to do with the structural makeup or constituents of corporate governance within any system. The structure shows the style and organisation of corporate governance within a company or even jurisdiction, like Nigeria. This means that corporate governance structure can be similar or different as between different banks or jurisdictions. The corporate governance structures of the banks were brought out by the reports but under the name of corporate governance framework.

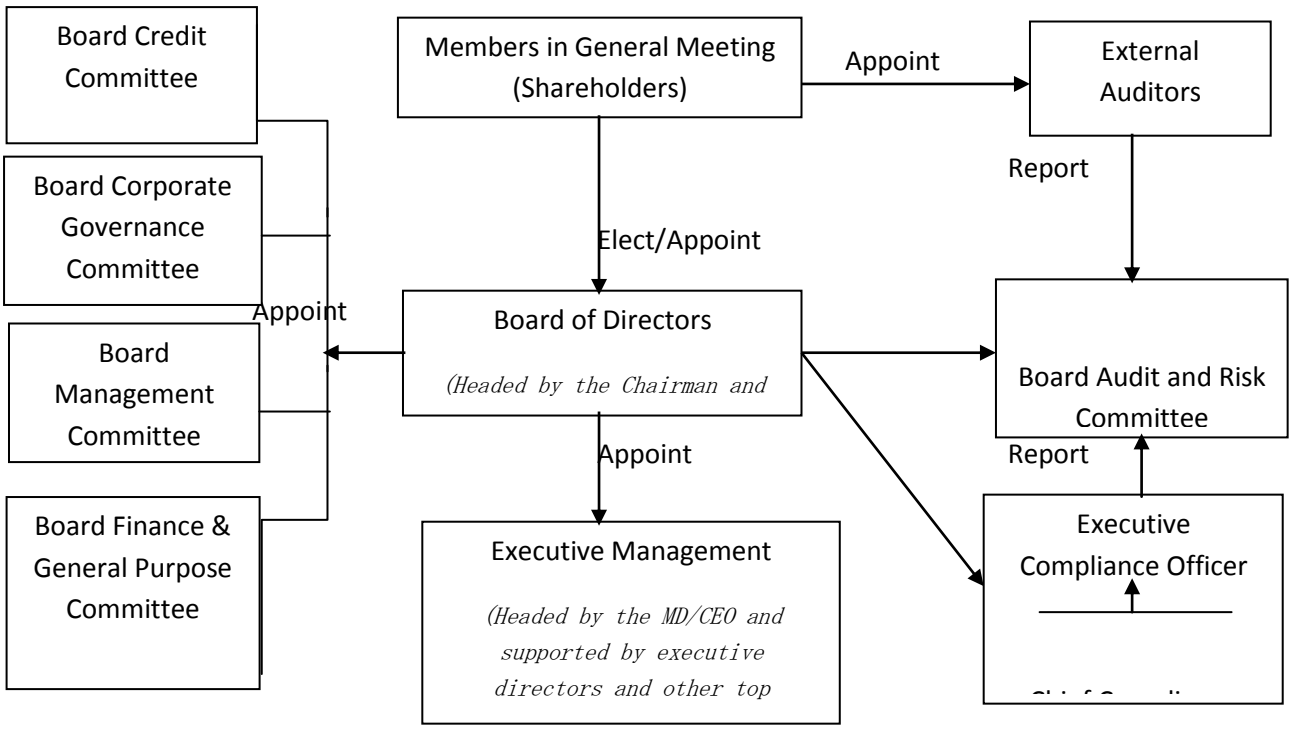
At the level of the board is a structural set up too for corporate governance.[711] Thus, at Fidelity the structure of the board showed that it had six executive directors and eight non-executives as against StanbicIBTC that had one executive director and nine non-executive directors. The case of the StanbicIBTC, being a multinational corporation with South African roots, must have been largely influenced by the position of the King Code.

From the foregoing discussion, there is the global corporate governance structure which is organisation-wide and the unit corporate governance structure. In this case, the board is a unit. Using Fidelity Bank, the typical global corporate governance structures of the bank can be graphically represented below:

[710]Part VI, sections 49-51 Financial Reporting Council of Nigeria Act (No 6) 2011.
[711]See Table 5.3.3 above.

A GRAPHIC REPRESENTATION OF CORPORATE GOVERNANCE

STRUCTURE IN THE NIGERIAN BANKING SECTOR



From the above diagrammatic depiction of the corporate governance structure of a typical Nigerian bank, it can be seen that the drivers of corporate governance are the shareholders in general meeting, the board of directors, executive management and external auditors. However, this cannot be the case in real life situation because there are other key drivers left out of the structure, but which, nevertheless, is an integral component within the structure. These are the company secretary[712] and creditors of the bank. These two constitute the missing lever in corporate governance structure within the Nigerian banking sector in particular and corporate system generally.

[712]See Table 5.3.2 below for further discussion.

Further, it can be deduced that the board of directors undertake their role by way of committee structure.[713] Thus, the board is appointed by the members of the company acting in general meeting. The board appoints committees through which it delivers on its governance responsibilities and constitutes executive management on which it carries out oversight roles. From the foregoing, the board is a bridge between the members in general meeting and the executive management. This is why the separation of the roles of the chairman and the managing director/chief executive officer (MD/CEO) is very paramount. If the roles are held by one and the same person, it will not only lead to lock in control, it can easily result in board capture by the MD/CEO. Interestingly, the roles were separated and kept distinct in the banks surveyed. However, the separation of the roles is not enough if the specific roles and duties of both offices are not spelt out. This is an apparent and costly shortcoming in the CBN Code 2006, which was, incidentally, not remedied in the CBN Code 2014. It provided for separation of the roles but failed to provide, even if a guide, for the specific roles and duties of each office.[714]

2) Table 5.3.2: Company Secretary in Banks' Corporate Governance

Sadly, the CBN Code 2006 and its successor 2014 code failed to make explicit provision for the role and place of company secretary in the corporate governance structure of Nigerian banks. Following the lines of the CBN Codes, none of the banks surveyed made any indicative criteria for the appointment of persons to the office of the company secretary. In fact in one of the year's report, Fidelity Bank did not provide or state that it had a company secretary, although it is a foregone conclusion that it did have one. In other words, the banks applied the law with respect to company secretary. This means that the banks had no role, and required no additional qualification criteria, for company secretary other than the ones specified in the law.[715] It would not be out of place to hazard that but for the strict requirement of a company secretary for public companies, of which the banks surveyed fell into, most of the banks

[713]See above figures 5.3.3 (structural set up of boards in the selected Nigerian banks) and 5.3.5 (board committees in the selected Nigerian banks).
[714]See below for the South African position.
[715]Section 298 CAMA for the role of a company secretary.

would be content to do without the position of a secretary. This is unfortunate, because the secretary is a high calibre professional in a regulated profession of which the requirement of fitness and integrity cannot be compromised and is eminently qualified to act as the executive or chief compliance officer with respect to the practice of corporate governance in the Nigerian banking sector.

Thus, it is submitted that the CBN mandatory requirement of engagement of chief compliance officer (who is not below the level of a general manager) and executive compliance officer (who is not below the position of an executive director) by the Nigerian banks is at best self-serving and cannot be efficient. This is because there are no criteria or requirement by the CBN that the occupier of any of the offices must belong to a regulated profession.[716] Unlike the CBN Code, the SEC Code made appropriate provisions for company secretary as a key driver of corporate governance within any corporate system.[717] Although the provision did not introduce anything in the light of CAMA provisions respecting the position of company secretary, the provision represents a welcome acknowledgement of the importance of the officer.

On the other hand, the South African regime under the King Code III and IV Codes of Corporate Governance recognise and insist on the pivotal role of the secretary for furtherance and institutionalisation of corporate governance and subsequent compliance with the requirements of the relevant code issued in that direction.[718] It is probable that if the secretary is given his/her pride of place in the governance structure of the Nigerian banking sector, the extant law directed at instilling integrity in the banking system would not be forgotten and left in the books currently obtains in the country.[719]

3) Table 5.3.4: Presence of Independent Directors

[716]See below for discussion of findings from the CBN interview.
[717]Section 8 SEC Code 2011.
[718]See below for a comparison between the South African system and Nigerian system through the eyes of the Standard Bank Group and Standard Bank of South Africa report and accounts 2015.
[719]Bank Employees (Declaration of Assets) Act Cap B1 LFN 2004.

The CBN Code 2006 states that not less than two non-executive board members should be independent directors. They must not represent any particular shareholder interest and must not hold any special business interest with the bank and their appointment should be based on merit.[720] On its part the CBN Code 2014 ordains that the Board of banks shall have at least two (2) Non-Executive Directors as Independent Directors as defined in the CBN guidelines on the Appointment of Independent Directors.

In practice all the banks surveyed have independent non-executive directors. However the number of independent non executive directors varies as some banks had one during one financial year and in others, two. In other words, compliance with the CBN Code is largely observed. However, with respect to the criteria for appointment, this was one of the questions put forward to the CBN Corporate Governance Team during the oral interview. Accordingly, further discussion of the question of independent non-executive directors on the board have been deferred to a discussion of the outcome of the interview under quality of leadership in the Nigerian banks. In the meantime, it is important to note that two independent non-executive directors on the board of Zenith Bank during the 2015 accounting reference period held shares in the capital of the bank. The criterion for assessing them as independent is not known because the CBN guidelines did not make room for a shareholder to be appointed on the board as an independent non-executive director. Although the presence of shareholding members on the board as independent non-executive directors did not violate the 2014 CBN Code, it is not a neat arrangement. Comparatively, as revealed below, all the non-executive directors on the board of Standard Bank of South Africa were independent and none of them held shares in the capital of the bank.

4) Table 5.3.6: Governance of Risk Management

Among others, the CBN Code 2014 provides that every bank shall have a risk management framework specifying the governance architecture, policies, procedures and processes for the identification, measurement, monitoring and control of the risks inherent in its operations. Such policies must reflect

[720]Code Provision 5.3.6 CBN Code 2006.

the bank's risk profile and appetite.[721] The 2014 Code provision on risk management is a significant improvement on the predecessor Code of 2006.[722]

In practice and with respect to risk profile, all the banks surveyed identified and reported on their risk profile. For instance, all the banks consistently reported its risk profile to be credit risk, market risk, liquidity risk and operational risk. However, it is only Fidelity bank that identified "fair value of financial assets and liabilities" as different and additional risk profile. Although the bank did not define what is meant by this risk element, it is submitted that it is not materially different from credit risk which is a class of financial asset.

