CORPORATE GOVERNANCE AND ACCOUNTABILITY OF CORPORATIONS; THE WAY FORWARD FOR NIGERIA

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ABSTRACT

Corporate governance broadly refers to the totality of the mechanisms, processes and relation by and through which Corporations are controlled. This control is important in that the idea that business is solely for profit is ingrained in the heart of each corporation, and this often times leads to unethical and or unwholesome practices in order to gain a (or an undue) competitive or market advantage, and may result in corporate crashes with a glaring telling effect on the economy.
This paper looks at the various global modern corporate governance instruments like the OECD Principles; the Sarbox Act; the Code of Corporate Governance for Public Companies 2011, viz a viz the Nigerian corporate environment and concludes that there is a need to further entrench CG principles in Nigeria by curbing or eliminating the various factors that are clogs to firm establishment of the CG principles in Nigeria.

Keywords: Corporate governance, corporations, Sarbox, OECD, Codes.

INTRODUCTION

The level and magnitude of the production factors and force in a nation basically determines the growth of the economy. The standing of a Nation in the country of state depends on the strength of its economy. The economy of a nation depend on the level of business the nation engages in both at the public and private levels and this includes the areas of production sphere carried from the intrinsically shaped complex of production sector in a given country. In which such production sectors are both public and private (The Great Soviet Encyclopedia 1979). This production is done by the big businesses largely referred to as Corporations.

The Word Corporation is derived from the Latin word "Corpus" meaning a "body of people". Under Roman Law, such entities referred to as Corporations included 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 organization registered at law but it generally refers to big business having legal personality whose liability is strictly limited to their investment (Pellet, 2005).

The fundamental idea that business is for profit, and the bigger the standing and stature of the business the greater the accruable profit, entices Corporations 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 flawed Pinto model, the poisonous leak which killed thousands living next to a Union carbide Plant in Bhopal, India, the catastrophe caused by the oil leak from the Exxon Valdez tanker etc. (Schwartz, 2001).

METHODOLOGY

This paper attempts an examination Corporate Governance ideals by analyzing the various Acts and rules (The Sarbox Act of 2002, the OECD Principles of 2004, and the Code of Corporate Governance for Public Companies 2011) of Corporate Governance as it applies to the Nigerian Corporate Environment and dissect the rules and the limitations thereto, as they apply to the Nigerian environment in order to further entrench the principles of good Corporate Governance in Nigeria and prevent corporate collapses.

NATURE OF CORPORATE GORVERNANCE

Law broadly refers to rules accepted as legations that guide human actions. 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 king of business and the structure of the king of business so created. Company law therefore laid the foundation for 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 process 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). There is the preponderance for the layman to confuse Corporate Governance with Company Law: company law lays the framework for the setting up of business, the king of business and the structure of the kind of business so created; Corporate Governance lays out the broad parameters by which the processes of conformity to the law were to be established. One definition of Corporate Governance shows this template clearly. The ambit of Corporate Governance is narrowed down to “a system of law and sound approaches by which corporations are directed and controlled focusing on the internal and external corporate structures with the intention of monitoring the actions of management and Directors and thereby reduce agency risks which may stem from the misdeeds of corporate officers” (Sifuna, 2012)

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.

ESSENCE OF CORPORATE GOVERNANCE

The realization that Corporations could misbehave as an ugly part of their competitive drive and market consumer acquisition strategy the corporate world to a shocking fact; the glaring discovery 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 form occurring In the first place” (Schwartz, 2001). Some scholars have postulated that a free market system operating within 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 have a means by which they self-regulate in other to prevent instances of corporate collapses some of which are listed here under.

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 hares 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 poo financial reporting, hid billions of dollars of debt from fouled deals and projects (Soltani, 2014) (Robert, 2008). At the end, the fraudulent practice was discovered and the company, with £63.4 billion in assets, was forces 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 Itlay 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 fund from Parmalat into 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 document's held as evidence of the transfers were forgeries. Further investigations reveal that Parmalat's debts are about eight times what the firms admitted (WordFinance.com). The company goes into bankruptcy and 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 Philip Bennett; the CEO had fraudulently concealed S430 millions 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 Cadbury Nig. Limited Scandal

Cadbury Nigeria was founded in 1865 as a subsidiary for Cadbury UK. The company produces coca 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 Price Water House 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 deliberated overstatement of the company's financial position over a number of years to the tune of between N13 and N15 billions".*

The company's Public Affairs Manager whilst briefing the nation on the scandal remarked *"over the number of years, Cadbury Nigeria had assigned itself and 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 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".*

Corporate Governance Principles.

