

## **ANALYSIS OF THE EFFECT OF THE NIGERIAN CODE OF CORPORATE GOVERNANCE ON PUBLIC COMPANIES IN NIGERIA**

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### **Abstract**

*Corporate governance is an area which has enjoyed periodic regulation over the years in order to assure public confidence in growing the economy. This paper examined the legal effect of the Nigerian Code of Corporate Governance (NCCG) 2018 and examined the statutory and common law principles, the extent of its enforceability. The paper analysed the challenges, levels of compliance and prospect of the Code of Corporate Governance in Nigeria. The paper found that persistent governance weaknesses to the residual influence of authoritarian governance legacies and the transplantation of Anglo-Saxon governance models into Nigeria's post-colonial legal context. In aligning Nigerian corporate governance with global best practices, the study underscored the imperative for cohesive legal reforms. It recommended the harmonization of governance codes, strengthening of audit and compliance mechanisms, enhancement of regulatory oversight, promotion of ethical corporate conduct, and the modernization of the Companies and Allied Matters Act (CAMA) and other relevant statutes to reflect international standards. The study concluded that the establishment of a unified, transparent, and enforceable*

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*governance framework is essential for sustainable corporate development and the economic advancement of Nigeria.*

**Keywords:** Corporation, Corporate Governance, Stakeholders, Corporate Leadership and Board of Directors

## **1.0 INTRODUCTION**

Corporate governance is crucial for economic success, with both practitioners and academics agreeing that effective corporate governance facilitates the achievement of business objectives. It relies on a framework of laws, codes, rules, norms and standards, which establish the foundation for reaching its goals. Corporate governance is essential for managing the diverse relationships within a company to achieve its objectives. It aims to protect the interests of weaker and dispersed owners from powerful managers, resolve conflicts among shareholders, and balance the interests of various stakeholders.<sup>1</sup>

The Financial Reporting Council (FRC) of Nigeria introduced a comprehensive code in 2011, and the Nigerian Code of Corporate Governance (NCCG) was updated in 2018.<sup>2</sup> The updated code aims to institutionalize best practices in corporate governance within Nigeria, with the goals of restoring confidence in the Nigerian economy and fostering an environment conducive to sustainable business operations. Since its

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<sup>1</sup> Rotimi Lawuyi, 'Corporate Governance Compliance and Enforcement in Nigeria' (2022) <<https://doi.org/10.2139/SSRN.4107906>> accessed 21 June 2024

<sup>2</sup> Adepetun Caxton-Martins and Agbor Segun, 'The Nigerian Code of Corporate Governance 2018: A Synopsis' (2020) <<https://www.dentonsacaslaw.com/en/insights/articles/2020/april15/the-nigerian-code-of-corporate-governance-2018-a-synopsis>> Accessed 21 June 2024

inception, this regulatory framework has aimed to enhance the performance and credibility of public companies operating within Nigeria. Nigeria, as Africa's largest economy, recognizes the crucial role of robust corporate governance practices in sustaining economic growth and attracting investment.<sup>3</sup> The regulatory framework aims to enhance transparency, accountability, and integrity in corporate affairs, ultimately fostering investor confidence and economic growth.

Nigerian courts have played a crucial role in interpreting and enforcing corporate governance principles through various landmark cases. One of such case is the famous *Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture (NACCIMA) v. Nigerian National Petroleum Corporation (NNPC) & Anor*<sup>4</sup>, where the Supreme Court affirmed the principle of corporate separateness, emphasizing that a corporation has its distinct legal personality separate from its members or shareholders. This case underscored the importance of upholding corporate governance principles, including the principle of limited liability. In *Central Bank of Nigeria v. Interstella Communications Limited & Ors*,<sup>5</sup> the Supreme Court emphasized that directors must prioritize the best interests of the company over personal gain. The court underscored directors' fiduciary duties towards the company and its shareholders, with breaches potentially leading to personal liability. Additionally, in the case of

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<sup>3</sup>7 Marlon Ayakpo, 'The Precarious Perch: Shareholders' Rights and Remedies in Cases of Corporate Governance Failure in Nigerian Companies' (2024) <<https://marcusokoko.com.ng/the-precious-perch-shareholders-rights-and-remedies-in-cases-of-corporate-governance-failure-in-nigerian-companies/>>Accessed 21 June 2024

<sup>4</sup> *Mines and Agriculture (NACCIMA) v Nigerian National Petroleum Corporation (NNPC) & Anor* [2003] 14 NWLR Pt. 840 at 671

<sup>5</sup> *Central Bank of Nigeria v Interstella Communications Limited & Ors* [2012] LPELR-20648(SC)

*Obaigbena v Federal Republic of Nigeria*,<sup>6</sup> transparency and accountability in corporate governance were emphasized. The court reaffirmed the necessity for companies to uphold precise financial records and disclose pertinent information to shareholders and regulatory authorities. To ensure effectiveness, the Financial Reporting Council of Nigeria (FRC) is tasked with overseeing the implementation of the Code and has the authority to issue guidelines to assist sectoral regulators in this regard. The Code outlines twenty-eight (28) broad principles, with sixteen (16) focusing on the Board of Directors and Officers. These principles cover various board-related issues such as composition, key functions, meetings, induction, delegation of duties, and evaluation. However, the true impact of the Code on public companies in Nigeria remains a topic of investigation and discussion.

