

CORPORATE GOVERNANCE COMPLIANCE: A PRIDE OR A PRICE FOR COMPANIES

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Abstract

The concept of corporate governance has before now been more concerned with the operations of a company and identifying the management structure of the company. This exclusion has remained without any justification, and with the consistent interests being showed on the subject of corporate governance, it is becoming more glaring that the concept cannot be limited to the operations of a company or in identifying the management structure of the company. Corporate governance has been adjudged to be of great relevance to both the company and the society. To the company in the sense that it promotes transparency and accountability, which are necessary factors for the growth and continuity of the company; and for the society because when the company continues to grow and expand, it births more jobs for citizens and residents, attracts development, and reduce the rate of crime. This article therefore discussed corporate governance and highlighted its benefits to both the company and the country where compliance to sound corporate governance practices are recorded. The doctrinal research method was used in this article, with references made to both primary and secondary sources of law. The article discussed the legislations on corporate governance operational in Nigeria, and concluded after reviewing the benefits associated with compliance to the provisions of the NCCG 2018, that compliance to corporate governance codes is both a price and a pride.

Keywords: Governance, Compliance, Transparency, Accountability.

1.0 Introduction

Corporate Governance obviously has taken over discussions in the international stage because of its intimidating influence in the economic health of companies and the society at large.¹ Trans-jurisdictional transactions have taken a different phase with the unending predominance of digitalisation in the economic sector, just as other sectors of the society. Despite the several regulations on corporate governance in Nigeria and their accompanying regulators that are tasked with the responsibility of ensuring compliance to a reasonable standard, we still record a low in compliance. While we might be tempted to justify or give supposedly rational explanations for these non-compliance or lapses, none of these justifications can assuage the effect of an ineffective corporate governance framework in a country, on its economy. This article seeks to highlight the importance of corporate governance in the international business community, and show that compliance to corporate governance is both a pride and a price.

2.0 Legal Framework

The world over, there are legislations and regulations recommending and mandating the compliance to broad and sectorial corporate governance codes in the country. In Nigeria, the Constitution of the

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¹ S Arjoon, 'Corporate Governance: An Ethical Perspective' [2005] 61(4) *Journal of Business Ethics*, 343 -352.

Federal Republic of Nigeria 1999 as amended (CFRN 1999) remains the grundnorm from which every other norm, legislation or regulation draws validation from.² Accordingly, the Companies and Allied Matters Act 2020 as amended (CAMA 2020), the Nigeria Code of Corporate Governance 2018, Investments and Securities Act, 2025 (ISA 2025), Financial Reporting Council of Nigeria Act 2011 (FRCN 2011), the Economic and Financial Crimes Commission (Establishment) Act 2004,³ Banks and other Financial Institutions Act 2020 (BOFIA 2020), and the sectoral corporate governance codes all draw validation from the CFRN 1999.

The exclusive supremacy of the CFRN 1999 as amended cannot be overemphasized as it does cut across all sectors and institutions in Nigeria for the promotion of progressive governance and the welfare of the people.⁴ Necessary powers have been appropriated to the various arms of the government; the Legislature, Executive, and the Judiciary.⁵ While many argue that the legislature is the law making arm of the government, we cannot ascribe an exclusive right to the legislature, because the executive, that is, the Governor or President, does have a role to play in the enactment of any legislation, be it state or federal.

3.0 Corporate Governance in Nigeria

Corporate Governance (CG) involves the processes by which corporate entities particularly limited liability companies are governed.⁶ It also means the process of decision-making and the process by which decisions may be implemented. CG is said to be a term which suffers from precision but can be summed up to mean the process of direction of a company, the relationship between the board of directors and management, and ultimately about the regime of accountability.⁷

Corporate Governance refers to private and public institutions, including laws, regulations and accepted business practices, which together govern the relationship, in a market economy, between corporate managers and entrepreneurs on one hand, and those who invest resources in corporations, on the other. Investors can include suppliers of equity finance (shareholders), suppliers of debt finance (creditors), suppliers of relatively firm-specific human capital (employees) and suppliers of other tangible and intangible assets that corporations may use to operate and grow.⁸

As posited by Cardale,⁹ CG is about what the bod of a company does and how it sets the values of the company. The aim is to facilitate effective, entrepreneurial and prudent management that can deliver the long-term success of the company. Going further, Cardale posits that although the codes of corporate

² CFRN 1999, s 1(1).