On its part Zenith Bank in its risk profile identified additional non-financial risks other than operational risk. These are legal risk, reputational risk, taxation risk, strategic risk and regulatory risk. In 2013 accounting reference period it identified insurance risk. All these non-financial risk fell within the category of operational risk. However, singling them out and reporting them in addition to reporting operational risk could mean that the bank's risk aversion, or its appreciation of the constituents of operational risk, is highly limited. Again it smacks the absence of diligence to include legal, taxation and strategy as constituents of risk profile of the bank. This is because if the business and activities of the bank are conducted transparently, diligently and as a prudent business enterprise there is no reason legal risk, for example, would threaten the existence of the bank. This is because the bank has the benefit of best legal services available and would therefore conduct itself and affairs in a way that reduces, or altogether removes, the likelihood of suits. If suits are initiated against the bank and because it had always conducted itself appropriately the bank would not be threatened because it can safely hazard the likely end of such suits. The same is applicable with taxation risk. The rate of companies' income tax[723] is known and clearly spelt out, and that rate is a percentage of earned profit and not of entire revenue. For other species of tax like Value Added Tax, it is the individual customer who bears the

[721]Code Provision 6.1.1 and 6.1.3 of the Code.
[722]Code Provision 7.1.1-7.1.4 CBN Code 2006.
[723]Section 9, Companies Income Tax Act CAP C21 LFN 2004.

burden not the bank; for capital gains tax it is payable out of profit. If the tax payable during any year of assessment becomes huge, it is evidence of good business and not otherwise. The same reasons could be adduced for insurance risk which was captured in 2013. However, the bank is justified in identifying regulatory risk as a one of its risk profile during the years surveyed. This is because regulatory unpredictability and policy somersault can have threatening consequences on the operations of the bank. For instance, recently the CBN directed all banks to engage executive compliance officers who must not be below the rank of an executive director. This is in addition to chief compliance officer who must not be below the rank of a general manager. Thus, if it happens that the CBN considers and declares unfit any of the existing executive directors of the bank, the implication is that the bank must take steps to engage a new executive director who will be designated executive compliance officer. This can have cost implications on the finances of the bank, especially in this period of economic recession and poor performance outlook of the banks.

Critically, it is important to note that none of the banks surveyed reported Information Technology (IT) risk. This was reported by First Bank, although it was not one of the banks surveyed. Failure of the banks, and this meant that most of the Nigerian banks are in this category, to identify IT risk as likely to impact significantly on its operations is most unfortunate. This is because more and more banking activities or operations are delivered through the online media, where risks and dangers of cyber attacks, spamming, phishing, identity theft, ATM fraud are increasing as the perpetrators get sophisticated in their unwholesome acts.

With respect to risk management framework, all the banks surveyed reported that they adopted, on a consistent basis over the three year span, enterprise risk management (ERM) framework. This is different from Basel III or Basel IV. What is ERM? The Committee of Sponsoring Organisation of the Treadway Commission (COSO)[724] defines ERM as:

[724]COSO is a joint initiative of five private sector organizations in the United States dedicated to providing thought leadership through the development of frameworks and guidance on enterprise

> a process, effected by an entity's board of directors, management and other personnel, applied in strategy-setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.

The ERM is an integrated risk management framework which requires that organizations examine their complete risk profile, "consider how those individual risks interrelate, and that management develops an appropriate risk mitigation approach to address these risks in a manner that is consistent with their long term strategy and overall risk appetite."[725] The end or object of ERM is to enable the banks to assess and measure their achievement of four basic organisation-sensitive objectives of strategic goals; operational goals; financial reporting goals and compliance goals. What is the current state of ERM practices in the Nigerian banking industry?[726]

Although the findings in the three year report and accounts of the bank surveyed is that ERM is the foundation of their risk management framework have been corroborated elsewhere,[727] the implementation of ERM has not been efficient because of the challenges of inadequate specialist capacity, "ineffective board/statutory audit committee and continued concealment..., inadequate operational and financial controls as a result of weak internal control, insider-related lending and rendition of false returns."[728] At the heart of these lie the problems of non-performing loan portfolio currently faced by the banks. Despite the challenges, it can be rightly inferred that there is significant compliance with the CBN directive to banks to implement ERM. As the banks improve on their technical competence and commit to ethical leadership it is hoped that ERM will yield fruits. In other words, if the banks can get their ERM implementation right, the perennial problems of toxic assets among other issues will be history.

---

risk management, internal control and fraud deterrence. See, https://www.coso.org/Pages/aboutus.aspx

[725]"Enterprise Risk Management". Retrieved from http://ucop.edu/enterprise-risk-management/procedures/what-is-erm.html. 26/2/2017

[726]Dabari, I.J., and Saidin, S.Z., (2015). Current State of Enterprise Risk Management Practices in the Nigerian banking Industry. *IOSR Journal of Business and Management.* 17, 6:1, pp 27-33.

[727]ibid, p. 32.

[728]ibid p. 29.

5) Table 5.3.7: Whistle Blowing Mechanism

Provision 6.1.12 of the CBN Code 2006 enjoins banks to establish whistle blowing procedure that encourage all stakeholders to report any unethical activity/breach of the corporate governance code using, among others, a special email or hotline to both the bank and the CBN, and nothing more. In other words, no provision was made for protection of the whistle blower and confidentiality. This lacuna was remedied in 2014 Code which made provisions for the whistle blowing.[729] It has also annexed to the 2014 Code "Guidelines for Whistle Blowing for Banks and Other Financial Institutions in Nigeria. Compliance with the provisions of the guidelines is mandatory for all financial institutions under the supervisory window of the CBN.[730] Under the Guidelines a whistle blower is any person "who reports any form of unethical behaviour or dishonesty to the appropriate authority." The mechanism approved in the guidelines for whistle blowing include "a dedicated hot-line or email address or other electronic devices that could be used anonymously to report unethical practices."[731]

With respect to practice, the research investigated the extent to which the banks under the study complied with the whistle blowing mechanism approved for use by the CBN. This element is significant because with it, there cannot be any way by which the whistle blower can report on observed or discovered unethical practices. Thus, of the entire banks surveyed only one bank, Fidelity Bank reported that it established the mechanism of hotline, email address and desk and this they did consistently since 2013 to 2015. On the other hand, Zenith Bank and Stanbic-IBTC consistently over the three year period studied, did not indicate in its report whether it established any or all of the mechanisms. WEMA Bank indicated in its report that it had established the mechanism of email address and hotline for use of whistle blowers. From the foregoing it can be inferred that the state of whistle blowing in the banks is still a challenge and it is a signification that the banks are still foot-dragging as far as corporate governance is concerned.

[729]See Code Provision 5.3 of the Code.
[730]Sections 1.2.1 and 1.2.2 of the Guidelines.
[731]Section 3.3, ibid.

6) Table 5.3.8: Efficiency of the Board of Nigerian Banks

Among other provisions, the 2014 Code stipulates that there shall be yearly review or appraisal of the board and individual directors. The appraisal or evaluation should cover board's structure, composition, responsibilities, processes and relationships as may be prescribed by the CBN. Pursuant to this, the annual evaluation exercise should be conducted by an independent consultant who shall present his report to the members in general meeting with a copy of the report forwarded to the CBN.[732] The wisdom behind the review is to discover to what extent the boards have been efficient in delivering on its oversight roles, ensuring that the banks are led by men of integrity and character, and delivering the best outcome to the members and stakeholders.

To discover the efficiency of the boards several elements were investigated. Accordingly, the survey showed that all the banks conducted induction/continuous training on a continuous basis, consistently disclosed the tenure of executive and non-executive members of the board, where necessary, and declared interests of members in respect of material contracts. Further, it was found that all the banks surveyed consistently reported on its internal control system and consistently reported that the board and its members were subject to evaluation by an external body.

Although the banks conducted induction for all its members, not all the banks indicated how much training, apart from induction programme, for its members as a way of shoring up their skills and their continuous development. Accordingly, during the periods studied, only Fidelity Bank indicated that it conducted a total number of twelve trainings for its board members. This was in 2015, but wasn't consistent in the number of trainings conducted in 2013 and 2014. The other banks did not indicate at all. It can be inferred that, apart from complying with induction programme, the banks are yet to place premium on continuous education programme for the directors. This is unacceptable because the board, as the brain and mind of the bank, must not slack in intellectual astuteness or be wanting in skills

[732]Code Provision 2.8.1 and 2.8.3 CBN Code 2014.

and professional competence. Consequently, it is not expected that the board members will be armed sufficiently with requisite knowledge, skills and core competent capabilities to deliver on their office.

Further, during the periods surveyed the boards of the banks were regular as far as meetings were concerned. Accordingly, the board of Fidelity Bank met on average 6.3 times in a year, Stanbic-IBTC met 5.3 times, WEMA met 4 times and Zenith bank met 4.3 times a year. This is encouraging. However, convening and attending meetings is one thing; holding productive meetings is quite another. One therefore wonders why the banks still languish in turmoil considering that the boards are meeting regularly. On the other hand and this could be the key to knowing why the banks still bleed, only Fidelity Bank reported that its directors were given, and had, the opportunity to independent professional advice at the expense of the bank. It would appear that the banks are adept at cherry-picking which provisions of the Code to abide with and the CBN appeared comfortable with this unacceptable state of affairs as revealed in the interview conducted with the CBN team on corporate governance.

5.4.2 Discussion of the Findings from the CBN Interview

The main findings from the interview held with the CBN team (**hereafter to be referred to as "the Team"**) on corporate governance are hereby discussed.

1) Ownership and Shareholding Patterns

It was discovered from the report and accounts of the banks surveyed that there was predominance of institutional owners. In some cases a significant individual shareholder emerged. In this regard, the question was put to the CBN team why the CBN Code 2014 failed to make provision for the role of institutional shareholders as far as corporate governance of the banks were concerned. To this question, the Team responded that it was not apposite that the Code should concern itself with the role of institutional shareholders in corporate governance since the CBN had a circular to all banks on the "Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria."[733]

[733]Circular Reference FPR/DIR/GEN/CIR/01/006 dated 16/4/2014 on "Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria."

With respect to the view of the Team that there was no need for provision of the role of institutional investors in the corporate governance of banks, it cannot stand scrutiny and commonsense. For instance, the Nigerian SEC Code 2011, recognising the institutional investors, apart from their membership as part and parcel of the general body of shareholders, as key drivers of corporate governance provided, even if terse, for the role of institutional investors and accordingly charged them to "seek to influence positively the standard of corporate governance in companies in which they invest; (to) demand compliance with the principles and provisions of this Code; (and to) seek explanations whenever they observe non-compliance."[734] The institutional investors should be accorded a place in the governance of the banks because being organised, as against the disparate shareholders who cannot come together with one voice, they represent a force whose voice will not be overlooked when they make one.