## **2. 0 CONCEPTUAL FRAMEWORK**

### **2.1 Concept of Corporate Governance**

Corporate governance, as defined in the Cadbury Report,<sup>7</sup> refers to the system responsible for directing and controlling companies. This definition emphasizes the collective responsibility of stakeholders in aligning interests effectively.<sup>8</sup> The implementation of corporate governance mechanisms aims to protect the interests of investors, shareholders, and all

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<sup>6</sup> *Obaigbena v Federal Republic of Nigeria* [2009] 11 NWLR Pt. 1153 at 99

<sup>7</sup> Magdi R. Iskander and Nadereh Chamlou, 'Corporate Governance: A framework for Implementation' (2000) <<http://documents1.worldbank.org>> accessed 22 June 2024

<sup>8</sup> Afshan Younas, 'Review of Corporate Governance Theories' *European Journal of Business and Management Research* [2022] (7) (6) 79-84

stakeholders.<sup>9</sup> The Cadbury Report<sup>10</sup> further explains that corporate governance delineates the roles and responsibilities entrusted to a company's board of directors in guiding the organization towards success. Corporate governance involves a network of relationships among a company's management, board, shareholders, and other stakeholders.<sup>11</sup> While there is no universally perfect model of corporate governance, the Organization for Economic Co-operation and Development<sup>12</sup> (OECD) has proposed principles of corporate governance which encompasses diverse elements and models, distinct from day-to-day operational management led by full-time executives. It focuses on the actions of a company's board and the establishment of its core values<sup>13</sup>. This framework strengthens financial and capital markets within a country. According to the UK Corporate Governance Code<sup>14</sup>, corporate governance aims to enable effective, entrepreneurial, and prudent management that ensures the long-term success of the company."

The concept of corporate governance lacks a precise, universally agreed-upon definition regarding its scope. However, it embodies a comprehensive

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<sup>9</sup> Hasan Ahmed Almashhadani and Mohammed Almashhadani, 'An overview of recent developments in corporate governance' *International Journal of Business and Management Invention (IJBMI)* [2022] (11) (5) 39-44

<sup>10</sup> (n24)

<sup>11</sup> OECD, 'G20/OECD Principles of Corporate Governance' (2023) <<https://www.fsb.org>> accessed 22 June 2024

<sup>12</sup> Ibid.

<sup>13</sup> Gyamerah S and Agyei A 'OECD Principles of Corporate Governance: Compliance among Ghanaian Listed Companies' *International Journal of Advanced Multidisciplinary Research* [2016] (3) (11) 82–92.

<sup>14</sup> FRC, 'UK Corporate Governance Code' 'Financial Reporting Council' (2024) <<https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/>> Accessed 2 April 2024.

concept involving codes and regulations designed to mitigate conflicts of interest and improve relationships among a firm's management, board of directors, shareholders, and stakeholders.<sup>15</sup> An illustrative example of a legal case related to corporate governance is the landmark *Smith v Van Gorkom*.<sup>16</sup> Case in Delaware, USA. In this case, shareholders of Trans Union Corporation sued the company's directors, alleging breaches of fiduciary duties in approving a merger agreement with a third party.

The OECD was instrumental in establishing an international code of corporate governance principles, first issued in May 1999 and subsequently revised in 2004 and 2014.<sup>17</sup> These principles, endorsed by organizations such as the World Bank and the International Monetary Fund (IMF), serve as guidelines for corporate governance practices without imposing obligations on member organizations.<sup>18</sup> By acknowledging the rights of all stakeholders, the OECD principles broaden the scope of corporate governance, emphasizing the separation of ownership from control.

## **2.2 Corporation**

A corporation holds a unique legal status, recognized as an individual entity under the law. In Nigerian legal doctrine, the concept of legal personalities encompasses two main categories: natural persons and artificial persons. Natural persons, referring to human individuals, inherently possess legal rights and obligations. In contrast, artificial or fictitious persons, such as

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<sup>15</sup> (n25).

<sup>16</sup> *Smith v. Van Gorkom* (1985) 488 A.2d 858

<sup>17</sup> Meseret Diriba and Dharitri Basumatary, 'Impact of Corporate Governance on Firm Performance: Evidence from Indian Leading Companies' *Parikalpana - KIIT Journal of Management* [2019] (15) 127-141.

