

Bridging the Corporate Governance Gap in Nigeria. (Part 1)

Introduction

Poor corporate governance has been the Achilles' heel of many corporations worldwide. Nigeria is not immune to this fact, especially as corruption is prevalent in the nation. The attention of the world was drawn to major corporate governance issues in Nigeria in 2007 when material misstatements were discovered in Cadbury Nigeria Plc's financial statements. Since then, many more corporate scandals have followed and effectively posed as obstacles against attracting foreign investments into Nigeria.

In recent years, several studies have established that investors have become increasingly concerned about corporate governance issues and taken such issues seriously in deciding where to invest. Hence, it is imperative that companies in Nigeria adhere to good corporate governance principles in order to position the country to take advantage of the investment opportunities existing in the global market. The ability of companies to reposition Nigeria to attract foreign investments further emphasises the vital role modern corporations play in the economic development of any nation. Realization of this fact has resulted in an upsurge in global initiatives to provide principles and codes to effectively manage and control these corporations. Such initiatives have featured in developed countries such as the United States of America, Canada, France, Germany, and many others. Some developing countries such as South Africa (see the King report 1994 and 2002) have also taken measures to address corporate governance issues. Recently, the Financial Reporting Council of Nigeria (FRC) issued the Nigerian Code of Corporate Governance ("the code") 2018 to regulate corporate governance best practices in Nigeria. However, many enlightened Nigerians have pointed out that many other corporate governance codes issued in the past in various industries have largely failed to achieve their targets. In response to challenges in their respective sectors, a number of industry regulators developed corporate governance codes for companies operating in their sectors.

These sectoral codes include:

1. Code of Corporate Governance for the Telecommunication Industry 2016, issued by the Nigerian Communications Commission (NCC);
2. Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014, issued by the Central Bank of Nigeria (CBN);
3. Code of Corporate Governance for Public Companies in Nigeria 2011, issued by the Securities and Exchange Commission (SEC);
4. Code of Good Corporate Governance for Insurance Industry in Nigeria 2009, issued by the National Insurance Commission (NAICOM); and
5. Code of Corporate Governance for Licensed Pension Fund Operators 2008, issued by the National Pension Commission (PenCom).

Since the existence of the above codes of corporate governance is not in doubt, one may be inclined to conclude that Nigeria's corporate governance issues does not stem from lack of codes to ensure good corporate governance practices. Instead, these issues may have resulted because the already existing codes are not being enforced. However, this article does not intend to jump to any conclusions, instead it intends to x-ray the corporate governance issues in Nigeria from all relevant perspectives, consider all stakeholders involved and establish with facts the root cause(s) of Nigeria's corporate governance issues, and then proffer solutions.

The Corporate Governance Mechanism in Nigeria

In order to identify the root cause(s) of Nigeria's corporate governance issues and make recommendations to ameliorate the situation, we must first appraise the current state of existing corporate governance mechanisms in Nigeria. We take a look at these mechanisms below.

The Government

Companies in Nigeria vary in size and structure, from large multinationals, who raise funds from capital markets of the world including the Nigerian Stock Exchange, down to the small businesses with one or two shareholders. There is no denying that activities of such institutions drive and impact the economic activities of the nation. Therefore, there is a need to ensure that these corporations are well regulated to ensure they operate in the best interest of the various stakeholders. The government promulgates the various laws affecting the management and control of these business enterprises in Nigeria.

The framework for corporate governance in Nigeria is entrenched in statute, with the underlying principles as follows:

- The recognition of a company as a legal entity, distinct from its owners;
- The unlimited life of a company, because of the transferability of shares;
- An appointed board overseeing the running of the company is accountable to the members on their stewardship
- The responsibility of directors to keep proper records of company's financial affairs and to make appropriate returns;
- Independent auditors are appointed by the members, to report on the truth and fairness of financial statements prepared by the management. been its measurement yardstick.

The most prominent legal framework for corporate governance is the Companies and Allied Matters Act (CAMA) 1990. This purports the idea that the corporate governance legislation in Nigeria appears comprehensive, the mechanisms for enforcement and compliance are very weak.

