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AN OVERVIEW OF CORPORATE GOVERNANCE IN NIGERIA

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ABSTRACT

This paper seeks to review the historical as well as predict the future of corporate governance within the Nigerian environment, and to synthesise theories with practice, thereby coming up with a proposed framework. Nigeria's corporate governance system is derived through a sustained research of the Anglo- American settings giving its distinctive feature. This study contributes to corporate governance literatures within the purview of a multicultural setting and their challenges.

Keywords: Corporate governance, regulation, governance theories, governance mechanism.

INTRODUCTION

Nigeria has a distinct corporate governance system currently derived through a sustained research of the Anglo-American settings. The provisions of company legislation contain issues that cover the regulations, governance, control and ownership of business enterprises. During the colonial era, the British Company law was introduced into the country, therefore it's legal system and corporate governance where fashioned after the UK pattern. After Independence in October 1960, it becomes obvious that a review of the company laws was necessary. Corporate governance development in Nigeria is characterized by founding families who often retain control of corporate boards and management. And that these families are mostly responsible for giving corporate strategic direction and performance indicators of publicly listed companies (Adegbite, 2015). It's noteworthy that international organizations did not define corporate ownership to exclude family control and governance.

According to international finance corporation (IFC), corporate governance can be defined as "the structures and processes for the direction and control of companies' (IFC,2010). The Organization for Economic Cooperation and development (OECD) described corporate governance as:

The internal means by which corporations are operated and controlled involving a set of relationship between a company's board, it's management, shareholders and other stakeholders.

Good corporate governance provides incentives for the board and management to pursue objectives in the interest of the company and shareholders, and facilities effective monitoring, which enhances firm's resources utilization.

Corporate governance follows a system of relationships defined by structures and processes. A simple process is where the shareholders provides the capital with an expectation of return on the investment. The managers having the expertise efficiently utilize the funds provided and present regular financial and operational reports in a transparent manner. The shareholders appoint an external auditor to express opinion on the financial statements. The shareholders also appoint a broad of directors to represent their interests. The direction and control over the mangers. The directors also appoint the audit committee as well as the internal auditor.

1. **Corporate governance framework in Nigeria**

   As aforementioned, the Nigerian legal system and corporate governance practices was patterned after UK's legislation, leading to the enactment of the Companies Act of 1968. The main weakness of the Companies Act was that it draws largely from the British company legislation. The Act was no longer adequate to regulate the affairs of business entities following changes in the political and socio- economic environments in the country.

To overcome that, the government established the Companies and Allied Matters Act (CAMA) of 1990, as amended in 2004. CAMA 2004 as amended is currently the main legal framework for corporate governance in the country which replaced the companies Act 1968. In 2003 the Securities and Exchange (SEC) issued the code of corporate governance for public companies. Although this corporate governance legislation seems to be comprehensive, the mechanisms to enforce compliances were weak or ineffective. This was corroborated by the Report on the Observance of Standards and codes (ROSC) Nigeria (2004) prepared by the World Bank. The report added that there are institutional weaknesses in regulation, compliance, and enforcement of accounting standards and rules. Similarly, the World Bank (2011) ROSC review on Nigeria identified emerging strength and weaknesses in the institutional framework underpinning accounting and auditing practices which influenced the reporting. The report made policy recommendation to address the systemic weakness identified. The implementation of the recommendations was expected to improve corporate financial reporting, and contribute by enhancing the quality of Nigeria's financial information and business environment thereby advancing good corporate governance and financial accountability.

Corporate Affairs Commission

The Corporate Affairs Commission (CAC) is charged with the responsibility of overseeing the regulation and supervision of the formation, incorporation, registration, management and winding up of companies in Nigeria. This is provided for in the Company and Allied Matters Act (1990) as amended 2004. All companies are required to submit their audited financial statements to the CAC within 42 days after the annual general meeting. Small companies are exempted from this requirement but may deliver modified financial statements and balance sheets. The Registrar of Companies. responsible for monitoring compliance with the requirements of the Act and stipulates penalties for non-compliance by both companies and their officers. The Commission also charged with e responsibility of arranging or investigating the affairs of any company where the interests of shareholders and the public so demand.