<sup>18</sup> Leipziger D and Leipziger D, *the OECD Principles of Corporate Governance* (2019) 396-405

corporations, are regarded as separate legal entities distinct from their individual stakeholders. This legal distinction was affirmed in the landmark case of *Salomon v Salomon & Co.*<sup>19</sup> In this pivotal case, the House of Lords upheld the principle of corporate personality, establishing that a corporation maintains a distinct legal identity independent of its shareholders. This ruling solidified the concept of an artificial person in Nigerian jurisprudence, emphasizing the legal autonomy and separateness of corporations. The Nigerian Supreme Court further reinforced the recognition of artificial persons in the case of *Fawehinmi v NBA*<sup>20</sup> emphasizing the importance of respecting the rights and obligations of corporations within the legal framework.

The term "corporation" originates from the Latin word "corpus," meaning body, which was historically used to refer to a collective or a group of people. During the period of Roman law codification under Emperor Justinian.<sup>21</sup> Incorporation conferred several advantages. It ensured the continuity of the collective entity even in the event of the death of individual members, potentially enabling its perpetuity. Moreover, incorporation granted the collective entity the capacity to own property, enter into contracts, receive donations, and engage in legal proceedings, including litigation.

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<sup>19</sup> *Salomon v A Salomon and Co Ltd* (1897) AC 22.

<sup>20</sup> *Chief Gani Fawehinmi v Nigerian Bar Association & Ors* (No.2) (1989) LLJR-SC.

<sup>21</sup> Howard Hotson, 'Universitas: the original meaning of the term Cabinet' (2018) <<https://www.cabinet.ox.ac.uk /ii2-universitas-original-meaning-term>> Accessed June 23 2024.

### **2.3 Internal Stakeholder**

Internal stakeholders encompass individuals within the company who are actively involved in its operations. This category includes Directors, Managers and Employees. The interests of internal stakeholders primarily revolve around aspects such as job security, career advancement, financial remuneration, and opportunities for promotion, employee benefits, and overall job satisfaction, as well as the company's profitability.

### **2.4 Connected stakeholders**

Connected stakeholders are entities that hold a significant interest in the company's activities due to their contractual or commercial relationships with the organization. Examples of connected stakeholders include Shareholders, Bankers, Suppliers and Customers. Shareholders seek to maximize their wealth through enhanced profitability and demand transparency and accountability in corporate governance practices. Bankers prioritize the security of loans extended to the company and expect adherence to loan agreements. Suppliers have diverse interests, including profitable sales, timely payments for goods and services rendered, establishment of long-term partnerships, fair procurement procedures, and resolution of trade disputes. Customers are concerned with the production and delivery of high-quality goods and services.

### **2.5 External stakeholders**

External stakeholders are individuals or entities external to the company who possess varying objectives and degrees of influence over the company. This category includes Government and Regulatory Agencies, Interest or Pressure Groups, Industry Associations and Trade Unions, and Non-Governmental Organizations (NGOs). Government and regulatory agencies focus on job creation and retention, investment promotion,

infrastructure development, computation of gross domestic product (GDP), collection of corporation taxes, and support for emerging industries. Interest or pressure groups advocate for the rights of employees, communities affected by the company's operations, and environmental conservation. Industry associations and trade unions advocate for the rights and welfare of their members, who are often employees of the company. Non-governmental organizations (NGOs) prioritize the protection of human rights, particularly those of employees working within the company's sphere of influence.

## **2.6 Corporate Leadership in an Organization**

Elahi<sup>22</sup> observed that leaders' attitudes toward organizational possibilities may not always align with theoretical expectations. Isaac<sup>23</sup> posited that organizational failures often stem from poor decisions made by leaders in their pursuit of profit maximization. Nwagbara<sup>24</sup> contended that contemporary leadership theories underscore the practical and ethical dimensions of leadership, emphasizing its symbiotic relationship with ethics. Moreover, Nwagbara<sup>25</sup> asserted that leadership serves as a complement to ethics and identified corporate financial misconduct as an integral aspect of financial leadership within the banking sector.

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<sup>22</sup> Elahi E, 'Risk management: The next source of competitive advantage' *Foresight* [2022] (15) (2) 117-131

<sup>23</sup> Isaac L, 'Corporate governance and organizational performance in the Nigerian banking industry' *European Journal of Business and Management* [2014] (6) 110-118.

<sup>24</sup> Nwagbara U, 'Encountering corrupt leadership and poor corporate governance in the Nigerian banking sector: Towards a model of ethical leadership' *Indian Journal of Corporate Governance* [2022] (5) 133-148.

<sup>25</sup> Ibid.

