THE OECD PRINCIPLES OF GOOD CORPORATE GOVERNANCE AND THE QUEST TO STOP CORPORATIONS' MISBEHAVIOUR; WHITHER NIGERIA?

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ABSTRACT

The growth of any Nation's economy depends on how well the Corporations in the public and private sector fare, as the factors of production of goods and services apart from the behemoths sponsored statutorily by Government as a matter of duty. The drive on the part of these Corporations to stay competitive and remain a big player in the market often leads to acts regarded as untoward and detrimental to the economy, and may also result in the crash of the Corporation. These corporate crashes have a negative resounding effect on the economy and this is what the OECD principles of good corporate governance attempts to eradicate. The Codes provide a framework for the workings and operations of Corporations globally. This paper examines whether Nigeria and indeed the Nigerian corporate environment has fully adopted and imbibed the OECD principles in order to avert corporate crashes in Nigeria and comes to the conclusion that the Codes have indeed been adopted into the Nigerian corporate environment.

KEY WORDS: OECD, corporate governance, codes, corporations.

INTRODUCTION

The standing of a Nation in the country depends on the strength of its economy. A nation's economy therefore is fundamental to the continued relevance such a country enjoys in the international community and the status it is accorded. The economy of any Nation includes the sectors of the production sphere carved from the intrinsically shaped complex of production sectors in a given country, in which such production sectors are both public and private (The Great Soviet Encyclopedia 1979).

The economy of a Nation depends on the level of business such a nation engages in both at the public and private levels. This business is done largely by big companies referred to as corporations. A corporation can be aptly described as a company or group of people authorized by law to act as a single entity and as a legal person.

This description is apt since the word corporation is derived from the Latin word "Corpus" meaning a "body of people" Under Roman Law, such entities referred to as Corporations include but was not limited to the state itself, guilds of craftsmen political groups and traders (Berman, 1983). In the United States, the term 'Corporation' is mostly used to refer to large business organizations registered at law but it generally refers to big business having legal personality, liability is strictly limited to their investment (Pellet, 2005) (Courtney, 2002).

The fact that corporations are integrally connected to the factors of production for economic growth means that any illegal or unethical activity by these entities and or their agents has the potential to have a significant negative impact on the welfare of society (Schwartz, 2001) and as such, they must be closely monitored and regulated.

The mindset that business is for profit, and bigger the standing and stature of the business the greater the accruable profit, entices corporation into unwholesome practices that may be of benefit to it in terms of overall growth or financial standing (Dawodu, 2015). These practices include falsification of financial records false posturing of financial standing, partial or non-disclosure of company activities, non-compliance with financial regulations, high risk business engagements. Which often leads to Corporate collapse (Dawodu, 2015). The damage of these collapses on the society is exemplified by e.g the effect of the decision by the Ford Motor Company not to recall its floured Pinto model. The poisonous leak which killed thousands living next to a Union Carbide Plant in Bhopal, India the catastrophe carved by the oil leak from the Exxon Valdez tanker (Schwartz, 2001).

Corporate Collapses (Crash of Corporations)

As stated earlier, unethical behavior by big businesses i.e Corporations often lead such corporations into collapse. A corporate collapse generally involves the insolvency or bankruptcy of a major business enterprise as a result of a scandal, which involves alleged or actual proven unethical behavior by people acting within or on behalf of a corporation. In recent times, this collapse has been majorly as a result of false or inappropriate accounting on the part of officers of the company.

It is pertinent to mention some incidents of corporate collapses as a result of unethical conduct.

The Mississippi Company. In 1720, the Scottish economist John Law greatly exaggerated the state of affairs of a monopoly trade venture in Louisiana and then convinced the French government to lend its support to the venture.

Obviously the shares of the company were not as near perfect as he claimed them to be. The euphoria of the speculative soon burst and the company collapsed. John Law was expelled from the colony.