Now does the rationalisation by the Team that it had Guidelines which affect the activities of institutional investors in the banks justify the non-inclusion of the role of institutional investors in the governance architecture of the banks? A brief consideration of the key aspects of the Guidelines,[735] which was handed over to the Researcher by the Team, will provide the answer. The Guidelines which is "intended to facilitate the understanding of the requirements for the adoption and operations of a financial holding company in Nigeria," covers, among other things, the structure of a financial holding company, licensing requirements, ownership and control, corporate governance, permissible and non-permissible activities, prudential regulation as well as supervision. In the context of this work only the provisions of the Guidelines on ownership and control and corporate governance will be considered. This will be done with the view to see the relationship between the Guidelines and activities of institutional owners or technically called financial holding companies (HoldCo).

[734]Section 27 SEC Code 2011.
[735]CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria.

On ownership and control[736] the Guidelines provide that any change in the ownership and control of a financial holding company[737] must be approved by the CBN before it can take effect. The Guidelines stipulate that (a) subsidiaries of a HoldCo or their partners shall not acquire shares in the same HoldCo; and subsidiaries of a HoldCo are barred from acquiring interests of other subsidiaries (meaning that First Bank of Nigeria Plc cannot purport to acquire shares in the capital of First Capital Ltd).[738] However, First Nominees Ltd, a subsidiary of FBN Holdings Ltd, can, in the ordinary course of its business, invest in FBN Holdings Ltd for the benefit of its clients but not on its own behalf.[739] It must be accepted that these provisions are sound and directed at ensuring that there is no lock on control. For example, if subsidiaries of a HoldCo are allowed to acquire shares in the same HoldCo a situation where one person acquires ownership of the subsidiary as well as the HoldCo cannot be avoided. Allowing a subsidiary acting as a nominee to invest in any HoldCo including its parent, although made in the ordinary course, is a technical way of beating the protection against lock on control.

With respect to corporate governance, the Guideline provisions in that direction were directed at strengthening the governance structure of a HoldCo and that of the bank itself. In other words, the Guidelines is concerned about the overall health of a HoldCo since that will impact on the health of its subsidiaries, including its banking subsidiary. A disturbing provision of the Guidelines has to do with its requirement of a HoldCo to "comply with the provisions of any code of corporate governance issued by the CBN for institutions under its purview."[740] It is disturbing because a situation where the HoldCo will be at crossroads cannot be avoided. For instance, if a HoldCo has in various segments of the financial services sector (like the insurance, pension, banking, securities), will it make sense to expect the HoldCo

[736]Section 4.1 of theCBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria.
[737] For example, FBN Holdings Ltd, the financial holding company having 99% of the shares in the capital of First Bank of Nigeria Plc.
[738]Section 4.1(c) and (d) of the Guidelines.
[739]Section 4.1(d), ibid.
[740]Section 4(d)(i) of the CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria.

to observe the CBN Code to the exclusion of the PENCOM and NAICOM Codes of Corporate Governance? To this extent, the Guidelines are overreaching in its scope. Another downside of the Guidelines is that while the provisions can help, to some extent, strengthen corporate governance in the banks, it is of limited application. This is because it is not all banks that are subsidiaries of a HoldCo. Fidelity Bank, Stanbic-IBTC, WEMA Bank, and Zenith Bank are not subsidiaries of any HoldCo. In the absence of a HoldCo, what happens to the role of institutional investors in promoting corporate governance in such banks? These banks have institutional investors in their shareholding structure but with no role assigned for such organised group of investors, it means that the practice of corporate governance will be impaired.

2) Quality of Bank Leadership in Nigeria

Within any organisational setting, leadership is everything. Without leadership all the talk about corporate governance will end up being an empty cymbal. Accordingly, the issue of leadership in the banks was taken up with the Team during the interview. The questions directed at the Team were designed after a careful study of the CBN circular on "Revised Assessment Criteria for Approved Persons' Regime for Financial Institutions" (hereafter the "Circular")[741] issued under reference FPR/DIR/GEN/05/014 dated 15/10/2015. The questions touched on the provisions of the Circular on "Criteria for Assessing Fitness (Competence and Capability)."

a) General. After making excellent provision regarding the fitness, competence and capability of any approved person, the Circular toned down the requirement when it stated "where candidates are deficient or fail the fitness test, they will be allowed a period of two years within which to undergo training to remedy the deficiency." To this statement the Team was asked whether this would not give room for lowering the standards already set with dire effects on the operations of any affected bank.

[741]With respect to banks, Approved Persons under the Circular are Managing Director, Deputy Managing Director/Executive Directors, General Managers, Deputy General Managers, Assistant General Managers, Non-Executive Directors, and Independent Directors.

And what about a situation where the person failed the fitness test by reason of a statutory provision, did the CBN possess the powers to act in contravention of the law?

Responding, the Team stated that the CBN "very rarely" lower the standards and that in enforcement the CBN was "stricter than the Code provision". Nevertheless, the Team clarified that the situation which would warrant side stepping the requirement could be in the area of experience. This will occur where a prospective candidate met the fell short on educational fitness requirement but met the experience requirement. According to the Team there had never been a case where a candidate who failed the fitness test by reason of statutory disability was cleared. Be that as it may, does it make sense to retain a condition which was never implemented in practice?

b) Non Executive Directors. The Circular states that in considering nominees with limited academic/professional qualifications and industry experience, the CBN shall among other factors take into account "the relevant experience and qualification of other board members and the existence and number of independent directors on the board." Taking into the consequential effects of these factors, the Team was asked whether anybody had ever been proposed who fell under this disability and whether this condition would not bring about "free rider problem," which is a situation where the unqualified non-executive director falls back, do and contribute nothing at meetings but only to reap on the efforts of other board members.

The Team responded that each director in any Nigerian bank was considered on his merit, and that banks were not allowed to exploit this requirement. Nevertheless it conceded that the observation with respect to free rider is a real possibility and it would take another look at the provision. However it must be observed that the banks surveyed reported that they had the right mix of knowledge, skills, competence and experience as far the membership of their boards are concerned.

c) Independent (non-executive) Directors. The CBN Code did not specify the criteria for determining independence but stated that independent non executive directors shall be appointed in line with the CBN guidelines. Among others, the Guidelines which formed part of the contents of the

Circular specified the tests of independence which a person must pass before he or she can be assessed to be independent. According to the Circular these are "professional, consultancy and advisory services test", "employment test", "affiliation test", and "additional income test."[742] It is submitted that the tests are very limited and fell short of the required number of tests of independence. Unlike the SEC Code 2011, the Circular was silent on "shareholding test," "material business dealing test", "long tenure test" and "omnibus test". This shortcoming of the Circular must have emboldened Zenith Bank to assess, determine and appoint shareholders on its board as independent non-executive directors.

Secondly, another observation raised with the Team had to do with the qualifying statement appearing immediately after the criteria for fitness, competence and capability for all approved persons were listed, which stated that "notwithstanding the requirements stated above (regarding tests of independence) the CBN may at its discretion, approve or disapprove the appointments of candidates under special circumstances." The question was asked what amount to "special circumstances" which could move the CBN to approve or disapprove the appointment of any candidate presented to the CBN by a bank. The explanation, which is satisfactory in the opinion of the researcher, is that a candidate may pass all the tests for appointment to any office, but fail on security check. In other words, if security report on any candidate is negative, no matter the sterling qualities such a candidate presented, that would constitute a special circumstance which justifies the CBN is refusing to approve such nomination.

3) Compliance with, and Enforcement of, the Code of Corporate Governance

The Team was asked to make a statement on the climate of corporate governance in the Nigerian banking sector with respect to compliance with (by the banks) and enforcement (by the CBN) of the CBN Code of Corporate Governance for the Nigerian banking sector. The Team believed that climate remained very excellent when assessed in terms of compliance and enforcement. In fact, the Team scored the banks over 90% as far as compliance with the CBN Code was concerned.

[742]For further reading on these tests of independence, see N. Ofo "Code of Corporate Governance in Nigeria 2011: Its Fortes and Faults". Available at http://ssrn.com/abstract=1937896.

To adumbrate the point that enforcement was as excellent as compliance, the Team referred, and provided, the researcher with a "Circular to all Deposit Money banks (DMBs) dated 28/9/2016 under reference FPR/DIR/GEN/CIR/06/004. The one-page circular directed the banks to appoint not only a Chief Compliance Officer (CCO) of the level of a General Manager but also an Executive Compliance Officer (ECO) not below the rank of an Executive Director. The ECO, represented in the governance structure depicted earlier, is "responsible and accountable for any breach of any extant regulation in the DMBs." To ensure compliance the CBN retained the power to "suspend/dismiss any ECO and CCO found wanting in the discharge of his/her responsibility". For the avoidance of doubt, the particular reason behind the CBN decision to float the office of an ECO was to ensure strict compliance to the regulations "relating to foreign exchange transactions, Financial Action Task Force (FATF) and Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT). The Circular did not include or mention the need to procure strict compliance with the CBN Code of Corporate Governance as one of the motivations behind its issuance.

This might have led to the capitulation of the Team when asked, if the banks were doing so great as far as compliance with the CBN Code of Corporate of Governance was concerned, why were the banks falling into trouble all the time? The researcher reminded the Team that majority of the banks have exceeded the five per cent threshold for non-performing loans, leading the CBN to seriously begin to mull the establishment of AMCON 2. In response, the Team blamed the problems of the banks on the volatile foreign exchange market which had brought the Naira to its lowest ebb in the history of the country. The Team did not mention the nagging problems of insider related loans, which accounted for overwhelming percentage of the toxic assets; the Team forgot to bring out the fact that banks were not doing well as far as management of risk was concerned; and the Team did not address the shortcomings of the CBN Code with respect to independence, disclosure, company secretary, institutional investors, to mention a few.

4) Impasse between the CBN and the FRC over Misstatement in the Financial Statement of Banks

The team when asked how the issue was resolved in respect of their squabbles with FRC on Stanbic-IBTC, noted that before the annual reports are published, it is thoroughly scrutinized by external auditors. The team refused to comment since the matter is being litigated upon, as it will result in extra judicial activism on the part of CBN.

5) Conflicting Provisions

The team stated that the CBN's purview is mainly on banks and other financial institutions. The Code as stated by the team is strictly directed to regulate banks. The team also pointed out that some banks are listed and as such have more than one code to abide by. With the FRC Code, the team reiterated that it has not come across any contradictory provision, as there is a harmonious structure put in place to avoid contradictions and conflicts with, not only the FRC Code but that of SEC and other regulations. The researcher quickly wants to point out that the SEC Code makes provision in the event of conflict.