³ EFCC Act 2005, Cap E5 LFN 2004.

⁴ CFRN 1999, preamble.

⁵ *ibid*, ss 4, 5, and 6.

⁶ P L Davies, *Gower Principles of Modern Company Law* (11th edn, Sweet & Maxwell 2021), 321.

⁷ J H Farrar and others, *Farrar's Company Law* (4th edn, Butterworths London 1998), 301.

⁸ C P Oman, Corporate Governance and National Development, *OECD Development Centre Working Paper* No. 180, 11.

⁹ M Cardale, *A Practical Guide to Corporate Governance* (5th edn, Sweet & Maxwell 2014) 4.

governance deal with process and structure of the company's bod, it is clear that codes will not work effectively unless boardroom behavior fulfils the intentions behind the process and structure.¹⁰

However, corporate governance has much a different meaning to different organizations.¹¹ Corporate governance is the system of rules, practices and processes by which a company is directed and controlled. As earlier mentioned, the code of corporate governance is to promote transparency in the affairs of corporations and also safeguard the interest of investors. It refers to the way in which companies are governed and to what purpose.¹²

Corporate Governance identifies who has power and accountability, and who makes decisions. It is, in essence, a toolkit that enables management and the board to deal more effectively with the challenges of running a company.¹³ Economists would define CG as a field in economics that investigates how to secure or motivate efficient management of corporations by the use of incentive mechanisms, such as contracts, organizational designs and legislation.¹⁴

Demaki,¹⁵ posited that, corporate governance is an institutional arrangement that checks the excesses of controlling managers. CG seeks to make orderly ambience for businesses to thrive by putting in place modalities to discourage unethical conducts and practices in corporations particularly amongst the BOD. As aptly viewed by Kajola,¹⁶ the whole essence of corporate governance is to ensure that the business is run well and investors receive a fair return.

The central issue in CG is how to make those in the management of companies more accountable, more responsible and more sensitive to the interest of shareholders, interest of creditors, interest of members of the public and the interests of the society.¹⁷ Adusei,¹⁸ defined CG as the adoption of a set of powerful micro-policy instruments in a firm that is aimed to ensuring an efficient allocation of resources in accomplishing the objectives of its equity holders, succeed in the competitive market as well as maximizing its positive impacts on other stakeholders and at the same time maximizing its negative influence on them.

¹⁰ *ibid* 5.

¹¹ M A Abu-Tapanjeh 'Corporate Governance from Islamic Perspective: A Comparative Analysis with OECD Principles' (Elsevier Ltd 2008) 89.

¹² S Mensah and others, 'Corporate Governance and Corruption in Ghana: Empirical Findings and Policy Implications,' [2003] *African Capital Markets Forum Accra Ghana*, 76.

¹³ H Abdullah and B Valentine, 'Fundamental and Ethics Theories of Corporate Governance,' [2009] (4) *Middle Eastern Finance and Economics*, 89.

¹⁴ Mathiesen, 2002 <http://www.encycogov.com> accessed 28 January, 2025.

¹⁵ G O Demaki, 'Proliferation of codes of corporate governance in Nigeria and economy development' [2011] *Business Management Review* 1: 1-7.

¹⁶ S Kajola, 'Corporate Governance and Firm Performance: The case of Nigerian Listed Firms,' *European Journal of Economic, Finance and Administrative Sciences*, 16-28.

¹⁷ J O Orojo, *Company Law and Practice in Nigeria* (5th edn, London: LexisNexis Butterworths 2008) 272.

¹⁸ M Adusei, 'Board Structure and Bank Performance in Ghana' (2011) 19(1) *Journal of Money, Investment and Banking*, 72-84.

Since CG also provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure.¹⁹ The Cadbury Report,²⁰ defined CG as “the system by which companies are directed and controlled”. Whilst management processes have been widely studied, relatively little attention has been paid to the processes by which companies are governed.