## **2.7 Board of Directors**

The Board of Directors (BOD) consists of elected individuals who represent the interests of a company's shareholders. Serving as the top layer of corporate hierarchy, the board focuses on ensuring efficient achievement of company goals. Board members make crucial decisions in the company's best interest.<sup>26</sup> Emphasizing why corporate governance experts advocate for board diversity. Diverse boards, incorporating individuals with varied skills and perspectives, contribute to sound business decisions, reduce volatility and enhance performance.<sup>27</sup>

## **3.0 LEGAL FRAMEWORK ON CORPORATE GOVERNANCE**

There are several discrepancies in accounts of how the Nigerian corporate governance evolved as a result of lack of a uniform code in the corporate sector for many years.<sup>28</sup> However, this system of legislation has its roots in Nigeria's colonial past.<sup>29</sup> Thus, from this research it is established that there are generic and sector specific legal frameworks.

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<sup>26</sup> Ashish Kumar Srivastav, 'Board of Directors (BOD)' Wallstreet Mojo (2024) <<https://www.wallstreetmojo.com/board-of-directors/>> Accessed 25 June 2024.

<sup>27</sup> Garcia A, 'Director Skills: Diversity of Thought and Experience in the Boardroom' Harvard Law School Forum (2018) on Corporate Governance and Financial Regulation <<https://corpgov.law.harvard.edu/2018/10/10/director-skills-diversity-of-thought-and-experience-in-the-boardroom/>> accessed 25 June 2024.

<sup>28</sup> Olayinka Philips and others 'Code of Corporate Governance' (2018) <<https://businessday.ng/insight-2/article/the-nigerian-code-of-corporate-governance2018/>, Nigeria>accessed 5 July, 2024

<sup>29</sup> Elewechi Okike, 'Corporate Governance in Nigeria: The Status Quo' *Accounting, Auditing & Accountability Journal* (2007) 705-730.

### 3.1 GENERIC LEGAL FRAMEWORK

#### 3.1.1 Companies and Allied Matters Act, 2020

The Companies and Allied Matters Act (CAMA) stands as a cornerstone legislation governing corporate entities in Nigeria, providing a comprehensive legal framework that outlines the rights and remedies available to shareholders in cases of corporate governance failures. CAMA serves as a statutory ground for shareholders to assert their interests, hold corporate management accountable, and seek redress for breaches of fiduciary duties and lapses in governance practices within Nigerian companies. CAMA 2020 stands as Nigeria's primary legislation overseeing corporate affairs, offering a robust framework for corporate governance aimed at improving transparency, accountability, and operational efficiency in company management.<sup>30</sup> It specifies the composition and structure of company boards, mandating that private companies have at least one director and public companies have a minimum of two directors, including at least three independent directors.

The Act<sup>31</sup> outlines specific rights and protections for shareholders, empowering minority shareholders to seek legal recourse through the courts if they perceive unfair or prejudicial management of the company's affairs. Shareholders are also guaranteed receipt of dividends declared by the company and must be furnished with financial statements and other essential information, thereby promoting transparency and facilitating informed decision-making. Financial reporting and auditing standards are strictly outlined under CAMA. Companies are obligated to uphold accurate

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<sup>30</sup> Companies and Allied Matters Act 2020, s 271 - 274

<sup>31</sup> Companies and Allied Matters Act 2020, s 344

accounting records and prepare financial statements adhering to International Financial Reporting Standards (IFRS). These statements undergo auditing and are presented at the AGM for shareholder endorsement.

Public companies are mandated to engage external auditors who maintain independence from the company. These auditors issue a report on the financial statements, assessing if they accurately represent the company's financial status. This stringent process ensures dependable financial disclosures and upholds the company to rigorous standards of financial integrity.

### **3.1.2 Financial Reporting Council Act, 2011**

The Financial Reporting Council Act of 2011 mandates public interest entities to adopt International Financial Reporting Standards (IFRS) for their financial statements, thereby enhancing transparency and quality in financial reporting. The Act also empowers the Financial Reporting Council of Nigeria (FRCN) to establish auditing standards that ensure audits are conducted with diligence and integrity. Established under Act No. 6 of 2011, the FRCN serves as Nigeria's primary regulatory body responsible for setting and monitoring compliance with accounting and financial reporting standards.

It plays a crucial role in promoting transparency and accountability in financial reporting practices, which are essential for effective corporate governance.<sup>32</sup> By enforcing internationally recognized accounting and

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<sup>32</sup> O M Atoyebi, 'The role of Nigeria's Financial Reporting Council under the Financial Reporting Council of Nigeria Act, 2011' (2023) <<https://omaplex.com.ng/the-role-of->

auditing standards, the FRCN aims to foster transparency, comparability, and reliability in financial reporting, empowering stakeholders to make well-informed decisions. The FRCN is responsible for issuing the Nigerian Code of Corporate Governance, which provides guidelines for good corporate governance practices. This code includes principles related to board composition, directors' duties, risk management, internal controls, and stakeholder engagement. The aim is to improve accountability, transparency, and the overall governance framework of companies in Nigeria.