The Sarbanes-Oxley Act 2002

The Act was the immediate response to the corporate crashed of major, hitherto considered blue chip companies which created losses running into billions of dollars in the United states economy. Named after it 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 is viewed as "an Act….to protect investors from the possibility of fraudulent accounting activities by corporation. This is why to the instant commentator, its two most important provisions are: the mandate of certification of accuracy by top management and the establishment of internal controls and reporting of accuracy by top management and the establishment of internal controls and reporting methods on the adequacy of such controls. 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 form accounting errors and fraudulent practices in the enterprise, as well as improve the accuracy of corporate disclosures".

These two definitions may differ in words are actually joined in a central theme; the Act is an attempt to curb or prevent sharp practices in corporate accounting either by commission or omission which could affect investors negatively. The instant opinion here is that the Act must be construed having in mind the Latin maxim "expressio unis est exclusio ulterius" to the effect that it would be unwise to view the Act as having 'some important provisions'. The whole Act was a meticulous, deliberate and methodical attempt to arrest problem of far-reaching ramifications so it is relevant in its entirety. The Act, which requires the United States Security and Exchange Commission to administer it by implementing the rulings on requirements to comply with the Law, has eleven main chapters or titles; the elements of which are briefly discussed below:

1. Public Company Accounting Oversight Board (PCAOB)

This is the first title of the Act and consists of nine sections. The major point is that it establishes the PCAOB to serve as 'the Watchman's Watchdog' by providing independent oversight of public accounting firms providing audit services. It is also saddled with the task of registration of auditors; definition of the processes and procedure for compliance audit; inspection and policing conduct and quality control; and enforcement of compliance with the requirements of the Acts.

2. Auditor Independence

This is the second title of the Act and also comprises of nine sections. It basically establishes the parameters for the operations of external auditor's vis-á-vis independence in order to limit conflicts of interest. The rationale for this may be traceable to incidents such as the pressure brought to bear on Arthur Andersen in the two cases of Enron and WorldCom.

3. Corporate Responsibility

This has sometimes been referred to as the most Germaine of the provisions probably due to the fact that it commences the requirements of the Act as to compliance.

Comprising of eight sections and embedded in the third schedule, it mandates that senior corporate executives take individual responsibility for the veracity and completeness of financial reports. In section 302 for instance, the Act requires that the company's principal officers take individual responsibility for the accuracy of the financial report by certifying that:

-the officers have reviewed it,

-the report does not contain any material untrue statements or material omissions or be considered misleading,

-the financial statement and related information fairly present the financial condition,

-the signing officers (mostly always the chief executive officer and the chief financial officer) are responsible for internal controls and have evaluated these internal controls within the previous ninety days….,

-a list of all deficiencies in the internal controls

This is to avoid the situation where (as in the Bernard Ebbers/WorldCom instance), the CEO absolves himself of liability by claiming non est factum.

4. Enhanced Financial Disclosures

In the fourth title, and comprising of nine sections, it prescribes and describes enhanced reporting requirements for financial transaction. It basically requires internal controls for assuring the accuracy of financial reports and disclosures and mandates both audits and reports on those controls.

5. Analyst Conflict of Interest

It comprises of only one section and seeks to shield the security analyst from pressures which could facilitate a conflict of interest situation. In establishing measures promoting the impartiality of the Analyst, the Act advertently restores investor confidence in the reporting of securities analysts.

6. Commission Resources and Authority

Comprising of only four sections, Title IV simply defines the practices to give effect to five above. It then vests power on, and states conditions under which, the Securities and Exchange Commission can bar persons from practicing as a broker, dealer or advisor.

7. Studies and Reports

The five sections in this title generally require the Securities and Exchange Commission to carry out their monitoring duties by performing various studies and report these about corporations. It is novel in the sense of its proactivity. It focuses on public accounting firms, Credit rating agency firms as well as investigating securities violations and the issue of complicity of investment banks in the manipulation of earnings and falsification of financial statements in the corporate crashes.

8. Corporate and Criminal Fraud Accountability

This title is often cited on its own as the 'Corporate and Criminal Fraud Accountability Act 2002'. Consisting of seven sections, it imposes sanctions for certain corporate misdemeanours by describing specific criminal penalties for manipulation, destruction of alteration of financial records or any act of interference with corporate investigations. It then goes on to provide a certain amount of protection to persons who give up information that aids in a corporate investigation or proffers evidence of corporate malfeasance i.e. whistle-blowers.

9. White Collar Crime Penalty Enhancement

This tile consists of six sections and is similarly referred to as an Act like Title 8 above. Apart from increasing the severity of penalties as sanctions for crimes dubbed as white collar crimes or conspiracy to engage in or commit same, it also recommends stronger sentencing guidelines for such cr imes and specifically adds failure to certify corporate financial report as an offence.