Companies are statutorily required to file their annual financial statements with the CAC. Document to be filed vary between small, unlimited and big companies. According to World Bank (2011), despite penalties for non-compliance, many companies do comply with the deadlines. Enforcement is also weak. Many of the companies are said to be dormant. WAC does not have the mandate to delist dormant companies. Documents are kept manually not electronically. The lack of electronic documents hampers on the timely presentation of the statutory Financial statements to external users.

The Securities and Exchange Commission

The Securities and Exchange Commission (SEC) apex regulatory body in the Nigerian capital markets. Its objective is to develop and to regulate the capital markets for a fair. transparent and efficient manner. It is an agency of the Federal Government (FG). The SEC evolved from the 1962 Capital Issues Committee, through to the 1973 Capital Issues Commission, to present SEC. Its foundation followed comprehensive review of the financial system. which led to the SEC decree of 1979. The decree has undergone several other reviews, leading to the current one, the Investments and Securities Act (ISA) 1999. The ISA empowers the SEC to regulate the capital markets to protect the interest of all investor and develop the capital markets and enhance its efficiency.

The SEC regulates the issuance of securities both the primary and secondary markets. It further regulates the capital markets institutions and the activities of capital markets operators. These objectives are achieved by setting rules, pre- registration requirements, inspection, surveillance, investigation and enforcement. Thus, SEC acts as the protector of the ordinary shareholder.

Financial Reporting Council (FRC) of Nigeria

The FRC is an agency of the government established under the Financial Reporting Council of Nigeria Act, of 2011, It replaces the Nigeria Accounting Standards Board (NASB). The FRC is saddled with the responsibility to develop and publish accounting or financial reporting standards to guide the preparation of financial statements by corporate entities in Nigeria. In so doing, the FRC protects the investors and other stakeholders, and ensure the best practices corporate governance in both public and private sectors. Of recent, the FRC has been in the news for issuing the controversial National Code of Corporate Governance (NCCG) 2016, in a bit to harmonise the various governance codes issued by sister regulatory agencies. The NCCG 2016 is currently under suspension by the Federal Ministry of Industry. Trade and Investment.

Major corporate governance institutions, codes and theories in Nigeria

Figure 2.4.1 corporate governance construct

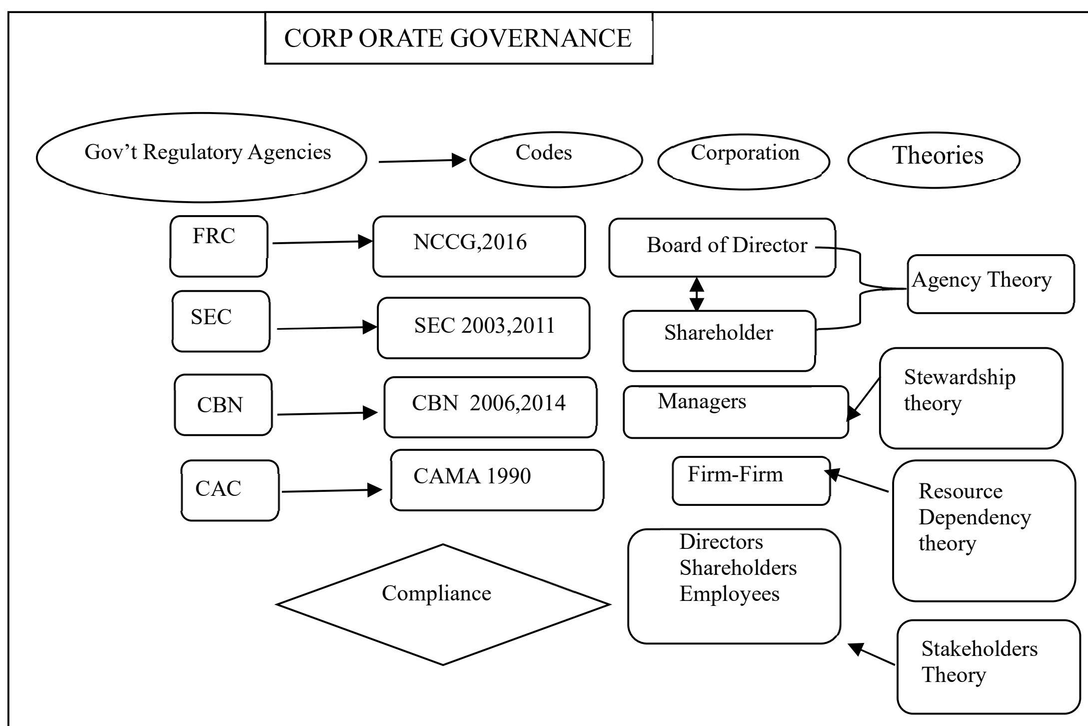

Figure 24.1 above depicts the main corporate governance institutions, codes; and theories in Nigeria.