A notable area of conflict is CBN Code Provision on organisational structure, which falls short of the basic statutory prescription and it stands in contrast with the provision of CAMA on structural patterns of corporations in Nigeria, of which banks are included.[743] The researcher is of the view that with the recent events between the FRC and the CBN on Stanbic-IBTC, the voyage towards naturally accepted and harmonized corporate governance code like the UK Code 2008 is yet to be embarked upon.

5.5 **Comparative Corporate Governance System: Perspectives from the South African Standard Bank Group (together with its subsidiary Bank)**

Against the background of the outcome of the interview with the CBN wherein the officials of the Bank exonerated the banks from wrongdoing in all its forms and stated categorically that compliance and enforcement of corporate governance regime in Nigerian banks was excellent, 99.9% to quote one of the interviewees, we sought a comparative analysis of the governance framework in Nigerian banks with that of the South African Standard Bank.

[743] See 3.4.1 of Chapter three.

Governance Element	Contents of 2015 Governance Report of Standard Bank Group and Standard Bank (a subsidiary), South Africa	Contents of 2015 Governance Report of Nigerian Banks
Applicable Framework	SA Companies Act 71 of 2008; JSE Listings Requirements; King Report on Corporate Governance (King Code); and SA Banks Act 94 of 1990. In terms of governance structure, the Bank is organised in Committees.	Not indicated or brought out by Nigerian banks. In fact Nigerian banks talk of framework in terms of drivers of corporate governance. These are the board of directors, shareholders, auditors, etc. These drivers are or can be more properly described as governance structure. Simply, put governance framework is not the same thing as governance structure and the mix up in the report of the Nigerian banks is unfortunate. In other words, the governance structure of the Nigerian banks is the same with that of the South African banks.
Particulars of Directors	In line with the requirements of King IV Code on Corporate Governance, full particulars of directors were indicated including full colour photograph of each director, their names, age, qualifications, experiences, external appointments and board	These details were lacking in the Nigerian banks' reports and beyond complying with the CAMA which requires the disclosure of the age of a director who is 70 and above, the reports of the banks did not do more. For instance Zenith Bank plc merely generalised that "its Board consists of persons of mixed skills, chosen on the basis

	committee membership. For instance, Atedo Peterside, a Nigerian non-executive director on the board, was stated to be 60, had BSc and MSc, held other appointments in Cadbury Nigeria plc, Nigerian Breweries plc , etc and was member of the Board Audit and IT Committees. In fact six (6) of the directors were foreign nationals.	of professional background and expertise, business experience and integrity as well as knowledge of the bank's business. This is not acceptable. The full particulars must be disclosed and the stakeholders should be allowed to pass the judgment as to the fitness of the directors to the bank's operations.
Board Committees	Among other Committees (of which equivalent Committee existed in the Nigerian Banks), there was a critical Board Committee on IT. Another Board Committee is Directors Affairs Committee. Generally, the functions and terms of reference of each Committee together with detailed report of their meetings and attendance report on each director was clearly provided in the Report. Significantly, the focus area of each Committee for or during the accounting reference period (2015) was explicitly provided. However, like the Nigerian banks' counterpart such an IT Committee was not established by the Board of Standard Bank (a subsidiary of the	The Report of Nigerian banks captured the duties and responsibilities of its various board committees, though this good practice did not cut across all banks. Except Stanbic IBTC the other Nigerian banks did not have in place Board Committee on Information Technology. This is disappointing and a regrettable state of affairs. Without a Board Committee on this important activity, how can Nigerian banks leverage and optimise on the potentials of IT in carrying out the banks' business? Critically, how can the Board exercise efficient oversight on the IT activities of the Bank with the view to focusing on risk factors inherent on the deployment of IT for the banks' activities. The same scenario played out with respect to identification of risks which the Banks faced. Except First Bank plc, no Nigerian bank captured and focused on IT as a risk-based activity. Yet Nigerian banks continue

	Standard Bank Group). This is fair enough in that the Group Board IT Committee can extend its tentacles to the subsidiary Bank and other subsidiaries in the Group. Also like its Nigerian counterparts, the subsidiary Bank had Audit Committee and Risk Large Group Committee, which is similar to Credit Risk Committee but might be narrower in terms of the scope of its activity.	to lose huge sums of money to hackers, scammers, identity thieves, ATM fraud, etc. Without such a committee and focus on IT as a risk-based activity how can the Banks engage the government and regulators with the purpose of tightening the legal regime for efficient protection of critical IT infrastructure in Nigeria? In fact, without a Committee on IT the banks cannot efficiently develop robust information security principles for protecting information and information systems from tampering, misuse, or compromise. Such principles make it possible for the banks to develop a sound information management programme. Further, the Reports of the Banks failed to provide for the terms of the Committees. This is a serious shortcoming, because it becomes difficult to see or discover overlap of functions, complementarities of duties and responsibilities or apparent duplication of roles. Generally, failure to provide for committee terms of reference blinds the relative importance of each committee as far as its roles and responsibilities are concerned
Independent Non-Executive Directors	During the year of report the Group had a total of 15 directors on its board. Out of this number, nine (9) were Independent Non Executive Directors. On the other	With respect to Nigerian banks and as seen above, the highest number of independent non executive directors in the board of a Nigerian bank is two. This is the minimum recommended by the CBN Code. Compared

	hand, the Bank had a total of 13 directors with nine of them assessed and determined as independent. These synchronises with the provisions of King IV Code. Although the King IV Code adopts "comply or explain" paradigm, in the determination of independence the Code encourages corporate entities to adopt "substance-over-form basis". Accordingly, the bank should consider whether the director: i) is a shareholder, officer, employee or a nominee of a significant shareholder of the company; ii) takes part in a share-based incentive scheme offered by the company; iii) is a shareholder, his/her shareholding can be considered material to the director's personal wealth or net worth; iv) has been in the employ of the company as an executive manager during the preceding three financial years or is a related party to such	to its South African counterpart, this is a far cry and means that the Nigerian banks are really behind in terms of international standards. This could have dire implications for efficient governance in the Nigerian banks. Secondly, on the criteria for assessing and determining independence the CBN Code appeared, as seen above, to be retrogressive. This is because the 2006 Code barred persons holding shares from being designated as independent; the 2014 Code removed this requirement. This must have informed the designation of shareholders of Zenith Bank as independent. Other critical elements for determining independence has been exhaustively discussed above and no point is served repeating them. Further, there were non executive directors as distinct from independent non executive directors. But under the South African regime all non executive directors were declared to be independent and held no shares in the Bank.

	executive manager; v) has been the external auditor or a key member of the audit team of the external audit firm during the preceding three financial years; vi) though not a member of the board, is a significant or ongoing professional adviser; vii) is a member of the board or the executive management of a significant customer or supplier; viii) is a member of the governing body or the executive management of another entity which is a connected party to the company; or ix) is entitled to remuneration contingent on the performance of the company (otherwise known as profitability bonus). Despite the above indicia for assessing and determining independence, the adoption of "substance-over-form" means that	

	the indicia could be overlooked where the bank considers that despite the presence of any index, the prospective director's independence would not be affected, fettered or compromised. This scenario played out here. For instance, Atedo Peterside is a director on the Boards of the Group and the subsidiary Bank, yet he was assessed and determined independent by the Group and the subsidiary. Despite this position, it is important to note that with respect to the subsidiary bank it was reported that *"no directors or prescribed officers held, directly and indirectly, interests in the company's ordinary issued share capital or preference share capital"*.	
Remuneration of Directors	One prominent and sterling feature of the report of the Group and its subsidiary Bank is the disclosure of the remunerations and emolument of all its directors (executive and independent non executive) and prescribed officers. It is transparent par excellence.	The Nigerian banks disclosed to the extent of the requirements of the 2014 CBN Code which merely encourages Nigerian banks "to make robust disclosures beyond the statutory requirements in BOFIA 1991 as amended, CAMA 1990 and other applicable laws." In other words, the specific details of the emoluments and remunerations of directors and executive management staff were not disclosed by the Nigerian banks. Following

		the provision of the Code some banks (like WEMA) were indeed encouraged as they disclosed the total, not the individual, emoluments of directors only, excluding members of executive management. Other banks, however, refused to be encouraged as they restricted their report on remuneration of directors to the requirements of the applicable laws (BOFIA and CAMA).
Separation of the functions of chairman and chief executive officer	In keeping with the minimum of standards of good corporate governance, the role of the chairman was kept distinct and separate from that of the Chief Executive Officer (CEO), with clear division of responsibilities. In proof of this, the report of the Group identified, specified and spelt out the duties and responsibilities of the chairman of the board, which include but not limited to leading the board and ensuring its effective functioning, setting the ethical tone for the board and company, conveying feedback in a balanced and accurate manner between the board and chief executive and assessing the individual performance of directors. On the other hand and as distinct	Although the CBN Code made clear provisions for separation of the roles of chairman of the board and that of the CEO and the reports of the banks indicated that the offices and roles were indeed kept distinct and separate, none of the reports brought out the specific roles of the chairman as against that of the CEO. The roles might indeed be kept distinct and separate in practice but failure to bring out the specific roles of both offices is a shortcoming as far as the requirements of transparency is concerned. Beyond that, it becomes easy for conflict to ensue between the chairman and CEO, and except the chairman is independent-minded and not ethically challenged, it would be easy for the CEO to capture the board. Where this happens such a board becomes the CEO rubber-stamping tool for festering the CEO's opportunism and misbehaviour.

	from that of the chairman, the role of the CEO includes but not limited to appointing the executive team and ensuring proper succession planning and performance appraisals, developing the company's strategy for consideration and approval by the board, setting the tone for ethical leadership and creating an ethical environment and ensuring that the entity complies with all relevant laws and corporate governance principles. The essence and wisdom of the above distinction and separation must not be lost. It synchronises with the King IV Code which itself separated the roles and specifically spelt out the functions of the chair of the board. Secondly, it helps establish clear line of authority; smoothens relationship, minimises opportunity for friction and encourages checks and discourages opportunism through CEO board capture or collusive malfeasant tendencies of the entire board.	
Company Secretary	The position and role of the secretary within, and as an indispensable driver of, the	Contrarily, the CBN Code is silent on the specialist role of the company secretary as a key member within the governance

	corporate governance system is conspicuously detailed in the report. The report indicated that arm's length relationship existed between the board and secretary. Additionally, it noted that "all directors have access to the secretary" and further thatthe secretary guides "the board on discharging itsduties and responsibilities, (and also) keeps the board abreast of relevant changes inlegislation and governance best practice". The above position as contained in the report is in keeping with the provisions of King IV Code on Corporate Governance which clearly stated that the corporate board must have "access to professional and independent guidance on corporate governance and its legal duties". It also requires the board to have the requisite "support to coordinate the functioning of the board and its committees" and in the case of companies these roles are "fulfilled by the company secretary".	structure. This invariably affected the prominence of the company secretary in the practice of corporate governance in Nigerian banks. This is discouraging because it means that neither the CEO nor the chairman will be held accountable for the success or failure of corporate governance in the Nigerian banking sector. However, it appears that the CBN is well aware of this problem and thus created the offices of Chief Compliance Officer and Executive Compliance Officer respectively. In the circumstances and as noted above, this is not enough because such officers might not be subject to any professional code of practice handed by a professional body of which such an officer is a member.