Allied Crude Vegetable Oil Refining Corporation. In 1963, Tino De Angelis, trading in commodities defrauded clients, which included the Bank of America on the claim that he was trading in vegetable oil. He obtained loans and made money on this basis. He actually showed inspectors tankers of water, with a bit of oil on the surface. The fraud was soon exposed, and the business collapsed leaving a lot of unpaid debts.

WorldCom. In 2001, The company, which was into Telecommunication had been affected by a drop in business share prices dropped, and the share buy bank scheme failed. The Directors of the company then concocted seemingly solid financial figures of the company, using fraudulent accounting methods, in order to push up the dropping stock price. This fraud was soon discovered and the company went into bankruptcy.

Enron. In 2001, the revelation of the falsification of the financial standing of the Enron Corporation came to fore. The Corporation, an Energy company based in Houston, Texas was formed by Kenneth Lay after the merger of the natural gas pipeline companies of Houston Natural Gas and Inter North. In 1992, Enron had become the largest seller of natural gas in the whole of North America and in a bid to achieve further growth, it commenced an aggressive diversification strategy (Healy and Krishna, 2003). In fact, it was said that at that time, *"Enron's stock increased by 311% between 1990 and 1998, a slightly higher rate than the average growth rate in the standard and poor 500 index"* (Healy and Krishna, 2003). The unfortunate irony was that the actual fact of the financial state of affairs of Enron were quite different (Ripley, 2002). The appointment of Jeffrey Skilling as CEO saw the development of Executive staff who, by the use of accounting loopholes special purpose entities and poor financial reporting, hid billions of dollars of debt from fouled deals and projects (Soltani, 2014) (Robert, 2008). Enron's complex financial statements were confusing to shareholders and analysts (Mack, 2002). At the end, the fraudulent practice was discovered and the company, with $63.4 billion in assets, was forced into bankruptcy and a number of Directors were sentenced to terms of imprisonment.

Parmalat. The company, founded in 1961 as a small pasteurization plant in Italy by Castilo Tanzi grew in business and diversified into milk, diary, beverage, bakery and other products. By 2002, the company had over 3000 employees in 30 countries and was valued at £3.7 billion. However by 2001 most of the new business and divisions financed as part of the international acquisitions were producing losses and the company financing shifted largely to the use of derivatives in a subtle attempt at hiding the extent of its losses and debts. The fact was that Tanzi, had diverted funds from Parmalat into other ventures such as Parma Tours and to cover up this unethical practice and falsely maintain the company's image, it engaged in questionable accounting practices part of which was to sell to itself credit-linked notes, the meaning of which was that the company was placing a bet on its own credit worthiness in order to conjure up an asset out of thin air. In 2003, bondholders discovered that about £4 billion funds reportedly held in a Bank of America account were actually nonexistent. The Bank claimed that the documents held as evidence of the transfers were forgeries. Further investigations reveal that Parmalat's debts are about eight times what the firms admitted (WorldFinance.com). The company goes into bankruptcy and the executives are arrested and prosecuted.

Refco. The company, a brokerage firm became a public company in 2005. The outlook was good and investors trooped in since the books showed such promise. The fact was that Phillip Bennett; the CEO had fraudulently concealed $430 million of bad debts in order to keep up the image and posturing of a solid financial company. The company collapsed and Bennett was sentenced to 16 years in prison.

The aforementioned is by no means an exclusive rendition.

METHODOLOGY

This paper will attempt a juxtaposition of the OECD principles viz a viz the Corporate Governance Codes for Public Companies in Nigeria (2011), and attempt an analysis of the provisions to find out whether Nigeria has adopted the full spirit of the principles, (to which it is a signatory) in the corporate environment, in order to prevent corporate collapses by curbing unethical practices of the corporation itself acting as an entity or through any of its officers in order to sustain economic growth and development.