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The report on the Observance of Standards and Codes (ROSC) Nigeria (2004) prepared by a team from the World Bank arrived at a similar conclusion. The report notes that "the accounting and auditing practices in Nigeria suffer from institutional weaknesses in regulation, compliance, and enforcement of standards and rules".

The Corporate Affairs Commission (CAC)

The establishment of the Corporate Affairs Commission (CAC) is provided for in Section 1 of CAMA 1990 together with its responsibility of overseeing the regulation and supervision of the formation, incorporation, registration, management and winding up of companies.

The commission's responsibilities vary across monitoring compliance with the act and specifies penalties in instances of non-compliance by companies and their officers, conduct an investigation into the affairs of any company where the interests of the shareholders and the public so demand. Additionally, the commission is able to provide information about any company on request, through its Wide Area Network System. Availability of such information to the public increases confidence in the business community and provides protection for the individual consumer, creditor or shareholder.

In practice, the role of the CAC has remained mechanical and ineffective. A study by Wallace (1987); Okike (1995, 1999); ROSC (2004) provides evidence that some companies and even auditors succeed in flouting company legislations and go scot-free. According to ROSC (2004), "there are significant weaknesses in the enforcement mechanism, which is accentuated by a degree of corruption and poor record keeping by the CAC". If the CAC aims to achieve its role of adequately promoting good corporate governance, its monitoring role needs to be strengthened and more realistic sanctions applied to erring companies.

Securities and Exchange Commission (SEC)

The SEC was primarily set up to protect the interest of investors against fraudulent and unwholesome practices of stockbrokers and other intermediaries (Orji, 2000). However, the commission's actions have focused on stocks and shares dealings, while failing to effectively monitor compliance with financial reporting requirements and enforcing actions against violators. The commission has inadequate capacity to effectively monitor compliance with accounting standards; its enforcement is weak and administrative sanctions and civil penalties are inadequate to deter non-compliance.

Nigerian Stock Exchange (NSE)

The stock exchange plays a crucial role in the mobilisation of capital. Although, Nigeria has an established Stock Exchange, it cannot be described as a stock exchange based financial system (Demirag, 1998) because it does not play a significant role in the mobilisation of savings. On behalf of the SEC, the NSE monitors compliance with the financial reporting requirements of listed companies. The commission protects the ordinary shareholder, through its influence on financial disclosure. For example, all listed companies have to obtain prior approval of the contents of the annual reports to be circulated to members before an Annual General Meeting. There have been instances when the Exchange has refused to grant prior approval to the company until corrections are made. Examples of such corrections include the disclosure of the financial effect of changes in accounting policies. However, occasional conflicts between the SEC and the NSE have been reported (ROSC, 2004) as regards the exercise of power over erring companies; hence the need for a revision of legislation to clarify the roles and powers of these institutions.

The Financial Reporting Council of Nigeria (FRC)

The Financial Reporting Council (FRC) of Nigeria is a federal government agency established by the Financial Reporting Council of Nigeria Act, No 6, 2011. It is a federal government parastatal under the supervision of the Federal Ministry of Industry, Trade and Investment. The FRC is responsible for, among other things, developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statements of public entities in Nigeria and for related matters. In line with the council's objectives, the FRC recently issued the Nigerian Code of Corporate Governance ("the code") 2018 to regulate corporate governance best practices. The code which was officially launched on the 15th

January 2019 broadly covers matters such as board of directors, assurance, relationship with shareholders, business conduct and ethics, sustainability and transparency. The code adopts the 'Apply and Explain' approach in implementing and monitoring compliance with the code. The Apply and Explain approach assumes that all principles have been applied and, therefore, requires companies to demonstrate how the specific activities they have undertaken best achieve the outcomes intended by the corporate governance principles specified in the Code. By doing so, the code aims to promote the adoption of corporate governance best practices in Nigerian companies to improve public confidence as well as trade and investment in Nigerian companies. A drawback of the code is its lack of a prescribed timeline for implementation or specific sanctions for non-compliance. However, implementation of the code will be monitored by the FRC through various sectors regulators who are empowered to impose appropriate sanctions on non-compliant companies.

We will finalise the discussion on Bridging the Corporate Governance Gap in our October Insight, we trust you will find it useful to enhancing compliance and your business performance.

Thank you for your time,
Pedabo White Room