It is clear that good CG practice adopted by board of directors is reflected in the value it adds to its operations and insulates generally the company from corporate failures. The failure of big corporate organizations all over the world without any prior sign or indications ultimately points to the loosed and fraudulent practices which ordinarily would have been detected by the regulators where a good corporate governance practice had been in force.²¹

Aina,²² explains that CG is not about the day-to-day operational management of the company by the managers and executives, but is concerned with the overall strategic plan to move the company forward. Good corporate governance enhances the value of the company and attracts investment to the company. It enables the company to meet its objectives and contributes to its growth and profits. On a national scale, countries that adopt good CG models attract more direct foreign investments than those that ignore its principles. The root cause of most corporate failures can be attributed to failure of corporate governance. Due to the importance of some of these big companies to the economy of the nation and stability of the economy, the governments of developing countries like Nigeria have now taken the issue of corporate governance more seriously.²³

A company is said to have observed corporate governance rule if the company is managed with diligence, transparency, responsibility and accountability aimed at maximizing shareholders' wealth.²⁴ Akinsulire,²⁵ explained that, corporate governance is a term which covers the general mechanisms by which management is led to act in the best interest of the company owners. Corporate performance, according to Onakoya and others,²⁶ is an important concept which relates to the ways and manners in which the resources (human, machine, finance) of an institution are effectively used to achieve the overall corporate objective of an organization.

¹⁹ J Chen, 'Corporate Governance' <<https://www.investopedia.com/terms/c/corporategovernance.asp>> accessed 2 September 2024.

²⁰ The Report of the Committee on the Financial Aspects of Corporate Governance otherwise known as the Cadbury Report published in 1992 and was later described as a landmark in thinking on Corporate Governance". The report included a Code of Best Practice (The Cadbury Code).

²¹ Sir Adrian Cadbury's speech on the 20th Anniversary of the Corporate Governance Code Event – October 2012.

²² K Aina, 'Board of Directors and Corporate Governance in Nigeria', *International Journal of Business and Finance Management Research*, available at <<http://www.bluepenjournals.org/ijbfmr/pdf/2013/October/Aina.pdf>> accessed 4 August 2024.

²³ K Aina, 'Board of Directors and Corporate Governance in Nigeria', *International Journal of Business and Finance Management Research*, available at <<http://www.bluepenjournals.org/ijbfmr/pdf/2013/October/Aina.pdf>> accessed 4 August 2024.

²⁴ O Pandey, *Financial management*. (9th edn, India: Vikas Publishing House RT Ltd 2005) 54.

²⁵ O Akinsulire, *Financial Management* (4th edn, Lagos: Gemosl Nigeria Ltd 2006) 87.

²⁶ A B Onakoya and others, 'Corporate Governance and Bank Performance: A Pooled Study of Selected Banks in Nigeria' [2012] *European Scientific Journal*, ESJ, 8(28).

What keeps an organization in business is simply its ability of judiciously use its available resources and make sure that the providers of economic resources and its managers mutually benefit from the use of the resources. Though there exist different views about how scholars integrate the concept of governance but, however, at the end, they tend to point toward the same direction which is to ensure the well-being of the owners of organizations.²⁷

A cursory consideration of the above, it is clear that two categories prevail. The first focuses on behavioral patterns — the actual behavior of corporations, as measured by performance, efficiency, growth, financial structure, and treatment of shareholders and other stakeholders. The second concerns itself with the normative framework — the rules under which firms operate, with the rules coming from such sources as the legal system, financial markets, and factor (labor) markets. Both definitions include Corporate Social Responsibility (CSR) and sustainability concepts.²⁸

A somewhat broader definition would characterize corporate governance as a set of mechanisms through which firms operate when ownership is separated from management.²⁹ A broader definition of a governance system is “the complex set of constraints that shape the ex-post bargaining over the quasi rents generated by the firm.”³⁰ Good corporate governance creates a transparent set of rules and controls in which shareholders, directors, and officers have aligned incentives.³¹ CG generally governs the relationships between: the company as a corporate entity and each member; the members, one to another; and the company and each of its officers.³²

The FRC has as a duty to ensure operation of good corporate governance practices within the public and private sector of the economy.³³ The Nigerian Code of Corporate Governance 2018 (NCCG 2018) is a product of the powers of the FRC in line with its duties to ensure good corporate practice in Nigeria, and ensure compliance to the codes of corporate governance. As provided, the NCCG 2018 seeks to institutionalise corporate governance best practices, promote public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment in Nigeria by institutionalising high corporate governance standards.