CORPORATE GOVERNANCE. (Nature and Relevance)

The realization that unethical practices by corporations can have major consequences for a nation, WorldCom alone threw about 130000 employees into despair (Dawodu, 2015), fundamentally begged the question *"What can be done to prevent corporate misconduct from occurring in the first place"* (Schwartz, 2001). Some scholars have postulated that a free market system operating within a legislative regime should be sufficient to prevent misconduct (Levitt, 1958; Friedman, 1970 quoted by Schwartz, 2001) while others (Arrow, 1973 ;) (Stone, 1975) have stated the opposite. The nexus between the two schools however, is that self-regulation by Corporations is not only permissible but also potentially economically mandated (i.e if good for the bottom line, or if laws are insufficient) (Schwartz, 2001).

It is then imperative that companies self-regulate.

The nature of Law itself meant that rules would be formulated for the regulation of business and business entities. Company Law therefore laid the framework for the setting up of business, the kind of business and the structure of the kind of business so created. Company Law therefore laid the foundation of the creation of business as artificial persons within the particular jurisdiction it operates. There was however a lacunae; the law did not in most cases specify how the processes of conformity to the law were to be achieved. There was then the issue of not only having a template for the formulation of a company, but also the rules that monitor or stipulated the approaches to be employed in adhering to the regulations.

Corporate governance (CG) broadly refers to the mechanism, processes and relations by which corporations are controlled and directed (Shailer, 2014). Where law states that a decision is to be made by a company, CG would specify the means and most seemingly reasonable process of arriving at that decision. Company law states that a corporation must have its objectives, CG pronounces the Procedures and processes through which the corporation's objectives are set.

Another definition of CG is more direct in showing its aim by narrowing down its ambit "a system of law and sounds 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 directors and thereby mitigating agency risks which may stem from the misdeeds of corporate officers" (Sifuna, 2012).

The importance of the aforestated definition is in its specificity;

- A focus on the internal and external corporate structures
- The intention of monitoring the actions of management and directors
- The mitigation of agency risks.
- The avoidance of the incidence of misdeeds of corporate officers.

Corporate Governance has gained prominence in the world of commerce as a critical issue in the running of business organizations as a result of the increasing rate of business failures and the need to curb or eradicate the concomitant effects of these crashes. The direct result of these failures was the realization of an urgent and compelling need to have transparency in the preparation and presentation of financial statements to various stakeholders and the public at large (Abdullahi et al, 2010), and the formulation, establishment and enforcement, of mechanisms and processes to ensure that the operations of Corporations follow global acceptable best practices which minimize if not totally eradicate the incidence of corporate crashes. In the words of the famous Roman General, *"to avoid all mistakes in the conduct of a great enterprise is beyond Man's powers. But when a mistake has once been made, to use his reverses as lessons for the future is the part of a brave and sensible man"(*Minicius, circa 100BC*)*

The corporate failures had happened; it was left to the corporate world to fashion out ways by which such did not reoccur. There was a need for the corporate world to heal itself since "corporate failure is never the result of a random set of events. It is normally the reflection of deep seated corporate shortcomings" (CIMA, 2012). A major part of this shortcoming was the lack of transparent, if not diligent accounting in and of corporations. It has been said that *"corporate accounting does not do violence to the truth occasionally and trivially, but comprehensively, systematically and universally, annually and perennially"* (Chambers, 1991).

The Sarbanes-Oxley Act 2002.

The Act was the immediate response to the corporate crashes of major, hitherto considered blue chip companies which created losses running into billions of dollars in the United States economy. Named after its sponsors, Senator Paul Sarbanes and Representative Michael G. Oxley, its thrust was to impose a greater burden on top management of corporations to individually certify the accuracy of financial information, and also to heighten the severity of the penalties for corporate fraudulent financial activities. The Sarbox (as it is famously coined) was viewed as *"an Act to protect investors from the possibility of fraudulent accounting activities by corporations"*. This is why to this author, its two most important provisions are: the mandate of certification of accuracy by top management (Section 302) and the establishment of internal controls and reporting methods on the adequacy of such controls (Section 404). To this end it was largely a document mandating strict reforms to improve financial disclosures from corporations and prevent accounting fraud.