## **3.2 SECTOR-SPECIFIC LEGAL FRAMEWORK**

### **3.2.1 Investment and Securities Act, 2007 (ISA)**

The Investment and Securities Act (ISA) established the Securities and Exchange Commission (SEC) and provides the legal basis for managing and regulating Nigeria's securities market. It sets operational guidelines for market participants, operators, and stakeholders, including liquidity requirements. Section 313 of the ISA grants the SEC authority to enact regulations to effectively implement the Act's provisions. In line with this mandate, the SEC issued the SEC Corporate Governance Guidelines (SCGG) to elevate governance standards in the securities market. These guidelines aim to foster transparency, accountability, and integrity among market players, thereby enhancing investor confidence and ensuring sustainable market growth.

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[nigerias-financial-reporting-council-under-the-financial-reporting-council-of-nigeria-act-2011/>](#) Accessed 15 July 2024.

### **3.2.2 Central Bank of Nigeria Act, 2007**

The CBN Act creates the Central Bank of Nigeria (CBN) and provides it with regulatory powers, including the ability to issue guidelines to entities it supervises. Under these provisions and supported by the BOFIA, the CBN has developed Corporate Governance Guidelines for commercial, Merchant, Non-Interest, and Payment Services Banks in Nigeria, as well as for Financial Holding Companies in Nigeria. These guidelines were issued in July 2023. Other codes that have been previously issued by the CBN include: Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014, Code of Corporate Governance for Other Financial Institutions in Nigeria 2018 (this covers microfinance banks, development finance banks, primary mortgage banks, mortgage refinance companies, finance companies, and bureaux de change). The Central Bank of Nigeria establishes the Central Bank of Nigeria Act. The CBN is the lead banking regulator charged with the overall control and administration of the monetary and financial sector policies of the Federal Government in Nigeria. Section 2 of the Act provides for the principal objectives of the CBN as follows; To ensure monetary and price stability, To issue legal tender currency, To maintain external reserves to safeguard the international value of the legal tender currency, To promote a sound financial system in Nigeria and Act as a bank and provide economic and financial advice to the Federal Government.

The Central Bank has the responsibility of issuing and granting licenses to banks to carry on the business of banking and supervise banks and other financial institutions. The CBN is empowered to issue guidelines and circulars relating to its responsibility to banks, foreign exchange market,

and other financial institutions.<sup>33</sup> Where a bank in Nigeria is discovered to be failing, the Central Bank is empowered to intervene by directing that the Nigerian Deposit Insurance Corporation (NDIC) takes over the management and control of the bank.<sup>34</sup> The Central Bank of Nigeria also develops fiscal initiatives that involve formulating and implementing policies, innovating products, and creating enabling environments for banks and other financial institutions to deliver effective services in a resourceful and sustainable manner.

### **3.2.3 Banks and Other Financial Institutions Act, 2020 (BOFIA)**

The main law governing the banking industry is the BOFIA. It acknowledges the Central Bank of Nigeria's supervisory responsibilities as specified in the Central Bank of Nigeria Act 2007. It outlines the requirements for granting a banking license and for revoking or variation of such license.<sup>35</sup> The Banks and Other Financial Institutions Act (BOFIA) governs corporate governance within Nigeria's banking sector.

### **3.2.4 Insurance Act, 2003**

The Insurance Act provides for the regulation of insurance sector in Nigeria. Section 86 of the Act empowers the National Insurance Commission (NAICOM) to administer and enforce the provisions of the

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<sup>33</sup> Resolution Law Firm, 'Overview of Banking Regulations in Nigeria' Mondaq (2020) <<https://www.mondaq.com/nigeria/financial-services/981632/overview-of-banking-regulations-in-nigeria>> Accessed July 15 2024

<sup>34</sup> Alawiye-Adams Adewale and Babatunde Afolabi, 'Asset Management Company of Nigeria: Matters Arising' *SSRN Online Journal* [2014] <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2436433](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2436433)> accessed 15 July 2024

<sup>35</sup> George Etomi & Partners, 'Analysis of the Nigerian Code of Corporate Governance' (2019) <<https://www.lexology.com/library/detail.aspx?g=4ab3a942-a53c-4f2a-90d4-151e3c4a8eec>> Accessed 16 July 2024.

Act<sup>36</sup>. Section 101 of the Act also empowers NAICOM to make rules and regulations for the purpose of giving effect to the provisions of the Act. In pursuance of this power, the NAICOM has therefore made the Corporate Governance Guidelines for Insurance and Reinsurance Companies 2021 (CGGIRC).

Regarding the Pension Reform Act of 2014 (PRA), this legislation established the National Pension Commission (PenCom) as the principal regulatory body overseeing Nigeria's pension sector. PenCom is responsible for licensing, regulating, and monitoring all Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs). Section 21 (f) of the Act empowers PenCom to establish standards, rules, and regulations for managing pension funds. In line with this mandate, PenCom issued the Code of Corporate Governance for licensed Pension Operators in 2017.