This is because, it has been shown that companies with effective boards and competent management who act with integrity and engaged with shareholders and other stakeholders are better placed to achieve their business goals and contribute positively to society.³⁴ The provisions of the Regulation apply to not just publicly listed companies but also to some private companies with statutory filing requirements

²⁷ D A Abdulazeez and others, ‘Corporate Governance and Financial Performance of Listed Deposit Money Banks in Nigeria’ [2016] *Journal of Accounting & Marketing*; 2.

²⁸ S Claessens and B Yurtoglu, ‘Corporate Governance and Development— An Update’ [2012] *Global Corporate Governance Forum Focus* 10; 3.

²⁹ *ibid.*

³⁰ L Zingales, *Corporate Governance. The New Palgrave Dictionary of Economics and Law* (London; MacMillan 1998) 121.

³¹ Zingales (n 30)..

³² R P Austin, *Ford, Austin and Ramsay’s Principles of Corporations Law* (17th edn, LexisNexis Butterworths 2018) 210.

³³ FRC Act 2011, ss. 11c & 51c.

³⁴ NCCG 2018, pt. B.

from agencies or bodies aside the Federal Inland Revenue Services (FIRS) and the Corporate Affairs Commission (CAC). The NCCG 2018³⁵ provides for the class of companies that must adopt and comply with its provisions. These companies include public companies that are both listed and not listed in the stock market; all private companies which are holding companies of public companies; and special companies as contained in the code.

The companies affected by the application of the NCCG 2018 shall include in their financial reports for each financial year, their compliance report.³⁶ As an encouragement, it is submitted that by adhering to the principles articulated in this NCCG 2018, companies will demonstrate a commitment to good governance practices and increase their levels of transparency, trust and integrity, and create an environment for sustainable business operations.

To ensure compliance, the NCCG 2018 makes provision for the monitoring of compliance and enforcement of penalties for non-compliance, as it copiously provides that the implementation of this NCCG 2018 will be monitored by the FRC through the sectoral regulators and registered exchanges who are empowered to impose appropriate sanctions based on the specific deviation noted and the company in question. As an added compliance drive, the NCCG 2018 provides that, the FRC may conduct reviews on the implementation of the NCCG 2018 where deviations from the NCCG 2018 recur. Other monitoring mechanisms adopted by the FRC will be based on its review of the level of implementation of the NCCG 2018.³⁷

The NCCG 2018 is basically structured in a flexible manner to be able to apply to companies of various sizes irrespective of the circumstances, as it affects implementation.³⁸ The Code consists of seven (7) parts and twenty-eight (28) principles together with practices recommended by the Code for the implementation of each principle.³⁹

As provided for by the NCCG 2018, the BOD is responsible for providing entrepreneurial and strategic leadership as well as promoting ethical culture and responsible corporate citizenship. The BOD also serves as a link between the stakeholders and the company, and as such should ensure the best interest of the stakeholders and interested parties are protected while also securing the prosperity of the company.⁴⁰

Principle 2 provides for the effective discharge of the responsibilities of the Board and its committees to be assured by an appropriate balance of skills and diversity (including experience and gender) without compromising competence, independence and integrity.⁴¹ The BOD is recommended to promote

³⁵ NCCG 2018, Reg 1 (1).

³⁶ *ibid*, (2).

³⁷ *ibid*, par D.

³⁸ *ibid*, par C.

³⁹ *ibid*, par E.

⁴⁰ NCCG 2018, pt A, Principle 1.

⁴¹ *ibid*, principle 1.

diversity in its membership across a variety of attributes relevant for promoting better decision-making and effective governance. These attributes include field of knowledge, skills and experience as well as age, culture and gender.