The Act has also been defined as a *"legislation passed to protect shareholders and the general public from accounting errors and fraudulent practices in the enterprise, as well as improve the accuracy of corporate disclosures"*.

THE OECD PRINCIPLES OF CORPORATE GOVERNANCE (2004).

The continued development in global commercial enterprise and the growth of companies into behemoths presupposed a proactive stand in regulations and or guidelines in the running of business worldwide. The reactions of Nation States were individual; the Sarbox Act was distinctly American and could not serve as a yardstick for global application. Have the need for a Code of Ethics/Principles/Guidelines to serve as an omnibus guide to the global village in terms of operations of companies.

The Organization for Economic Co-operation and Development (OECD) Principles of Corporate Governance were established pursuant to the spirit and letter of Article 1 of the Convention signed in Paris on 14th December 1960, which came into force on 30th September 1961. It was in order

"to promote policies designed

-to achieve the highest sustainable economic growth and employment and a rising standard of living in member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;

-to contribute to sound economic expansion in member as well as non-member countries in the process of economic development;

-to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

Formed initially by twenty countries, its membership ranks have been swelled by other countries, through accession and the present principles represent the result of the review undertaken by the Steering Group under the mandate from the OECD Ministers in 2002. It is apt to say that the OECD principles have actually impacted the element of 'international' on corporate governance. The endorsement of these principles by the OECD (member countries) Ministers in 1999 has transformed the principles into an international benchmark or parameters for measuring the corporate industry operations for policy makers, investors, corporations and other stakeholders worldwide. Initially formulated in response to a call by the OECD Ministers meeting in 1998, it was to develop *"in conjunction with national governments, other relevant international* *organizations and the private sector, a set of corporate governance standards and guidelines. The major corporate collapses have illuminated the irrepressible need to have sound corporate financial stability which the guidelines are set to achieve."* (Preamble to the OECD Principles). The Charter document therefore clearly states *"the principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries…"* (Preamble to the OECD Principles), in effect hoping to strengthen the institutions that ensure the smooth running of corporations in all their ramifications.

It is pertinent to state that the principles are not some form of strict codes like Criminal Law or the Law of Evidence, but rather a bold attempt to harmonise some common elements which underlie good corporate governance all over the world. As the Preamble to the principles clearly states *"there is no single model of good corporate governance".*

There are basically six rules that serve as the OECD Principles and they are herein reproduced with their main themes.

i. Ensuring the basis for an effective Corporate Governance framework i.e the corporate governance framework should promote transparent and efficient markets, be consistent with the rule of Law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.
ii. The Right of Shareholders and Key Ownership functions i.e the corporate governance framework should protect and facilitate the exercise of shareholders rights.
iii. The Equitable treatment of Shareholders i.e the corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.
iv. The Role of Stakeholders in Corporate Governance i.e the corporate governance framework should recognize the rights of shareholders established by Law or through mutual agreements and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.
v. Disclosure and Transparency i.e the corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.
vi. The Responsibilities of The Board i.e the corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the Board's accountability to the company and the shareholders.

CORPORATE GOVERNANCE IN NIGERIA

There is global realization that poor corporate governance is the bane of many corporates in both the developed and developing nations. This is particularly true of Nigeria where, as an added albatross, corruption is endemic. There is no doubt that in the determination of foreign direct investment, which is integral to the growth of any developing nation (e.g. Nigeria), good corporate governance is key to investor decisions. Nigeria in this regard is, like any other nation, keen to attract the much needed investments into the economy and take advantage of the glaring opportunities in the global market, therefore it must adhere to principles of good corporate governance.

It is also impossible to underplay the vital role that the modern Corporations play in the economic development of any nation and the need to ensure that these Corporations are operated in the best possible manner (Okike, 2005).