### **3.2.5 Nigerian Communications Commission Act, 2003 (NCA Act)**

The NCC Act is the principal legislation that governs the communications sector in Nigeria. The Act establishes the Nigerian Communication Commission (NCC) and endows it with powers to administer the provisions of the Act<sup>37</sup>. Section 70 of the NCA grants the NCC the authority to develop

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<sup>36</sup> Banwo & Ighodala, 'New Minimum Capital Requirement for Nigerian Insurance Companies: What You Should Know' Banwo & Ighodala, (2 June, 2019) < <https://banwo-ighodalo.com/grey-matter/new-minimum-capital-requirement-nigerian-insurance-companies>> Accessed 16 July 2024

<sup>37</sup> Oyetola Muyiwa Atoyebi, 'An Exposition of the Power of the Nigerian Telecommunications Commission (NCC) Vis-À-Vis the Power of the Nigerian Environmental Standards Regulatory Agency (NESREA) In the Telecommunications Industry in Nigeria' *Lawpavilion* (2024) <<https://lawpavilion.com/blog/an-exposition-of-the-power-of-the-nigerian-telecommunications-commission-ncc/>> Accessed 17 July 2024.

and publish guidelines on all necessary matters to ensure the effective implementation and administration of the NCA. In accordance with this provision, the NCC has enacted the Code of Corporate Governance for the Telecommunications Industry 2016, known as "the NCC Code. Other sections are Section 4 which established the Nigerian Communications Commission (NCC) as the regulatory authority for the telecommunications sector, Section 62 Required telecommunications companies to obtain licenses from the NCC to operate and Section 88 mandated the submission of annual reports and financial statements to the NCC.<sup>38</sup>

#### **4.0 CHALLENGES OF THE NIGERIAN CODE OF CORPORATE GOVERNANCE**

The Nigerian Code of Corporate Governance 2018, is fraught with challenges that impede its effectiveness in aligning with global practices. Some of the challenges that impede the sustainable development of corporate governance in Nigeria are hereunder discussed:

##### **4.1. Regulatory Challenges and Weak Enforcement Mechanisms**

Regulatory bodies in Nigeria face significant challenges in overseeing corporate governance practices. These bodies often lack the independence, capacity, and effectiveness required to enforce governance standards. Even when robust regulations are in place, weak enforcement mechanisms result in poor compliance by companies. This undermines the credibility of the corporate governance framework and leads to inconsistent application of

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<sup>38</sup> John Ishaku Mantu, 'The Legal Framework for Licensing Telecommunications Services in Nigeria' *SSRN Electronic Journal* [2019] <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3411906](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3411906)> accessed 17 July 2024

governance practices. Bello<sup>39</sup> highlights the need for strengthening regulatory bodies to ensure they can effectively monitor and enforce corporate governance standards. Enhancing the capacity of these bodies is crucial for improving compliance and fostering a more transparent and accountable corporate environment.

#### **4.2 Multiplicity of Codes of Corporate Governance**

Nigeria's corporate governance landscape is complicated by the existence of multiple codes of governance. This multiplicity can lead to confusion and inconsistency in their application, with companies selectively adhering to less stringent codes. Such selective compliance weakens the overall governance framework and hampers efforts to establish a cohesive governance system. Efforts to harmonize these codes are essential for creating a unified and effective corporate governance framework.<sup>40</sup>

#### **4.3 Inadequacy in Basic Statutes of Corporate Law**

Many of the statutes governing corporate law in Nigeria are outdated and inadequate for addressing contemporary corporate governance needs. These legislative gaps hinder the development of a robust governance framework that can support modern corporate practices. There is calls for comprehensive legislative reforms to address these gaps and align Nigeria's corporate governance statutes with international standards<sup>41</sup>.

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<sup>39</sup> Bello Marshall, *Chapter 8 - Challenges of Corporate Governance in Nigeria* (In Corporate Governance in Nigeria: Current Practices and Emerging Trends, Malthouse Press, 2020).

<sup>40</sup> Yusuf Garba Manjo, *Corruption Phenomenon in Nigeria* (UNILORIN PRESS and Ganji - LRN Research Centre 2024).

<sup>41</sup> Bello Marshall, *Chapter 8 - Challenges of Corporate Governance in Nigeria* (In Corporate Governance in Nigeria: Current Practices and Emerging Trends, Malthouse Press 2020).

#### **4.4 Inadequate Attention to Business and Investment**

The challenges in corporate governance have far-reaching implications for business and investment in Nigeria. Poor corporate governance undermines investor confidence, making investors wary of committing their resources in an environment perceived as lacking transparency and accountability. This lack of confidence can stifle economic growth and hinder Nigeria's integration into the global economy. Ngozi<sup>42</sup> argues that improving corporate governance is crucial for economic development and emphasizes the need for sustained efforts to enhance governance practices.