The Board should have a policy to govern this process and establish measurable objectives for achieving diversity in gender and other areas.⁴² The BOD in her task to promote the achievement of the strategic objectives of the Company, ensures that the Company remunerates fairly, responsibly and transparently.⁴³ The BOD is encouraged to regularly appoint new members that would bring in innovations, whilst retaining the experience, skills, and diversity, as well as ensuring continuity.⁴⁴

The offices of the Managing Director/Chief Executive Officer and Chairman of the BOD are strongly recommended to be separate at all times.⁴⁵ The Code as enacted seeks to ensure transparency and protect the interest of all investors as it clearly spells out the roles of the executive and non-executive directors of the company. While the executive directors are expected to support the managing director of the company in the implementation of policies and actualization of company's goals, the non-executive directors are expected to support the managing director and the company with their skills and expertise on issues of strategy and performance of the board.⁴⁶

The role of the company secretary in supporting the effectiveness of the Board by assisting the Board and management to develop good corporate governance practices and culture within the Company is also highlighted in the NCCG 2018.⁴⁷ This role of the company secretary is manifested in many areas and particularly in the meetings of the company which has been identified as the principal vehicle for conducting the business of the Board and successfully fulfilling the strategic objectives of the Company.⁴⁸ The code approves of the practice of the board to delegate some of its functions, duties and responsibilities to well-structured committees and departments, but in doing this, the code did not absolve the board from the wrongful acts of these committees, as at all times, the board is not allowed to abdicate its roles, duties and responsibilities.⁴⁹

It is therefore advised that the board regularly meets to evaluate the performance of each Director, the committees of the Board and the Board itself to the achievement of the company's objectives.⁵⁰ The NCCG 2018 also provides that by institutionalising a system for evaluating the Company's corporate governance practices, the company ensures that its governance standards, practices and processes are adequate and effective.⁵¹

⁴² *ibid*, par 2.4.

⁴³ *ibid*, principle 16.

⁴⁴ *ibid*, principle 2.6.

⁴⁵ *ibid*, principle 2.8.

⁴⁶ *ibid*, Principles 5 & 6.

⁴⁷ *ibid*, Principle 8.

⁴⁸ NCCG 2018, Principle 10.

⁴⁹ *ibid*, Principle 11.

⁵⁰ *ibid*, Principle 14.

⁵¹ *ibid*, Principle 15.

A sound framework for managing risk and ensuring an effective internal control system is essential for achieving the strategic objectives of the Company.⁵² Also important is the implementation of sound accounting principles, an effective whistle-blowing policy, and good internal and external auditing of the company's accounts.⁵³

The need to constantly maintain sound communication with the shareholders of the company and ensure proper information transmission as well as dialogue also compelled the inclusion of a Principle for the Board to always interface with the shareholders. The NCCG 2018 recognizes the importance of general meetings as it creates an opportunity for the board of directors to engage shareholders and facilitate better understanding of the company's goals and objectives. The shareholders on the other hand, are given an opportunity to exercise ownership rights and appraise and advice the board of directors.⁵⁴

This opportunity created intentionally by the NCCG 2018 has been suggested to reasonably balance the needs of the shareholders and board members.⁵⁵ Equitable treatment of shareholders and the protection of their statutory and general rights, particularly the interest of minority shareholders, promote good governance.⁵⁶

The establishment of policies and mechanisms for monitoring insider trading, related party transactions, conflict of interest and other corrupt activities, mitigates the adverse effects of these abuses on the Company and promotes good ethical conduct and investor confidence⁵⁷. These policies will repel any form of abuse of privileges and powers that is usually experienced in companies and which has been identified as one of the major setbacks causing corporate failures and the winding up of companies.

The NCCG 2018 also provides that adequate attention to sustainability issues including environment, social, occupational, and community health and safety ensures successful long-term business performance and projects the Company as a responsible corporate citizen contributing to economic development.⁵⁸ In promoting transparency, the company is also enjoined to ensure regular communication and interaction with stakeholders to keep them conversant with the activities of the Company and assist them in making informed decisions.⁵⁹ Transparency also includes full and comprehensive disclosure of all matters that are material to investors and stakeholders, and of matters set out in this Code, to ensure proper monitoring of its implementation which engenders good corporate governance practice.⁶⁰

⁵² *ibid*, Principle 17.

⁵³ *ibid*, Principles 18, 19, and 20.

⁵⁴ *ibid*, Principle 21.