The Cadbury Nig. Limited Scandal

Cadbury Nigeria was founded in 1865 as a subsidiary for Cadbury UK. The company produces cocoa based beverages and confectionaries. Unarguably one of the best brands in the Nigeria market, its products, particularly Bournvita, Tom-Tom, Eclairs and Trebor Mints are (or were, as the case may be) household names. The company in 2005 was adjudged the most respected company in Nigeria and its chief executive, the most admired executive officer in the country

The fact which was to lead to the dismissal of the chief executive officer Mr. Bunmi Oni and the company's finance director Mr. Ayo Akadiri, was that the company's financial report was a bundle of financial misstatements; a deliberate understatement of expense and overstatement of revenue in order to paint a false rosy picture of the company's performance. This was done in a number of ways including but not limited to turnover manipulation, changing asset depreciation methods, changing stock valuation methods as well as capitalizing expenses that are supposed to be written off and off-balance sheet financing.

The Board of directors of the company and the company at the instigation of the Chairman commissioned the firm of PriceWaterHouse Coopers to review and investigate the company's financial statements and the result was a revelation of financial book padding and corruption. The outcome of the investigation *"has confirmed a deliberate overstatement of the company's financial position over a number of years to the tune of between N13 and N15 billion"*.

The company's Public Affairs Manager whilst briefing the nation on the scandal remarked *"over the number of years, Cadbury Nigeria had assigned itself an ambitious growth target. To achieve these targets, several systems abuses occurred. The overstatements are directly traceable to these systems abuses".* The interesting thing about the Cadbury issue is that in 2013, the public was again alerted to the possibility of another scandal in the company's financial computations. In a report which predicted another scandal over alleged fraudulent financial reporting and urged the company to present a realistic result of its operations and financial position, it stated *"that Cadbury closed its books….with N3.8 billion worth of sales; however it was alleged that the sum of N1.8 billion from that amount was not realized from actual sales transactions, but represented only an increased credit limit which Cadbury extended to its distributors…Cadbury assisted the distributors to secure bank loans to the tune of N800 million, which the distributors allegedly deposited with the company to give the impression of partial payments for the increased credit line of goods".*

Adaptation of OECD Principles of Corporate Governance: The Code of Corporate Governance for Public Companies, 2011.

In order to fill a yawning gap in the existence of a comprehensive framework for corporate governance in Nigeria, the Securities and Exchange Commission in June 2000 set up the committee on Corporate Governance of public Companies in Nigeria. Made up of members from the public and private sectors and representatives from the Nigeria stock Exchange, the Securities and Exchange Commission and the Corporate Affairs Commission, the Committee had its main duty to review the practices of corporate governance in Nigeria and thereafter, recommend a Code of best practices to be followed by public companies registered in Nigeria in the exercise of power over the direction of the enterprise, the suspension of executive actions, the transparency and accountability in governance of these companies within the regulatory framework and market.

In achieving this task, the Committee was required to:

1. Identify weaknesses in the current corporate governance practice in Nigeria with respect to public companies;
2. Examine practices in other jurisdictions with a view to the adoption of international best practices in corporate governance in Nigeria
3. Make recommendations on necessary changes to current practices, and
4. Examine other issues relating to corporate governance in Nigeria.

In its report submitted in April 2001, the Committee made recommendations focused on transparency and accountability of the management and boards of public companies, stating that the recommendations *"have been arrived at after reviewing the existing practices in Nigeria and other countries around the world in order to ensure that they also conform to global best practices".* Based on this, a code of Corporate Governance for Public Companies came into operation in 2003.

In September 2008, the Securities and Exchange Commission inaugurated a National Committee (The Mahmoud Commission) for the review of the 2003 Code, address its weaknesses and further improve the mechanism for its enforceability. The laudable development in this review was the task of the Committee to examine and recommend ways of effecting greater compliance to the Code thereby laying a greater emphasis on enforcement for breach of its principles.

The Board of the Securities and Exchange Commission, whilst stating its belief that the new code will ensure the highest standards of transparency, accountability and good corporate governance without inhibiting enterprise and innovation, stated the application of the code to only public companies but advised that other companies not covered by the code should set the code as a standard guideline for their operations.