Theories of corporate governance

The theoretical basis for corporate governance can be understood in the theories that explain the relationships that subsist among parties both within and outside the corporate entity. Barbara (2014) and Nordberg (2010) reviewed several governance theories which include: agency theory, resource dependency theory, stewardship theory, stakeholders' theory, managerial hegemony, and multi-governance theory. Other governance theories include; institutional theory (Adegbite, 2015), contract theory, and aggregation theory (Joo, 2010), and so on. Within the Nigerian context, the following theories have featured more prominently:

Agency theory

The agency theory is premised from the principal- agent relationship traced to the work of Jensen and Meckling (1976) who defined the theory as a contractual relationship between

one party called the principal who engages another party called the agent with authority to act on behalf of the principal. Agency theory holds that managers that have nose in the business, can only be expected to work in their own interests (Nordberg, 2010). The theory on the other hand assumes that shareholders' only objective is to maximise their wealth through shareholders' increases or dividends. This leads to conflicting interests where managers and shareholders each hold the same economic objective; is to maximize their own personal well-being. Pursuant to these interests, managers' and shareholders' objectives become divergent. To mitigate this problem, the agency cost must be incurred: a balance between ownership and control.

Stewardship theory

The stewardship theory holds that managers will ordinarily act as stewards of the resources entrusted to them. These contrasts with the agency theory that assumes managers are selfish and act in their own interests, According to Nordberg (2010), the agency portrait of the manager seems unduly pessimistic, and that managers might not be so self-serving. It was argued that the economic model of man in agency theory reflected only an aspect of how executives directors' perspective. Arguably, managers in general seek to do a good job of being stewards the assets they control in the interest of the business entity. People are motivated by a need to succeed, and to gain intrinsic satisfaction by performing inherently challenging work, exercise a sense of responsibility thereby gaining recognition from peers and bosses. If this is right, then the exact opposite response is expected from managers and corporate boards from the agency theory prediction. The central provision of good corporate governance is assumedly the separation the chairman and CEO roles. Agency theory implies that a strong chairman that can challenge the CEO would go a long way in curbing executive powers. This separation has its associated costs, but the gains might worth it. However, if stewardship theory is correct and executives are not merely self-interested actors, then CEO duality provides clearer focus lead to stronger value creation and not mere cost control (Nordberg, 2010).

Resource dependency theory

In her review, Barbara (2014) explained that business entities rely on each other to have access to valuable resources and therefore seek to establish connections in order to enhance their interdependence. For example, an interlocking or multiple directorship is a form of link in that complex chain of connections among business organizations. Business entities use their corporate boards to access or absorb significant interdepedent external organizations. Directors can be an important networking chain that can connect the entity to external resource, and /or improve the corporate image of the entity. The interlocking directorship chain, involves the exchange of privilege information to show commitment or continued support from the external organization. Resource dependency theorists' focus on "corporate governance" is based on the supposition that "board composition and board size are not random or independent factors, but are rather, rational responses to the condition which emanates from the external environment" (Pfeffer, 1972; Pfeffer & Salancik, 2003).

Stakeholders' theory

The stakeholder theory has been widely covered in studies of this nature (Altman, 1997; Jensen, 2002) The theory deals with the relationship between the firm and all the interest groups associated with it. In that capacity, the pertinent stakeholders can be an individual, an organization, a group, the government, the general public, and so on (Donaldson & Preston, 1995), These different group of stakeholders usually have conflicting goals in which the firm's management tries to maintain a balance between alternatives, and decides on the option that maximizes the value of the firm (Jensen, 2002). More often, firms' resources are scarce, limiting its ability to stakeholders. In order to tackle this issue, Mitchell, Agle, and Wood (1997)

proposed a framework for identifying the stakeholders. They are characterised by the following claims - (1) ability to influence the firm (2) relationship with the firm and (3) exigent claim on the firm. Contingent upon these characteristic, stakeholders' remarkable quality has varying degrees. Therefore, directors should realize what groups can influence the firm, and serve their legitimate interests.