10. Corporate Tax Return

The only section under this Title stipulates that the CEO of a Corporation should sign the company Tax Return. This is to be able to place liability or responsibility of the inaccuracy of such return on an officer of the corporation; a provision seemingly in furtherance of the Third Title of the Act.

11. Corporate Fraud Accountability

Comprising seven sections the first section actually confers a name on this title. It identifies corporate fraud and tampering with company records as criminal offences and imposes specific penalties for these particular offences. It is in the implementation of this section or provision that the United States Securities and Exchange Commission can resort to temporarily freezing transactions or payments that are deemed either large or unusual.

The OECD principles of Corporate Governance 2004

The organization for Economic Co-operation and Development (OECD) principles of Corporate Governance were established.

“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”.

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, investor, 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 guideline are set to achieve. “ The Principles 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..” in effect hoping to strength 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 code like criminal law or the law of evidence, but rather a bold attempt to harmonize some common elements which underlie good corporate governance all over the world. As the preamble to the principle 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 market, be consistent with the rule of Law and clearly articulate the division of responsibilities

ii. The Rights of shareholders and Key Ownership function 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 equitant able treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effect 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 stakeholders 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 an 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, and the Board’s accountability to the company and the shareholders.

The Code of Corporate Governance for Public Companies (In Nigeria) 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 practice 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 an 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. 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 advise 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 for (or legislation as it is strictly referred to) in Nigeria at the moment and is 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 the 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 corporation practices and behavior….”

The code clarifies the lingering doubt on the issue of the Securities and Exchange Commission as ‘Oversight Supervisor’s 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 provisions of an y other Code in relation to a company covered by the two codes, the Code that 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 les 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 logistic concerning board members and senior management; establishment and monitoring of internal control mechanisms; supervision of the communication system and process of the company or 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) state "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 meeting's

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 for 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 function…"(a) The chairman's primary responsibility is to ensure effective operation of the Board and that it works toward achieving the Company's strategic objectives. He should not be involved in the day-to-day operation of the Company. This should be the primary responsibility of the Management Team.

(b) For all public companies with listed securities, the position of the chairman of the Board and Chief Executive Officers shall be desperate 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 balance in the discharge of its duties.

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

Limitation to Effective Corporate Governance In Nigeria

The Code of Corporate Governance for Public Companies 2011 represent a clear attempt at joining the global village in the quest to establish a sound footing for the running of Corporation in Nigeria and averting the felling effects of Corporation's mismanagement on the economy. There ae however still some impediment to its full adaptation and implementation to the Nigeria Corporate Environment.

These include:

Lack of Transparency and Accountability

The Nigeria implementation of Corporate Governance principles still leaves room for shrouding material fact about big business form the Public. The banking industry debacle of the 2000's is still fresh in mind (The Nigerian Factor)

Corruption

There is no gainsaying the fact that Nigerian Corporate environment is still riddled with corruption. Fraudulent and or unethical practices Tax evasion, withholding of Dividends, criminal misappropriation, falsification of Books, to outright embezzlement of funds are pervasive in the corporate clime. For instance the most important Government Corporation, the NNPC is a cesspool of corruption.

One clear reflection of this state of affairs is the 'subsidy Scam'. Due to the furore generated by the rising cost of subsidy, the Federal Government set up committee discovered that unscrupulous marketers, with the active connivance of field officers from two of the subsidiaries of the NNPC i.e. the petroleum products Pricing and Regulatory Agency (PPPRA) and the Department of Petroleum Resources (DPR) fleeced the Nation of N382billion without supplying a drop of Petrol. In order to benefit from this largesse i.e. subsidy payment, the oil companies 'manufactured' fictional oil ships (vessels) they claimed traversed seas and oceans of the world carrying imaginary petrol, with Nigeria being their final destination.

For the non-existent supply of this imaginary product, seven companies were paid the sum of N13billion. Other companies who did not create imaginary or fictional vessels, decided to space-travel existing ones; such that real vessels which were in other countries, discharged Petrol into storage tanks in Nigeria at the exact time that were in those other countries. The eleven companies involved in the scams in these two categories, received a total of N21billiion as subsidy payment.

The Nigerian Factor

One of the major limitations to the firm establishment of the Corporate Governance Principles is the all-pervasive concept of "the Nigerian Factor". Abstract or innocuous as it seems, it is real. A commentator, at pains to explain the propensity of the Nigerian corporate player to engage in unethical practice, commented "the Nigeria Factor is difficult to define, yet you recognize it when you see it. It has political, ethnic, religious, socio-economic and other angles to it, and whilst it might be difficult to explain to non-Nigeria's, every Nigerian understands what it is" (Okike, 2007) This is significant of the role that Culture plays on corporate governance.