⁵⁵ *ibid*, Principle 22.

⁵⁶ NCCG 2018, Principle 23.

⁵⁷ *ibid*, Principle 25.

⁵⁸ *ibid*, Principle 26.

⁵⁹ *ibid*, Principle 27.

⁶⁰ *ibid*, Principle 28.

4.0 Compliance; A Pride or a Price

Oman,⁶¹ posited that the institutions of corporate governance inspire two objectives: enhance the performance and ensure the conformance of corporations. He went further to suggest that the performance of corporations is the principal generator of economic wealth and growth in the society.

The NCCG 2018 acknowledged that by institutionalizing high corporate governance standards, public trust and confidence in the Nigerian economy will be revived, thus facilitating increased trade and investment.⁶² This is a testament of the direct impact of corporate governance on the economy of a nation. Morck and others,⁶³ posited that economic growth depends on the distribution of control over capital assets. Their position also intimated the functional role of capital markets in stimulating growth, demonstrating how the distribution of corporate control and the workings of capital markets are related, and how their interactions affect economic growth.⁶⁴

Todorovic,⁶⁵ posited that corporate governance is a key element for improvement of investors' confidence, increase of competitiveness and improvement of economic growth. James Wolfensohn,⁶⁶ posited that corporate governance is now as important in the world economy as the government of nations. He went ahead to posit that good corporate governance has a direct economic benefit to the company and nation. Maher and Anderson,⁶⁷ identified that the relationship between corporate governance and economic performance has become one of the most controversial issues faced by policymakers today. This underscores the reason why countries have paid more attention to corporate governance, ensuring that the extant codes of corporate governance are efficient to meet the economic needs of investors and businesses.

The effect of corporate governance on a nation's economy needs no much elaboration as it has become a global index ensuring more attention on the subject of corporate governance. Corporate governance is widely considered to have significant implications for the growth of an economy as it reduces the risk for investors, attract investment capital and improve the performance of companies.⁶⁸ The effect of corporate governance on a nation can be considered from areas of: attraction of foreign direct investments; job creation; economic growth; environmental sustainability; political stability; and promotion of transparency and accountability, amongst others.

A company that complies with the provisions of the NCCG 2018 and other rules and legislations on corporate governance, will definitely attract better investments from within and outside Nigeria. This

⁶¹ C P Oman, 'Corporate Governance and National Development' *OECD Development Centre Working Paper No.180*, 13.

⁶² NCCG 2018, Aims and Objectives.

⁶³ R Morck and others, 'Corporate Governance, Economic Entrenchment and Growth' *NBER Working Paper Series* [10692], 1.

⁶⁴ *ibid*.

⁶⁵ I Todorovic, 'Impact of Corporate Governance on Performance of Companies' *Montenegrin Journal of Economics* [9]2, 47.

⁶⁶ J D Wolfensohn, "A Battle for Corporate Honesty, the Economist: The World in 1999" *Financial Times*, 3-8.

⁶⁷ M Maher and T Anderson, 'Corporate Governance Effects on Firm Performance and Economic Growth' *OECD Department of Economics Working Paper*, 1.

⁶⁸ K Heenetigala and A Armstrong, 'The Impact of Corporate Governance on Firm Performance in an Unstable Economic and Political Environment: Evidence from Sri Lanka' *Paper submitted to the 3rd Conference on Financial Markets and Corporate Governance*, 2.



would also keep the company in good tabs with employees, stakeholders and the corporate environment, with associated benefits guaranteed for the company. It is therefore a price and a pride for a company to pay, and not merely a recommendation. Compliance to the provisions of the NCCG 2018 is to the benefit of the company and the nation, and should not be seen as a mere suggestion without consequences for non-compliance.

5.0 Conclusion

Compliance to corporate governance codes in Nigeria and outside this country is therefore, both a price to be paid and a pride to celebrate. It is a price to pay, because it promotes transparency and accountability, with intentional objectivity in the discharge of the duties and powers of the directors of the company. It is a pride because of the many benefits that naturally accrue to a company with recognized compliance to the provisions of the NCCG 2018 and other corporate governance provisions contained in legislations as ISA 2025, CAMA 2020, amongst others.