Proposed Theoretical Framework for the Study

Figure 4.1 the proposed framework

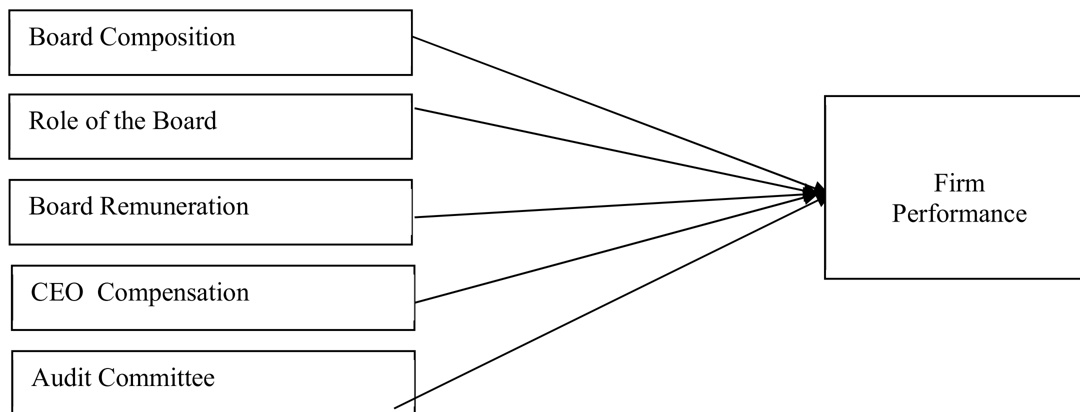

Figure 4.1 above shows a direct relationship between some corporate governance variables and firm performance. Firm performance can take a form of both financial and non-financial indicators. For example, return on asset/investment, profit margin. increase in turnover etc. Board composition and structure denotes how individual positions are optimised on the board to reflect independence, gender, and separation of CEO and Chainman positions. The agency theory explains this directorship mix to assure shareholders that the firm will perform will to protect their investments. Ethnic diversity entails a mix of various major ethnic groups.

The challenges of corporate governance in Nigeria

Historically, corporate governance has been tainted with several high-profile corporate scandals, corruption and failures of varying magnitude in different sectors of the economy (Adegbite, 2015). The Cadbury Nigeria case, African Petroleum (AP), and the recent failed banks are corporate governance issues related. A well-defined governance mix will go long way to mitigate some of the issues. The 2016 governance code also placed emphasis on gender diversity. Also, the audit committee membership is not only required to have financially literate members, but that there should be at least one member who is a financial expert. It is noteworthy that although the National Code of Corporate Governance of 2016 issued by FRC is currently under suspension, its issuance ab initio is already a signal (as in signalling theory) to corporate entities of what lies ahead, in line with international best practices.

Adegbite (2015) identified and outlined the corporate governance challenges as follows:

Weak board governance: This shows a general insufficient capability, independence and heterogeneity in board composition. There exists bogus board reputation with non-robust board evaluation.

Weak executive monitoring and accountability: This arises due to non-vibrant institutional shareholders, and corrupt shareholder activism.

Corruption: corruption exists between the board and managers, perpetrated against the uninformed minority shareholders and other stakeholders. There is opaque executive compensation structure which reinforces corporate corruption. On the other hand, there are

connivance between regulators and corporations to circumvent regulatory provisions to perpetrate corruption.

SUMMARY AND RECOMMENDATIONS

This paper reviews the historical perspective of corporate governance in Nigeria, current trend and predicts future expectations. The study itemizes the variables in which theories and practices could be synthesized. Although Nigeria is not immune to corporate governance challenges, the peculiarity of its corporate environment led to multiplicity of regulations and issuance of governance codes. This was overcome, though short-lived when the codes were harmonised by the FRC in 2016. Although several studies consider the various governance codes separately, it is recommended that studies should utilise the harmonised code (though now under suspension) by the FRC, 2016. It is also recommended that newer measures of variables can be tested, for example, in audit committees, shareholders' expertise or female membership could be considered. The study could also be designed to reflect the influence of other regulatory and professional bodies as external mechanism and stakeholders.

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