The Code of Corporate Governance (in Nigeria) 2011 issued by the Securities and Exchange Commission, which became effective on the 1st April 2011, is the most comprehensive corporate governance document (or legislation as it is strictly referred to) in Nigeria at the moment and summarized as follows:

1. Application of the Code

This provision states the purview of the application of the code. It goes further to state the mode of application of the code to the listed companies. The fundamental distinction between corporate governance and company law i.e the fact that laws are rigid rules which may be followed technically but not rightly and that principles are guidelines which ought to be complied with for good company operations is stated in Section 1(3) (a) *"This Code is not intended as a rigid set of rules. It is expected to be viewed and understood as a guide to facilitate sound corporate practices and behavior.*

The Code clarifies the lingering doubt on the issue of the Securities and Exchange Commission as 'Oversight Supervisors' attempting to intrude into the day to day running of companies under the guise of corporate governance when its states "The responsibility for ensuring compliance with or observance of the principles and provisions of this code is primarily with the Board of Directors.

A major development in the Code is found in this section wherein the intention to enforce a stricter level of compliance to corporate governance principles is stated. Section 1(3)(g) states "where there is a conflict between this Code and the makes a stricter provision shall apply.

2. The Board of Directors (Responsibilities)

The Board of Directors as stated in Section 1(3)(b) above is the primary organ ensuring good corporate governance. This is amplified in Section 2 wherein, the primary responsibilities of the Board are explicitly stated vis-à-vis good corporate governance which is hereto copiously reproduced: “The Board is accountable and responsible for the performance and affairs of the company. It should define the company’s strategic goals and ensure that its human and financial resources are effectively deployed towards attaining those goals.

The principal objectives of the Board is to ensure that the company is properly managed. It is the responsibility of the Board to oversee the effective performance of the management in order to protect and enhance shareholder value and to meet the company’s obligation to its employees and other stakeholders.

The Primary responsibility for ensuring good corporate governance in companies lies with the Board. Accordingly, the Board should ensure that the company carries on its business in accordance with its articles and memorandum of association and in conformity with the laws of the country, observing the highest ethical standards “and on an environmentally sustainable basis.

3. Duties of the Board

The Code in this Section moves further from stating the expectations of a Board (as in the responsibilities contained in Section 2) to mapping out the duties of or the functions presumed of a Board which includes:

-formulation of policies and overseeing the management and conduct of the business

-formulation and management of risk management framework i.e all companies are expected to have apparatus for measuring and assessing the viability and practicability of risks

Other provisions relate to the logistics concerning board members and senior management establishment and monitoring of internal control mechanism; supervision of the communication system and process of the company for proper dissemination of information; performance appraisal; and prompt and effective shareholders update; veracity of financial reports; maintenance of best practices; and notably , ensuring compliance with the laws of Nigeria.

4. Composition and Structure of the Board

In keeping with the mandates of its vision of not being a set of rigid rules, the Code is basically advisory in providing guidelines for the outlook of Boards.

Section 4(1) states “The Board should be of a sufficient size relative to the scale and complexity of the company’s operations and be composed in such a way as to ensure diversity of experience without compromising independence, compatibility, integrity and availability of members to attend meetings.

The Code goes on in this Section to suggest the number of persons on a Board and their pedigree then clearly provides for the independence of the Board from management in order to fully effect the corporate governance principle of oversight for proper accountability

5. Officers of the Board

Having stated the primary aim of the Board as the eyes and hammer of corporate governance on the operations of a Corporation, this Section lists the presumed officers of a corporation and their purview.

In this Section however, the preference of a Unitary Board model with its peculiarity of separation of powers in one Board by the Code is discernible. Sections 5(1)(a-c) are instructive in this regard wherein the Code mentions one Board and not only lists their presumed members but further states their functions…" (a) The Chairman's primary responsibility is to ensure effective operation of the Board and that it works towards achieving the Company's strategic objectives. He should not be involved in the day-to-day operations of the Company. This should be the primary responsibility of the Management Team.