CHAPTER SIX

SUMMARY AND CONCLUSION

6.1 Summary

The work appraised the law and practice of corporate governance in the Nigerian banking sector. It narrowed specifically on the industry specific CBN Code of Corporate Governance for Nigerian Banks 2006 Post Consolidation. The motivation for the work was the wave of crises which the Nigerian banks had had to experience. The first major wave of crisis was in the 1990s, followed by the second major wave which occurred immediately after the banking consolidation in 2009. The second wave was benumbing as it sent some banks to insolvent liquidation. The contradiction remained that banks experienced crisis and suffers the consequences in the presence of robust governance provisions. For instance, there was the CAMA, BOFIA, the CBN Act and subsequently, there was the general application Codes that litter the Nigerian corporate system and, out of many, the industry specific Code put in place by the CBN for the Nigerian banking sector. Yet, banks faltered, failed and went extinct because of failure of corporate governance. What, then, is the problem? This informed the research questions which directed the focus of the work leading to the findings.

The research considered the nature and principles of corporate governance in the light of national cultures. There is a correlation between national corporate governance cultures

and crisis leading up to corporate collapses. Corporate collapse occurs when a company implodes and subsequently recedes into insolvent liquidation. Thus in jurisdictions that adopt the Japanese and Germanic corporate governance culture life-suffocating crisis were less experienced as against environments which operate Anglo-US model of corporate governance systems. Accordingly, it is no surprise that in Nigeria, which operate and adopt Anglo-US corporate governance model, companies, especially those in the financial sector, as represented by the banks in the work, were prone to constant shocks despite the presence of robust corporate governance provisions, represented by strict legal and soft law regimes.

Furthermore, the apex regulator of the Nigerian banking sector, the Central Bank of Nigeria (CBN), is acting within its statutory mandate when it *suo motu* assumed responsibility for moving for institutionalizing corporate governance in the Nigerian banking sector following the successful consolidation exercise. However, the fact that the CBN is statutorily the relevant authority to see to it that this happens does not mean that the CBN is functionally the right body to see to the success and effectiveness of corporate governance in the Nigerian banking sector. In other words, the CBN is statutorily the right regulator but functionally a poor enforcer of corporate governance in the Nigerian banking sector. The practice of corporate governance by banks shows variation in what is contained in theory, which clearly demonstrates a drift from the Code provision.

From the practice perspective, there is a flagrant disregard for some of the Code Provisions, with the banks having a choice of deciding the provisions to be encouraged by, provisions to comply with and which to disregard without any mandatory provision in the Code to either comply or explain posture. The Code is not free from loopholes with respect to certain key tenets and features of corporate governance, such as failure to

make provision for the specific roles and duties of the Chief Executive Officer/the Managing Director. Banks also have failed to place premium on continuous education of directors. Although the provision for whistle blowing in the 2014 Code is all encompassing, the state of whistle blowing is still a challenge; and Code Provision 5.3.6 of the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 was omitted in the Code of Corporate Governance for Banks and Discount Houses 2014, thereby allowing directors own shares in the banks in which they are directors. Furthermore, S. 4(d)(i) of the Guidelines for Licensing and Regulation of Financial Holding Company in Nigeria (HoldCo) is overreaching in scope.

Moreover, there is a causal link between sound system of corporate governance and efficient risk management systems in the Nigerian banking sector. However, the drag here is that legal framework for corporate governance, as represented by the CBN industry specific Code does not efficiently provide against corporate maladministration. This is uncharitably accentuated by the plethora of challenges which dot corporate governance systems, the chief among which are exogenous challenges including but not limited to corruption, short-termism (otherwise earnings management) and statutory compliance issues. For example, the CBN Code failed woefully to make provisions for external audit within the corporate governance architecture for the Nigerian banking sector just as the role of company secretary was conspicuously absent from the Code.

6.2 FINDINGS

The major findings of the research include the following:

1. It was found that there is a nexus between national corporate governance cultures and crisis leading up to corporate collapses. Corporate collapse occurs

when a company implodes and subsequently recedes into insolvent liquidation. Thus in jurisdictions that adopt the Japanese and Germanic corporate governance culture life-suffocating crisis were less experienced as against environments which operate Anglo-US model of corporate governance systems. Nigeria's national culture as far as corporate governance is concerned took after the Anglo-US corporate governance model, and this was the reason behind the frequent wave of crises experienced by the Nigerian banking sector despite the presence of robust corporate governance provisions, represented by strict legal and soft law regimes.

2. It was found that the Central Bank of Nigeria (CBN), as the apex regulator of the Nigerian financial system, particularly the banks, was acting within its statutory mandate when it *suo motu* assumed responsibility for moving for institutionalizing corporate governance in the Nigerian banking sector following the successful consolidation exercise. However, the fact that the CBN is statutorily the relevant authority to see to this happen does not mean that the CBN is functionally the right body to see to the success and effectiveness of corporate governance in the Nigerian banking sector. In other words, the CBN is statutorily the right regulator but functionally a poor enforcer of corporate governance in the Nigerian banking sector.
3. The corporate governance framework, represented, in the light of this research, by general application codes and industry specific code, is inefficient in stemming the tide of corporate maladministration in the Nigerian banking sector. This finding was grounded on the premise that the Code failed to prescribe any penalty for failure to comply with the provisions of the Code as against the UK Code founded on comply or explain posture. This explained why the Nigerian

banking sector experienced asphyxiating crisis in 2009 in the face of the CBN Code, the cause of which had been traceable to corporate governance failure and managerial slack.

4. It was found that there is an inextricable causal link between sound system of corporate governance and efficient risk management systems in the Nigerian banking sector. Thus, in any bank where there is risk management failure, which is actually failure of any or more of the implementing bodies of the risk management function, there is absence of efficient system of internal controls or weak system of internal controls, which consequentially seeps through the corporate system to destroy the bank. That is, compromised risk management function results in corporate governance failure which ultimately leads to the failure of the affected bank.
5. It was found that the implementation and the practice of corporate governance in line with the CBN industry specific Code was plagued by a plethora of challenges. One of such challenges is the issue of corruption, which was found to be surprisingly correlated to profitability in the Nigerian banking sector. This explained why it was committed by bank owners and managers who engaged in distorted lending practices, including connected lending, crony capitalism and managerial slack.In fact, inside management fraud, a kindred of corruption, and corporate governance failure were found to have accounted heavily for the 2009 financial crisis which hit and almost destroyed the Nigerian banking sector.
6. In addition it was found that the exogenous issue of short-termism is a challenge plaguing the practice and implementation of sound system of corporate governance in the Nigerian banking sector (otherwise earnings management). Short-termism destroys economic value, increases systemic risks, decimates a

bank's competitiveness, compromises the bank's long term value and reduces the potential of the entire Nigerian economy. Because short-termism is caused is by personal interests of the management of the banks, especially where managerial compensation is based on the bank's operating performance, it becomes easy for the managers of the banks to sidestep internal and external control mechanisms of the banks in order to feed on their personal greed and ambition to maintain control at all costs.

7. It was found that the CBN Code failed to define what constitutes a relevant professional body for the purpose of membership of audit committee anddid not make any provisions for external audit, a statutory post incorporation compliance matter, within the corporate governance architecture for the Nigerian banking sector. This is a serious oversight by the CBN Code because experience has shown that world class corporate collapses, like the cases of Enron of the USA and Barings Bank of the UK, were significantly due to compromised or improperly conducted audit and internal control failures.
8. It was found that the practice of corporate governance by the banks has not been at its best. The banks failed to realize that there is a distinction between corporate governance framework and corporate governance structure. The Code failed to distinguish the roles and duties of the CEO/MD. Under the practice, some banks' independent directors were seen to be having shares (this will hamper their independence being that they have a stake in the bank); the non inclusion of the roles, qualification and duties of company secretary in the annual reports of some banks and failure of banks to indicate the existence of an internal governance framework. In essence, there was no transparency and total disclosure in the annual reports and accounts. Furthermore, the provision of

HoldCo is overreaching in scope, as it fails to accommodate banks not subsidiaries of HoldCo, other segments of the financial sector and also making provision for the protection of institutional investors.

6.3 RECOMMENDATIONS

1. It is recommended that the national corporate governance culture of Nigeria should be revisited with a view to specifically tailoring it to accord with our peculiar business environmental and cultural orientations. This recommendation has become apt because the wholesale adoption, implantation and implementation of the Anglo-US corporate governance culture has not helped our corporate system, having subjected our companies, especially the banking sector, to frequent failures, collapses and scandals. To give effect to this recommendation, the relevant regulatory bodies, in this case the CAC, CBN, SEC, FRC and NDIC in conjunction with industry operators and professionals and relevant stakeholders should convene a national corporate governance workshop where issues specific and peculiar to our culture, environment and jurisdiction in the area of corporate governance are considered, discussed and analysed. Such a workshop, if successfully convened and conducted, will ensure that the present system of one-size fits all stance of the Anglo-US Model of corporate governance which we implement is re-examined, reviewed and refined to align with our peculiar environment and culture.
2. It is recommended that the CBN should hands off from enforcing the implementation and practice of corporate governance in the Nigerian banking sector since experience has shown that it is has abysmally failed in the task of enforcing a sound system of corporate governance in the Nigerian banking sector.

This being the case the CBN should immediately disqualifies itself from this self-imposed role. Accordingly, the Financial Reporting Council of Nigeria, being the eminently qualified and statutorily empower body, through its directorate of corporate governance,[744] to develop principles and practices of corporate governance and thereby promote the highest standards of corporate governance in Nigeria.[745] Except the CBN hands off and hands over the enforcement of corporate governance in the Nigerian banking sector, issues of conflict will arise each and any time the Financial Reporting Council of Nigeria exercises its function to insist and compel any bank to comply with the highest standards of corporate culture. This was the case when the FRC sanctioned Stanbic-IBTC Bank and the CBN almost immediately, in a show of utter disregard to its Code, called upon the sanctioned bank to ignore the penalty.