#### **4.5 Ignorance of Minority Shareholders**

Most minority shareholders are illiterate and ignorant of the rules guiding business practices. They not only found it difficult to interpret the figures but also do not understand business ethics.<sup>43</sup> They therefore are not in a position to question the board and management on the malpractices and sharp practices being perpetrated in the companies where they have interest.

#### **4.6 Lack of Observance of Rule of Law**

Despite having enjoyed democracy for about 30 years out of 58 years of independence, our political environment is largely dominated by military mentality. This mentality, which hardly obeys the rule of law, permeates most of our institutions and these include corporate organizations<sup>44</sup>.

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<sup>42</sup> Ngozi Uzoka, 'Corporate Governance and Socio-Economic Development in Nigeria: Tracing the Nexus' *Nigerian bar Journal* [2024].

<sup>43</sup> Nwakoby Chidimma Stella, Nwakoby Ifeoma and U T Ndukwe, 'Dilemma of Minority Shareholders in Nigeria Company Law' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* [2023] (14) (1) 65-76.

<sup>44</sup> Okaro Sunday Chukwunedu, Grace Nyereugwu Ofoegbu and Gloria O. Okafor, 'Corporate Governance and Sustainable Development in Nigeria-Perspectives and

Without following the basic rule of law, which includes equality before the law, supremacy of the law and respect for individual human rights, no corporate organization can be said to be fair. They do not even obey their rules of corporate governance.

#### **4.7 Alien Corporate Governance Structure**

Nigerian corporate governance structure had its origin in the colonial era. It witnessed the dominance of British companies, subject to British laws, but in the Nigerian business environment. “As a result, issues relating to the conduct and governance of Nigerian corporations, which are combined within the provisions of the company legislation have their roots in the country’s colonial past.” Nigeria thus inherited an Anglo-Saxon defined framework of corporate governance. Furthermore, while the country’s attainment of independence led different boardroom squabbles among directors, management, to the replacement of the Companies Ordinance of 1922 with the Companies Act of 1968, the UK corporate law remained a huge influence.

### **5.0 COMPLIANCE LEVELS WITH THE NIGERIAN CODE OF CORPORATE GOVERNANCE**

The 2018 Code is comprehensive, addressing various aspects of corporate governance, including the responsibilities of the board, the structure and independence of board committees, risk management, ethical conduct, and the protection of shareholder rights.<sup>45</sup> Organizations are required to

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Challenges’ *International Journal of Academic Research in Business and Social Sciences* [2018] (8) (9) 90-104.

<sup>45</sup> Azim M I, ‘Corporate governance mechanisms and their impact on company performance: A structural equation model analysis’ *Australian Journal of Management* [2022] (37) (3) 481–505.

demonstrate how they meet these standards through detailed reporting, which is intended to enhance transparency and ensure that stakeholders have a clear understanding of a company's governance practices.<sup>46</sup> Levels of compliance among organizations can be categorized into three main tiers: high compliance, moderate compliance, and low compliance. Organizations that achieve high compliance levels have thoroughly integrated the principles of the Code into their operations. They exhibit strong governance frameworks, transparent reporting mechanisms, and proactive risk management practices. For instance, these companies typically have diverse and independent boards, robust internal control systems, and rigorous audit processes, which contribute to increased investor confidence, improved financial performance, and greater operational resilience.<sup>47</sup> Organizations with moderate compliance generally adhere to key governance practices but may have some areas needing improvement. While they follow the main principles of the Code, their implementation may lack consistency or depth. For example, *Ecobank Transnational Inc. v SEC & Anori*,<sup>48</sup> In this case, Ecobank challenged a directive from the SEC over alleged corporate governance breaches, including boardroom conflicts and inadequate disclosures. The dispute highlighted deficiencies in the bank's compliance with governance protocols and board transparency. These companies might have independent directors and audit committees but May not fully meet

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<sup>46</sup> Boo E and Sharma D, 'Effect of Regulatory Oversight on the Association between Internal Governance characteristics Audit Fees' *Accounting and Finance* [2018] (48) 51–71.

<sup>47</sup> Eniola Abiodun Anthony, Tonade Abiola Mukaila and Adeniji Oluwafemi Samson, 'Internal Control Structures and Financial Performance: Evidence from Listed Companies in Nigeria's South-West Region' *International Accounting and Taxation Research Group, Faculty of Management Sciences* [2021].

<sup>48</sup> *Ecobank Transnational Inc. v SEC & Anor* (2016); [2016] LPELR-41453(CA).

expectations in areas such as risk management or stakeholder engagement. Addressing these gaps can enhance their stability and investor trust.