(b) For all public companies with listed securities, the positions of the Chairman of the Board and Chief Executive Officer shall be separate and held by different individuals. This is to avoid over concentration of powers in one individual which may rob the Board of the required checks and balances in the discharge of its duties.

(c) The Chairman of the Board should be a non-executive Director

Other Provisions

The Code provides for multiple directorships, wherein it advocates that no ceiling should be placed on member of directorships an individual may hold but instigated disclosure of all such appointments, it provides for family and interlocking directorships with the notable innovation that not more than two members of the same family should sit on the Board of a public company at the same time regardless of the level of their holdings in the company, and eschews cross membership of the Boards of two or more companies in the interest of objectivity and independence of the Board.

The Company Secretary is expected to be possessed of the requisite qualifications to assume such a position and in the spirit of the wordings of Section 8(3) acts as a direct link between the Chairman and the Chief Executive Officer as regards company operations. He is also enjoined to be the nexus between the Board, management, and the company.

The internal mechanisms of and for upholding good corporate governance ideals are aptly stated in the Code. Section 9 provides for Board Committees and the extent of their functions and mentions the establishment of at least three committees and the extent of their functions, and mentions Governance/Remuneration Committee, and the Risk Management Committee.

The Code in its third part deals with the issue of Shareholders, meetings, protection of shareholder rights, the role of shareholder associations, and institutional shareholders.

The importance of the internal audit function is exemplified by the provisions of Sections 31(1-14) whilst as a reinforcement of its commitment to accountability and transparency in the operations of companies, the Code provides in Section 32(1)… "Companies should have a whistle blowing policy which should be known to employees, stakeholders such as contractors, shareholders, job applicants, and the general public. It is the Board to implement such a policy and to establish a whistle-blowing mechanism for reporting any illegal or substantial unethical behavior.

(32)(2) The whistle-blowing mechanism should be accorded priority and the Board should also reaffirm continually its support for and commitment to the company's whistle-blower protection mechanism.

In Section 33, the Code enjoins companies to adopt a rotation of External Auditors in order to safeguard the integrity of the external audit process and in Section 34 canvasses for a greater level of disclosures than that prescribed by statute i.e the CAMA 1990. The Code mandates companies under its purview to have a Code of Ethics and Statement of Business Practices, which should be implemented as part of the corporate governance practices of the Companies.

Conclusion and Recommendations

The aim of Corporate Governance is to lay the basis for a mutually beneficial synergy between the business organization and all the parties that it impacts on (Dawodu, 2015). To this end it establishes principles that are regarded as acceptable best practices globally in the running of a corporate entity (Yasaki, 2001). It does not impose but advises. It stresses its flexibility and possible modifications to suit an extent purpose, situation and environment (Dawodu, 2015).

This above attributes are on glaring reason why it is so easily adaptable to any economic environment and has been seamlessly adopted and adapted to the Nigerian Corporate environment through the Codes 2011, in order to prevent unethical behavior and the crash of Corporations, which significantly affects the national economy.

The non-rigidity of the OECD principles as a law but rather as guides elicits easy acceptability, since there is adherence. Each state nation is free to use it as a guide to formulate its own Codes, which is exactly what Nigeria has done.

In order to further entrench the dictates of good corporate governance as exemplified in the OECD principles and the Codes 2011 in Nigeria, there is the need to improve the mechanisms for supervision of Companies in Nigeria, coupled with an effective judicial system capable of imposing appropriate sanctions for breach of the guidelines. This will further motivate compliance with the provisions of the Codes.

It is also recommended that the use of clear language be employed in legislations defining proper and improper corporate behavior (Kraakman, et al, 1996).