3. It is suggested that the CBN specific industry Code of Corporate Governances for Banks in Nigeria Post Consolidation 2006 should be reviewed with a view to establishing sanctions against any bank that flagrantly disregards or breaches the Code Provision on risk management. In line with this recommendation, the Code could provide that any bank that breaches the provisions as to risk management shall be barred from extending further credit for the time being and until it remedies its breach. In the same vein, the banks should be required to come up with mechanisms which attack the apparent case of conflict and compromise which concatenate to destroy the risk management function and throw the bank into avoidable losses and consequent failure. For example one of such mechanisms could be to require the Company Secretary as the Secretary to the

[744]Section 10(d) Financial Reporting Council of Nigeria (FRC) Act 2011.
[745]Section 50(a)-(b), ibid.

Board and the relevant committees of the Board, including the Board Risk Management Committee, to note specifically in the report of directors the extent of compliance with, or deviation from, the Code Provisions on risk management. Where there is any deviation, the Secretary must report the reasons thereto. The report of the Company Secretary should be relied on by the CBN to proceed against the bank in the case of any infraction.

4. It is recommended that the risk management function in banks should be strengthened by tasking the external auditor as one of implementing agentsof risk management function with the duty of making a statement in her report to the CBN and other regulatory bodies like the SEC and FRC stating to the effect that her opinions on the report are unbiased and have not been motivated by presence of any conflict. To make this recommendation a practical one, the Code, which presently did not make provisions respecting external audit, should be reviewed to specifically note the role of external auditors in the corporate governance framework. This recommendation is hoped to achieved the prime purpose of discouraging any motivation or tendency, on the part of the top management of the banks, to compromise the risk management function which can occur where any or all of the implementing agents slacks leading to weaknesses in the system of internal control. It will also ensure that Nigerian banks do not become victims of Enron and Barings Bank experiences due to improper or compromised audit.
5. It is hereby recommended that the law, Bank Employees, Etc (Declaration of Assets) Act, Cap B1 Laws of the Federation of Nigeria, which has been good in the books only due to lethargy on the part of the relevant authority to procure observance of and compliance with the law should be amended with the view of

making the Economic and Financial Crimes Commission the relevant authority. Except this is done, the issue of corruption which has been a singular most devastating factor contributing to failure and collapse of Nigerian banks will continue to plague the sector and from time to time subject it to avoidable crises as witnessed in the 1990s and most recently in 2009. The law seeks to regulate and control the lifestyle of managers of Nigerian banks, including the staff of the CBN, and thereby procure that the cases of related lending, crony capitalism and other malpractices are stamped out of the system or, at least the very least, reduced to the barest minimum.

6. It further suggested that the issue of short-termism could be cured by requiring that execution compensation system of Nigerian banks must be subject to written approval of the Central Bank of Nigeria, where it still remains the body enforcing the practice of corporate governance in the Nigerian banking sector, or the appropriate body, the Financial Reporting Council of Nigeria, where the reason is allowed to prevail and the CBN hands off from enforcing the practice of corporate governance in the Nigerian banking sector. This recommendation is apt because short-termism or earnings management is fed by the inordinate desire of managers to build oligarchic institutions so that any thought of a possible loss of position, esteem and financial compensation is resisted by all means including inflating figures and embark on almost any course of action just to maintain control. The index for approving the executive compensation system of any bank should be based on hard facts, which should include the capital base of the bank, its deposit base, lending profile, the number of staff and level of the executive compensation as a percentage of the entire salary structure or spending of the

bank. In other words, it should not be based on anticipated earnings or projected future growth of the bank.

7. Moreover it is recommended that the industry specific Code should be reviewed to accommodate the role and position of external audit, a statutory post incorporation compliance matter. In the same vein the Code should provide for punitive measures against any auditor who is found to be professionally negligent in the discharge of his function as an external auditor. This recommendation is informed by the need to avoid in Nigeria Enron and Barings Bank experiences where failure of internal controls, negligent and compromised audit caused the failure of the entities.
8. The practice of corporate governance should align with Code provision. The Code must be enacted in a way to ensure compliance or explain posture or variation and clearly stating the distinction between corporate governance framework and corporate governance structure; the inclusion of the distinct roles and duties of the CEO/MD; and the 2014 Code should be reviewed to include the abolition of independent directors having shares in bank as contained in the 2006 Code. It is also recommended that banks ensure transparency and total disclosure in their annual reports. The CBN Guidelines for Licensing and Regulation for Financial Holding Company in Nigeria be reviewed to widen its scope to accommodate other segments of the financial sector and further protect institutional investors.

6.4 FURTHER RESEARCH

1) The elements of corporate governance discussed in 5.3 and 5.4 of the work are by no means exhaustive. Thus, it calls for a study of other elements for a period of 2013 – 2015 and beyond, in Nigerian Banks, with a comparative

analysis of any foreign bank(s) in any country to discover the corporate governance architecture;

2) A study of the Annual Reports and Financial Statements of other banks not contained in this research;
3) A study of corporate governance in other segments of the financial sector putting the mind the CBN Guidelines for Licensing and Regulation for Financial Holding Company in Nigeria. This would be beneficial as to proffering a better understanding of corporate governance in other sectors of the financial system in Nigeria with a view to addressing the similarities and differences of the roles of corporate governance;
4) A further research of corporate governance in the light of the CBN Code of Corporate Governance for Banks and Discount Houses 2014;
5) A research into the unification of both the mandatory and soft law regimes of corporate governance framework in the financial sector vis-a-vis Financial Reporting Council of Nigeria Code of Corporate Governance 2015 as it relates to the financial sector; and
6) The role of institutional investors in promoting corporate governance in banks who are not subsidiaries of HoldCo.

6.5 CONTRIBUTION TO KNOWLEDGE

In the above light, I have been able to reach out and explore by empirical methodology *vis-a-vis* the theoretical provisions of some of the Mandatory Statutory and the Soft law regimes of corporate governance codes, the depths and immense benefits attendant to the genuine practice of sound corporate governance that banks in Nigeria should adopt to avoid suffocating crisis, thus, giving birth to banking sector tranquillity and banking *ne plus ultra*.

Drawing a distinction between corporate governance framework and corporate governance structure, I have critically identified and constructively engage corporate governance challenges of the Regulator and the banks in Nigeria and has proffered suggestions in form of recommendations on how best the challenges can be tackled to prop the Central Bank of Nigeria and Bank's internal framework of corporate governance.

BIBILIOGRAPHY

A. <u>BOOKS</u>

Ajogwu, F., - *Corporate Governance and Group Dynamics*, Lagos: Centre for Commercial Law Development, 2013.

Azinge, E., - *Corporate Governance and Responsibility*, Nigerian Institute of Advanced Legal Studies, Lagos, 2014.

Amupitan, J.O., - *Corporate Governance: Models and Principles*, Hilltop Publishers, Ibadan & Lagos, 2008.

Biegelman, M.T - *Executive Roadmap to Fraud Prevention and Internal Control,* John Wiley, New Jersey, USA, 2006.

Boatright, J., - *Ethics and Corporate Governance: Justifying the Role of*

the Shareholder,The Blackwell Guide to Business Ethics, 2001.

Chambers, A. - *Corporate Governance Handbook*, 4th ed., London:
Tottel, 2008.

Chiejine, F.C., - *Corporate Governance in the Nigerian Financial Sector:*
An Ethical Analysis of the 2009 Regulator Intervention and Operators' Behaviours, 2010.

Cochran,P.L.,& Wartick, S.L., *Governance: A Review of the Literature*, Financial Executives Research Foundation, New Jersy, 1988.

Davies, A., - *The Globalisation of Corporate Governance: The Challenges of Clashing Cultures*, Gower Publishing, England, 2011.

DeCicco, M., - *Tips for Good Corporate Governance*, WithumSmith+Brown, 2011.

Demb, A., & Nuebauer, F., *The Corporate Board, Confronting the Paradoxes*, Long
Range Plannings 25, 1992.

Egwuonwu, R., - *Interlocking Directorate & corporate Governance*, Stride Associate Ltd, Nigeria, 1997.

Goldface-Irokalibe, I.J., *Laws of Banking in Nigeria,* Malthouse Law Books, . Lagos, 2007.

Gower & Davies, P.L., - *Principles of Modern Company Law*, Sweet and Maxwell, London, 2008.

.Hartman, L., - *Perspectives in Business Ethics*, 2nd edition, Mcgraw-
Hill College, 2001.

Iskander, M & Chamlou, N., *Corporate Governance: A Framework for Implementation,World Bank*, Washington, 2000.

Luigi, Z - *Corporate Governance*, The New Palgrave Dictionary of Economics, 2ND ed., 2008.

Joy, U., & Olaniyan, O., *Nigeria Economic Relations: Dimensions of Dependence and Change*, 1989.

Mallin, Christine, A., - *Corporate Governance Developments in the United*

Kingdom: Country Analysis, 2nd ed.Edward Elgar Publishing, 2011.

Marnet, O., - *Behaviour and Rationality in Corporate Governance*

Oxford: Routledge, 2011.

Maassen, G.F., - *An International Comparison of Corporate Governance*

Models, 3rd ed., Spencer Stuart, Amsterdam, Netherlands, 2002.

Mallin, C.A., - *Corporate Governance,* CUP, 3rd ed., 2010.

Mayer, F., - *Corporate Governance and Performance in Enterprise*

and Community: New Directors in Corporate Governance, Blackwell Publishers, United Kingdom, 1999.

Monks, R.A.G., & Minow, N., *Corporate Governance*, Blackwell Business, Oxford, 1995.

Orojo, J.o., - *Company Law and Practice in Nigeria*, 5th Edition, Lexis

Nexis, Durban, 2008.

Oyejide, T.A., & Soyibo, A., *The Practice and Standard of Corporate Governance in*

Nigeria, DPD Research Report 26, 2001

Sheridan, T., Kendall, N., *Corporate Governance: An Action Plan for Prosperity,*

Financial Times, Pitman Publishing, London, 2002.

Smerdon, R., - *A Practical Guide to Corporate Governance*, 3rdEdition

London: Sweet & Maxwell, 2007

Solomon, J., - *Corporate Governance and Accountability*, 3rd ed., West Sussex: John Willey, 2010

Webster's Third New International Dictionary of the English Language (unabridged), Mass Massachusetts: Meriam-Webster Publishers, 1993

B. JOURNALS

Abel, A.A., - "Corporate Governance and the Issue of Shareholders' Democracy" (2014)*The Nigerian Accountant Journal*.

Abiola, J., - "Corporate Governance in Nigerian Banking Sector and Relevance of Internal Auditors" (2012) *Journal of Arts and Social Sciences*, Volume 5, No.1.