A People are just why they are. Still on the matter of this phenomenon, another scholar opined "it is analogous to the concept of the 'hidden variable' in quantum physics, known and significant, but not seen. It defies conventional wisdom"(Braide, 2002). A more illuminating explanation has however been given of this element in terms of economic activities. Abdulkadir Ahmed, former Governor of the Central Bank of Nigeria, expressed a frustration he shared with many other commentators "there appears to be a certain built-in stubbornness' in the attitude of the typical Nigerian economic agent… it manifests in a strong propensity to circumvent laid-down rules of economic behavior and to resist control and regulation…. It tends to encourage a kind of softness or luke warmness in the application and implementation of legitimate rules of economic conduct. Hence it provides a fertile ground for bribery, corruption, idleness and the contrivance of get-rich quick attitude which are antithetical to hard work and discipline."

This is the bane of growth of good corporate governance in Nigeria; the prevalent disposition to engage in sharp practices, cut corners, and circumvents the law and rules especially for pecuniary gains. It is ingrained. It is a scourge for corporate governance.

Conclusion

The relevance and significance of good corporate governance to any economy cannot be wished away. The rules of corporate governance attempt to lay the basis for a mutually beneficial synergy between the business organization and all the parties that it impacts on. It therefore establishes principles that are regarded as acceptable best practices globally in the running of a corporate entity. It does not impose but advises. It stresses it flexibility and possible modifications to suit an extant purpose, situation and environment (Ahumwa, 2012). The gains of conformity or compliance to the principles of corporate governance cannot be wished away by a nation. Its core principles of synergy, probity, transparency and accountability are proven ingredients for economic growth of a Nation (Yasaki 2001).

It is best in these words "if a country does not have a reputation for strong corporate governance principles, capital will flow elsewhere. If Investors are not confident with the level of disclosure, capital will flow elsewhere. If a country opts for lax accounting and reporting standards, capital will flow elsewhere. All enterprises in that country-regardless of how steadfast a particular company's practices may suffer the consequence (The King Report, 2002).

This is why Nigeria got it right in adapting these rules of global best practices in the running of Corporations as the Codes of Corporate Governance (for Public Companies) 2011. It is hoped that the limitations mitigating against the improvement in the entrenchment of rules be removed, and the corporate environment made better.

Recommendations

There is a need to further entrench the ideals of good corporate governance as enshrined in the Code of corporate governance for public companies 2011 through the following:

A Will to Enforce Sanctions on Big Business in Event of Contravention

There is first and foremost the need to have an effective judicial system capable of imposing sanctions for breach of regulations. It is interesting to note that there has been no effective prosecution of those involved in the subsidy scam in Nigeria despite incontrovertible proof of fraud. There has been no charge against anyone for the misappropriation or otherwise, of $1.48billion. This is in contrast to the practice in developed countries where most of the Board member of corporations that engaged in counting fraud are serving various sentences in prison.

Zero Tolerance for Corruption

The prevalent view is that Nigeria still accommodate to a large extent. The fallout of the Enron Scandal in the United States was that Arthur Andersen as the accounting firm handling Enron's books lost their license to practice the profession whereas the firm of Akintola Williams & Deliotte, who handled Cadbury's books leading to the scam, still practices freely. The further entrenchment of the principles of good corporate governance presumes that tolerance of corruption in all its forms, be eschewed.

Re-Orientation of the Business Mindset

There is an urgent need to re-orientate the Nigerian business mind. In this regard it is expedient to ease the burden and process of doing business in Nigeria to undermine the propensity for circumventing due process. Here, the latest innovation of E Registration etc. is a much welcome development.

Constant Update of the Provisions of The Code to Reflect the State of The Corporate Environment

As a direct consequence of the Nigerian factor earlier mentioned; it would be a good development to formulate corporate governance principle specifically suited to the peculiarities of the corporate environment of Nigeria as the OECD Principles advice in its Preamble. South Africa in formulating it corporate governance framework adopted a much wider and all-encompassing model than the recommendations of the Cadbury Report which it studied in 1994…"the purpose of the King Report…was. And remains, to promote the highest standards of corporate governance in advocating an integrated approach to good governance in the interests of a wide range of stakeholders having regard to fundamental formalized the need for companies to recognize that they no longer act independently form the societies and environment in which they operate"(Okike, 2007).

Nigeria should, in view of its peculiarities in sense of purpose, think seriously about the Kraakman suggestion to developing countries to make their corporate governance rules "self-enforcing" i.e. to rely for their success on actions and decisions by direct participants in the corporate enterprise e.g. shareholders rather than by indirect participants e.g. judges, regulators, legal and accounting professionals etc.

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