REFERENCES

Bahrain Soltani, "The Anatomy of Corporate Fraud: A comparative Analysis of High profile American European Corporate Scandals." Journal of Business Ethics (2014). 120.pp 251-274. Springer. At p 3, see also Bryce Robert (2008), PIPE Dreams: Greed Ego and the Death of Enron. Public Affairs. ISBN 1-58648-201-7.

CIMA; Chartered Institute of Management Accounting. Posted 15-02-2012. Retrieved 06-06-2018.

Cooper Cynthia "Extraordinary Circumstances: The Journey of a Corporate Whistleblower". Hoboken, New Jersey: John Wiley & Sons Inc., ISBN 978-0-470-12429-1.

Courtney, Thomas B. (2002). *The Law of Private Companies* (2nd ed.). Bloomsbury Professional. 4. 001.

Dawodu, H. O, *The OECD Principles of Good Corporate Governance and The Nigerian Corporate Environment; A Case Study of The Nigerian National Petroleum Company*. University of East London, UK, 2015.

Elewechi N.M. Okike "Corporate Governance in Nigeria: The Status Quo" Blackwell Publishing. Pp173-193 at p173.

Elewechi N.M. Okike "Corporate Governance in Nigeria: The Status Quo" Journal Compilation, Sunderland Business School, University of Sunderland Vol. 15, No 2 (March 2007). Blackwell Publishing Co.pp173-193 at p191.

Harold Joseph Berman, *Law and Revolution* (vol. 1): *The Formation of the Western Legal Tradition*, Cambridge: Harvard University Press, 1983, pp. 215-216. ISBN 0674517768.

Healy, Paul M; Krishna G Palepu (Spring, 2003) "The Fall of Enron" (PDF) Journal of Economic Perspectives 17(2)5.doi:10, 1257/089533003765888403. Archived 24-06-2018. Retrieved 25-06-2018.

Kraakman R,B Black, and R Hay: 1996, "A Self Enforcing Model of Corporate Law", Harvard Law Review. 109, 1911.

Mack Toni (2002-10-14) "The Other Enron Story". Forbes. Archived 25-06-2018. Retrieved 25-06-2018.

Muraina Abdullahi, Okpara Enyinna and Ahumanya Stella "Transparency in Corporate Governance: A Comparative Study of Enron USA and Cadbury PLC, Nigeria". The Social Sciences (2010) Vol. 5, Issue 6. Pp 471-476 at 471.

Nigeriaworld Features Article-Cadbury: Nigeria's Enron.

Accessed at www.nigeria.com/feature/publication/babsajayi/121406.html. 2018-06-06

Omoregie N.V, 2006. “Cadbury Saga and the Imperatives of Cost Management”. The Guardian. January 3, 2006 pp.43.

Speech of the Roman General Minicius to his soldiers after his defeat by Hannibal the Great.

Pettet, B. G. (2005). *Company Law*. Pearson Education. p. 151.

Ripley Amanda (December 30, 2002).”The Night detective”. Time Magazine.

R.J Chambers, (1991) quoted in “Chaos in the Counting House” (Chapter 1, ‘Corporate Collapse: Accounting, Regulatory and Ethical Failure”, Frank Clarke, Graeme Dean and Kyle Oliver. Revised Ed., Cambridge University Press. 2003 at p3.

Roach, Brian. Corporate Power in a Global Economy. Global Development and Environment Institute. Tufts University. 2007.

Schwartz, Mark S, *The Nature of the Relationship between Corporate Codes of Ethics and Behaviour*, Journal of Business Ethics, 32: 247-262, 2001.

Shailer, Greg. An Introduction to Corporate Governance In Austraila. Sydney, 2014).

Sifuna, Anazett Pacy (2012) “Disclose or Abstain: The Prohibition of Insider Trading on Trial” Journal of International Banking Law and Regulation. 27 (9).

The Great Soviet Encyclopaedia, 1979.

Yasaki A.G.A (2001) “Corporate Governance in Third World Countries with particular reference to Nigeria”, Corporate Governance: An International Review, 9, July. 238-253 at 240.