Abogun, S., Fagbemi, T.O and Balogun, B.R., - "Corporate Governance and Bank Liquidity: Evidence from Selected Banks in Nigeria" (2014) *University of Ilorin Journal*, Volume 16 No.2.

Adekoya, A.A., "Corporate Governance Reforms in Nigeria: Challenges and Suggested Solution" (2011) *Journal of Business Systems, Governance and Ethic*s, Volume 6 No.1.

Adenike, A., - An Evaluation of the Limitations of Corporate Governance Codes in the Prevention of Corporate Collapse in Nigeria (2013) *IOSR Journal of Business and Management*, Volume 7, Issue 2.

Adepoju, B.A., - "The Nexus between Corporate Governance & Human Resources Management Practices", (2010) *Nigerian Academy of Management Journal*, Volume4 No.2.

Agbonifoh,B.A., - "Human Management and Corporate Governance: The Quest for Best Practices in Nigeria", (2010) Nigerian *Academy of Management Journal,* Volume 4 No.2.

Aguilera, R.A. & Cuervo,C.A.,- Code of Corporate Governance Worldwide, What is the Trigger? (2004) *Organisational Studies*, Volume 25 No. 3.

Arjoon, S., - "Corporate Governance: An Ethical Perspective" (2005) *Journal of Business Ethics*, Vol.61 No.4.

Ato, G., - "Corporate Governance: How is the Accounting

Profession Responding to the Demand for Greater Transparency and Good Governance in the Public and Private Sectors of the Economy", *The Nigerian Accountant*, 2002.

Ayandele, A.I., and Isichei, E.E.,- "Governance Practices and Challenges in Africa" (2013) *European Journal of Business Management*, Vol 5 No 4.

Ayodele, A.A - "Corporate Governance Reforms in Nigeria: Challenges and Suggested Solutions" (2011) Industrial Management Department, Saudi Arabia, *Journal of Business Systems, Governance and Ethics*, Volume 6 No.1.

Demaki,G.O., - "Proliferation of Codes of Corporate Governance in Nigeria and Economic Development", (2001), *Business and Management Review*, Volume 1 No.6.

Demirag, i., and Tylecote, A., "The Effect of Organisational Culture, Structure and Market Expectations on Technological Innovations: A hypothesis" (1992) *British Journal OF Management*, Volume 3 No.1.

Denis, D.K., & Mc Connell "International Corporate Governance" (2003) *Journal of Finance and Quantitative Analysis*, Volume 38 No.1.

Ezeoha, A., - "Effects of Banking Industry Consolidation in Nigeria: A Review" (2007) *Journal of Banking Regulatio*n, Volume 8.

Fama, E.E., & French, K.R., "Financing Decisions: Who Issues Stock?" (2005) 76 *Journal of Fin Econ* 549.

Godlewski, C.J - "An Empirical Investigation of Bank Risk Taking in Emerging Markets within a Prospect Theory Framework" (2007) *Banks and Banks System*, Volume 2, No.2.

Goyal, K.A., & Agrawal, S., "Risk Management in Indian Banks: Some Emerging Issues"(2010) *Int.J.Res*, Volume 1 No.1.

Inyang, B.J., - "Nurturing Corporate Governance System: The Emerging Trends in Nigeria" (2009) *Journal of Business, Governance andEthics*, Volume 2 No. 2.

Jensen, M.C., "Theory and Methodology" (1983) The *Accounting Review,* Volume LVIII.

Jensen, M.C., - "The Modern Industrial Revolution, Exit and the Future of Internal Control Systems" (1993) *Journal of Finance*, Volume 48 No.3.

Mohammed, F., - "Impact of Corporate Governance in Banks Performance in Nigeria" (2012) *Journal of Emerging Trends in Economic and Management Science*, Volume 3 No.3.

Mohammedd, F., - "Impact of Corporate Governance on Banking Sector Performance in Nigeria" (2011) *International Journal of Econ Development, Research & Investment*, Vol 2, No.2.

Nwankwo, G.O., - "Bank Lending in a Developing Economy: The Nigerian Experience" (1975) *Journal of African Law.*

Nworji, I.D., et al, - "Corporate Governance and Bank Failure in Nigeria: Issues, Challenges and Opportunities" (2011) *Research Journal of Finance and Accounting,* Volume 2, No.2.

Ogbechie, C., & Koufopoulous, D.N.,- "Corporate Governance Practices in Publicly Quoted Companies in Nigeria" (2007*) International Journal of Business, Governance and Ethics*, Volume 3 No.4.

Okpanachi, J., et al - "Corporate Governance Principles Application and the Financial Performance of Deposit Money Banks in Nigeria: An Impact Assessment" (2013)

Research Journal of Finance and Accounting, Vol 4 No.2.

Okpanachi, J., and - "Imperative Analysis of the Impact of Mergers Acquisitions in Financial Efficiency of Banks in Nigeria" (2011)*Journal of Accounting and Taxation*, Volume 3,No.1.

Oso, L., & Bello, S., Governance in - "The Concept and Practice of Corporate Nigeria: The Need FOR Public Relations and Effective Corporate Communication" (2012) *Kamla-Raj, J Communications*, Volume 3, No.1.

Randall, K .M., World, - "A History of Corporate Governance around the Family Business Groups of Professional Manager" (2006) *Journal of International Business Studies*.

Rwegasira, K., Markets - "Corporate Governance in Emerging Capital Whiter Africa" (2000) *An International Review*, Volume 8 No.3.

Sanusi, L.S., - "Banking Reform and Its Impact on the Nigerian Economy"(2012) *CBN Journal of Applied Statistics*, Volume 2, No.2.

Sifuna Anazett, Trading - "Disclose or Abstain: The Prohibition of Insider on Trial" (2012) *Journal of International Banking Law and Regulation*, Volume 12 Number 9.

Suberu, O.J., &Aremu, O.S., the - "Corpprate Governance and Merger Activity in Nigerian Banking Industry" (2010) *kamla-Raj, Journal of Economics*, Volume 1 No.2.

Tricker, R.I., Interest, - "Corporate Governance- The New Focus of Corporate Governance: An International Review, 1993.

Traintis, G.G., & Daniels, R.J., "The Role of Debt in Interactive Corporate Governance"
(1995*) California Law Review*, Vol.83, 1995.

Wheller, D.,Colbert, B., and Freeman, R.E., - "Focussing on Value: Reconciling Corporate Social Responsibility, Sustainability and A Stakeholder Approach in a New York World" (2003) *Journal of General Management*, Volume 28 No.3.

Williamson, O.E., - "The Theory of the Firm as Governance Structure: Firm
Choice to Contract" (2002) *Journal of Economic Perspective*, Volume 16 No.3.

Williamson, O.E., - "Corporate Finance and Corporate Governance" (1988)
Journal of Finance, Volume 43 No.3.

Wilson, I., - Regulatory and Institutional Challenges of Corporate
Governance in Nigeria Post Consolidation (2006) Nigerian Economic Summit Group, Economic Indicators, Volume 12 No.2.

C. NEWSPAPERS

Onamson, F.O., - "Legal Implications of Banking Sector Reform", Law and Economy, The Nation Newspapers, Vol 4, Nos. 1159, 1166 and 1173 of 22/9/2009, 29/9/2009 and 1/10/2009.

Sanusi, J., - Good Corporate Governance Rest with the Board, Business, Banking and Finance, The Punch Newspaper of 11/12/2003.

D. **UNPUBLISHED WORKS/MONOGRAPHS**

Adegbite, G., - Corporate Governanceof Banks and the Banking Sector
Reforms in Nigeria: The Issues, World Finance Conference, Shanghai, China, 2012.

Arun, T.G., & Turner, T.D., Governance of Banks in Developing Economies-Concepts

and Issues, University of Manchester, School of Environment, Education and Development, Policy Working Paper, No.2, 2003.

Cowry Asset Management, - Nigerian Banking Report: Following the Progress of
Nigerian Banks in the Last 10 Years; A Concise Milestones, Challenges, Successes and Outlook of the Nigerian Banking System, Cowry Research Desk, 2009.

Millstein, I.M. - Corporate Governance: Improving Competitiveness and
Access to Capital in Global Markets, 1998.

Olusola, A.A., - Corporate Governance Framework in Nigeria: An International Review, 2011.

Onamson, F.O.,- "A Critical Examination of Remedies for Corporate Mal-administration under Companies and Allied Matters Act (CAMA) 2004" (unpublished) LLM Thesis Thesis, Department of Commercial Law, Faculty of Law, A.B.U. Zaria, 2011.

Oyedije, A.T., & Soyibo, A., Corporate Governance in Nigeria, Conference on Corporate Governance, Ghana, 2007.

Sanusi, S.L., - The Nigerian Banking Industry: What went Wrong and the Way Forward, Bayero University, Kano, 2010.

Sanusi, S.L., - Banking Reform and Its Impact on the Nigerian Economy, University of Warwick's Economic Summit, United Kingdom, 2012.

Sukubo, J., - Legal Reform and Corruption of Financial Institutions in
Nigeria (e copy), LLM Thesis. Institute of Advanced Legal Studies, University of London, 2009/2010.

Thomas, W.J., - Themes and Models of Corporate Governance, University of Carlifonia, Davis Legal Studies Research Paper No.213, 2010.

CBN Banking Annual Supervision Report, 2008.

Central Bank of Nigeria Economic Report for the First Half of 2012.

Central Bank of Nigeria Annual Report 2012.

Central Bank of Nigeria Briefs 2012-2013.

Central Bank of Nigeria Annual Report 2010.

Basel Committee on Banking Supervision , Consultative Document: Principles for Enhancing Corporate Governance, Bank for International Settlement 2010.

Fidelity Bank Annual Reports 2013-2015.

Standard Bank for South Africa Annual Reports 2013-2015.

Stanbic-IBTC Annual Reports 2013-2015.

Wema Bank Annual Reports 2013-2015.

Zenith Bank Annual Reports 2013-2015.

E. INTERNET SOURCES

http://www.ebrd.com/pages/sector/legal/corporate/core.shtml - European Bank for Reconstruction and Development 2012 (Retrieved on 12/3/2013).

fprd@cbn.gov.org - Implementation of Sustainable Banking Principles by Banks, Discount Houses and Development Institutions in Nigeria, FPR/DIR/CIR/CBN/01/33, 2012 (Retrieved 11/8/2013.

http://allafrica.com/stories/201002011487./htm - Durojaiye, R., Ighomwenghian, K., & Umeijei, E., Bank CEOs-Going, Going, Daily Independent, Lagos, 2010 (Retrieved 10/2/2013).

http://www.academia.edu/784845/The_State_and_Future_of_the_Banking_industry_in_Nigeria-Donli, J.G., The State and Future of the banking Industry in Nigeria 2003 (Retrieved 25/8/2014).

http://www.academia.edu/5185469/INDEPENDENCE_OF_BOARD_OF_DIRECTORS_CODE_IN_NIGERIA_AN_OVERVIEW_By_Duru _Onyekachi_Wisdom_Ceazar - Duru, O.W., Independence of the Board of Directors under the Corporate Governance Codes in Nigeria: An Overview (Retrieved 9/6/2014).

http.//www.bis.org/bcbs/membership.htm - Basel Committee Membership (Retrieved 21/7/2015).

http;//www.bis.org/bcbs/history.htm – History of the Basel Committee

.

http://www.cen.bank.org/cashless - CBN Cashless Policy (Retrieved 15/5/2014).

http://thecorporateprof.com/historical-development-of-corporate-governance-in-nigeria - The Corporate Prof, Historical Development of Corporate Governance in Nigeria (Retrieved 15/5/2014).

http://corporatecomplianceinsights.com/key-elements-of-the-risk-management-process - Deloach, J., Key Elements of the Risk Management Process, Corporate Compliance Insights 2012 (Retrieved 18/5/2015).

http://cenbank.org/out/speeches/2010/pdf - Sanusi, S.L., The Nigerian Banking Industry: What went Wrong and the Way Forward (19/11/2015).

http://www.cenbank.org/out/2000/publication/pressRelease/Gov/CBN%20Restructures.pdf(Retrieved16/05/2014)http://www.cenbank.org/OUT/CIRCULARS/BSD/207/GUIDELINESS%20FOR%THE%20APPOINTMENT%20OF%20INDEPENDENT%20DIRECTORS.PDF- Circular to All Banks, Guidelines for the Appointment of Independent Directors, BSD/DIR/GEN/CIR/VOL.013 (Retrieved 28/5/2014).

http://www.efcc.org –Economic and Financial Crime Commission, Abuja (Retrieved 17/11/2012).

http://www.ebrd.com/pages/sector/legal/corporate/core.shtml - European Bank for Reconstruction and Development 2012 (Retrieved 12/3/2013).

http://lexican.ft.com/term?term=corporate – The Financial times Lexicon (Retrieved 19/3/2013).

http://www.eocd.org – Basel Committee on Banking Supervision, Principles for Enhancing Corporate Governance, Organization for Economic Co-operation and Development, Bank for International Settlement 2010(Retrieved 15/4/2013).

http:/nigeriavillagesquare.com/articles/akm-oyebode/the imperatives-of-corporate-governance_Oyebode A., The Imperative of Corporate Governance in Nigeria, Village Square, (Retrieved 12/8/2013).

http;//www.firstbanknigeria.com/InsideFirstBank/OurHistory/tabid/265/Default.aspx –First Bank, Our History 2010 (Retrieved 29/06/2013).

http://www.emergingmarketsesg.net/wp.content/uploads/2011/01/Three-Models-of-Corporate-Governance-Jnauary-2009.pdf. (Retrieved 26/11/2013).

http://www.iiste.org/Journals/index.php/RJFA/article/viewFile/183/67 - Nworji, I.D., et al, Corporate Governance and Bank Failure in Nigeria: Issues, Challenges and Opportunities 2011 (Retrieved 25/8/2014).

http://www.ifac.org/sites/default/files/3.1-Carlos-Madrazo-Establishing-Credibility-FINAL.pdf -International Federation of Accountants, Establishing Credibility in the Investor Community 2003 (Retrieved 12/11/2014).

http://www.ifc.org/wps/wcm/connect/iff2c/8048a7e722daa5fef606oad5911/GCGF%2BPS%2Bissue%2B17%B3-4-10.PDF?MOD=AJPERES – Global Corporate Governance Mode: Building Responsible Boards and Sustainable Business, Private Sector Opinion, Issue 17, A Global Corporate Governance Forum Publication (Retrieved 10/2/2014).

http://investopedia.com/terms/b/bank-stress-test.asp - Bank Stress Test (Retrieved 10/6/2015).

http://www.krepublisher.com/02/Journals/JC/JC-033-0-000-12-Web/JC-03-1-000-12Abst-PDF/JC-03-1-001-12-039-080-L/JC-03-1-001-12-039-080-L-Tt.pdf - Oso, L., & Bello, S., The Concept and Practice of Corporate Governance in Nigeria: The Need for Public Relations and Effective Corporate Communication 2012 (Retrieved 01/2/2014).

http://lawreview.law.ucdavis.edu/issues/40/2/articles/DavisVol40No.2_Valesco.pdf 2006 (Retrieved 8/6/2014).

http://www.rbnz,govt.nz/speeches/0132484.html -Reserve Banks of New Zealand, Corporate Governance in the Financial Sector 2003 (Retrieved 26-04-2013).

http://ndic.org/mandate-power-functions.html-NDIC: Mandate, Power and Functions (Retrieved 17/11/2012).

http://mpra.ub.uni-muenchen.de/3804 - Balogun, E.D., Banking Sector Reforms and the Nigerian Economy: Performance, Pitfalls and Future Policy Options, MPRA 2007 (Retrieved 29/06/2013).

http://na.theiia.org/standards-guidance/public%20Documents/Public_Sector-Governance_/_pdf - Supplementary Guidance: The Role of Auditing in Public Sector Governance, the Institute of International Auditors, 2nd ed., 2012 (Retrieved 5/6/2014).

http://www.cenbank.org/AboutCBN/history.asp - Central Bank of Nigeria, About CBN (Retrieved 16/5/2014).

http://www.riskmanagementmonitor.com/guest-post0tips-for-good-corporate-governance - DeCicco, M., Tips for Good Corporate Government 2011 (Retrieved 19/11/2013).

http://www.wsj.com/article/the imaginary-problem-of_corporate Short-Termsism, Wall Street Journal 2015 (Retrieved 19/05/2015).

http://www.krepublishers.com/02-Journal/JE/JE-01-0-000-10-Web/JE-01-2-000-10-PDF/JE-01-2-091-10-025-SUBERU-O-J/JE-01-2-091-10-25-SUBERU-O.j.Tt.pdf- Suberu, O.J 7 Aremu, O.S, Corpprate Governance and Merger Activity in the Nigerian Banking Industry, kamla-Raj, j Economics 2010 (Retrieved 19/06/2014).

http://www/w.com/upload/pubcontent/pdf/pub4147-/pdf -Governance Commentary, A 12-Step to Truly Good Corporate Governance, Latham & Watkins Publications 2011 (Retrieved 19/11/2013).

http://sahara reporters.com/2010/w/08/former-md-oceanic-bank-cecillia-ibru-convicted-for-bank-fraud – Sahara Reporters, Former MD Oceanic Bank, Cecillia Ibru, October 8 CONVICTED OF Bank Fraud 2010 (Retrieved 25/08/2014).

http://ssrn.com/id=2231635 - Dionne, G., Risk Management; History, Definition and Critique (Retrieved 29/6/2015).

http://thisdaylive.com/articles/stress-test-cbn-declares-nigerian-banks-are-sound/203661 (Retrieved 23/6/2015).

http://www.transparency.org/publications/gcr/gcr_2009#6.1 – Global Corrupt Report, Transparency International (Retrieved 2/8/2014).

http://ndic.org.ng/supervision.html-NDIC: Supervision (Retrieved 17/11/2012).

http://nigeriavillagesquare.com/articles/akin-oyebode/the-impeartive-of-corporate-governance - Oyebode, A., The Imperative of Corporate Governance 2009 (Retrieved 12/8/2013).

http://www.oecd.org/dataoecd/32/18/31557724.pdf - Organization for Economic Co-operation and Development Principles of Corporate Governance 2004 (Retrieved 19/3/2014).

http://www.rbnz.govt.nz/speeches/0132484.html- Reserve Bank of New Zealand, Corporate Governance in the Financial Sector 2003 (Retrieved 26/04/3013).

http://moneyintheworld.net/geo/Africa/banking/central_bank_nigeria - Money In the World.net, Central Bank of Nigeria, Brief History (Retrieved 16/5/2014).

http://www.sebi.gov.in/commreport/corpgov.pdf-Report of the SEBI Committee on Corporate Governance 2003 (Retrieved 19/3/2013).

http//papers.ssm.com/so/3/papers.cfm?abstract_id=2277986- Adegbite, G., Corporate Governance of Banks and the Banking Reforms in Nigeria: The Issues, World Finance Conference, Shanghai, China (Retrieved 25/08/2014).

http//repository.upenn.edu/law_series/12 - Traintis,G.G & Daniels,R.J., The Role of Debt in Interactive Corporate Governance, California Law Review.

http://my.safaribooksonline.com/book/finance/9780749448172/chapter-1-corporate-govrnance-the-historical-background/chapter_1_corporate_governance#2/- Safari Books Online (Retrieved 28/10/2013).

http://www.slideshare.net/spande19552/the-theoretical-framework-for-corporate-governance - Santosh Pande, The Theoretical Framework of Corporate Governance 2011 (Retrieved 05/2/2014).

http://www.succurro.com.au/article/49-governance/85-what-is-good-corporate-governance- What is Good Corporate Governance (Retrieved 19/3/3013).

http://ssm.com/abstract=1592599 – Duncan, A., Nigerian Banking Reform: Recent and Future Prospects 2010 (Retrieved 21/4/2014).

http://www.succurro.com.au/article/49-governance/85-what-is-good-corporate-governance- Owen, J., The Failure of HIH Insurance, HIH Royal Commission. What is Good Corporate Governance 2003 (Retrieved 05/2/2014).

http://www.vanguardngr.com/2010/10/cecillia-ibru-goes -to-jail (25/08/2014) virtusinterpres.org/additional_files/book_corp.../sample_chapter02.pdf – Sridharan, V.G., Navissi, F., The Theoretical Foundations of Corporate Governance 2012 (Retrieved 21/12/2013).

www.bis.org/pub/bcbs122.htm - The Basel Committee on Banking Supervision, Enhancing Corporate Governance fro Banking Organizations 1999 (Retrieved 26/01/2014).

www.ecgi.org/research/index.php- European Corporate Governance Institute (Retrieved 19/3/2013).

www.financialstabilityboard.org/publications/r_0904b.pdf,andImplementationstandards- Financial Stability Board Principles for Sound Compensation Practices 2009 (Retrieved 26/01/2014).

www.frc.org.uk/corporate/combined.cfm - United Kingdom Corporate Governance (Retrieved 03/6/2013).

www.worldbank.org 1999 (Retrieved 20-12-2013).

www.cenbank.org/supervision/framework.asp- CBN Website: Supervisory Framework (Retrieved 17/11/2012).

APPENDIX