On the other hand, organizations with low compliance show significant deficiencies in adhering to the Code; this can be seen in the case of *Ojukwu v Yahaya & Others*<sup>49</sup> were an employee of a private company who sued over alleged unfair dismissal and the lack of governance structures to handle internal grievances. The court found that the organization lacked basic HR and governance policies, such as disciplinary procedures and whistleblowing mechanisms. They often have inadequate governance structures, lack transparency, and exhibit weaknesses in risk management. Common issues in low-compliance organizations include boards dominated by insiders, poor audit practices, and insufficient communication with shareholders. These shortcomings can lead to operational inefficiencies, reduced investor confidence, and heightened vulnerability to financial crises<sup>50</sup>.

According to Tayo-Tiwo's<sup>51</sup> research, Nigerian banks' compliance with the Code can be divided into three main levels: high compliance, moderate compliance, and low compliance. Banks with high compliance have fully integrated the Code's principles into their operations, featuring strong governance frameworks, transparent reporting, and proactive risk management.

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<sup>49</sup> *Ojukwu v. Yahaya & Others* (2021); NICN/ABJ/341/2019.

<sup>50</sup> Arturo Navarro, 'Risks associated to the lack of good Governance controls' Link in (2024) <<https://www.linkedin.com/pulse/risks-associated-lack-good-governance-controls-arturo-navarro-cpa-trpoc>> Accessed 18 July 2024.

<sup>51</sup> *Ibid.*

To enhance compliance levels with the Nigerian Code of Corporate Governance, several recommendations are proposed. Regulatory bodies should intensify their monitoring and enforcement activities to ensure that banks adhere to the Code, with regular audits and inspections helping to identify and rectify non-compliance issues<sup>52</sup>. Providing training and education on corporate governance principles to board members and senior management can improve their understanding and implementation of the Code.

## **6.0 PROSPECTS OF THE NIGERIAN CODE OF CORPORATE GOVERNANCE**

The future of corporate governance in Nigeria looks promising, with significant developments and emerging trends indicating a commitment to enhancing corporate governance practices. The prospects of corporate governance in Nigeria involve comprehensive reforms of companies' governance through the issuance of various codes aimed at safeguarding investors' wealth.

Corporate governance is gaining increasing attention worldwide, driven by the need for a steady influx of foreign direct investment into developing economies and the pressure of aligning national governance systems with global standards. Globalization has prompted national governments and regulators to develop and implement mechanisms that ensure better corporate governance regulation, the convergence towards international best practices is essential for countries like Nigeria, aiming to attract international market participants and maintain investor confidence<sup>53</sup>.

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<sup>52</sup> (n325).

<sup>53</sup> Emmanuel Adegbite, 'Corporate governance regulation in Nigeria' *Corporate Governance* [2022] (12) (1).

Despite facing several challenges, recent developments in Nigeria's corporate governance framework suggest significant potential for improvement.

## **7.0 CONCLUSION**

This research has critically examined the effect of the Nigerian Code of Corporate Governance on public companies in Nigeria, addressing its legal implications, impact on financial performance, and the challenges faced by public companies in adherence to the Code. The study's objectives were methodically pursued, providing valuable insights into the complex landscape of corporate governance in Nigeria. The research discusses the significance of robust corporate governance for economic development and investor confidence. It identified the problems associated with public companies in the corporate world. This foundation established the need for analyzing the Nigerian Code of Corporate Governance within the context of Nigeria's unique socio-economic and legal environment.

The research elucidated key concepts such as corporate governance, corporate leadership, and board of directors. It discussed the Companies and Allied Matters Act, the Financial Reporting Council Act, and sector-specific laws, demonstrating the multifaceted regulatory environment that Nigerian public companies navigate. The study identified the challenges, levels of compliance and prospect of the Code of Corporate Governance in Nigeria. It underscored the necessity of aligning Nigeria's corporate governance framework with global best practices to enhance investor confidence and promote sustainable economic growth.

## **8.0 RECOMMENDATIONS**

### **8.1 Enhance Legal and Regulatory Frameworks**

Addressing challenges posed by a weak legal system and ineffective regulatory bodies requires strengthening Nigeria's legal and regulatory frameworks. This can be achieved by consolidating various regulatory bodies into a single, robust entity empowered to enforce corporate governance standards effectively.

### **8.2 Promote Stakeholder Engagement and Education**

Effective corporate governance hinges on active engagement and education of all stakeholders, especially minority shareholders. Implementing comprehensive education programs to deepen stakeholders' understanding of corporate governance principles and their role in holding boards accountable is crucial.

### **8.3 Adapting Governance Frameworks to Local Context**

Understanding Nigeria's unique corporate environment and institutional dynamics is essential for developing effective governance frameworks. Crafting governance codes that integrate international best practices while remaining flexible to Nigeria's specific corporate and socio-economic conditions will increase their relevance and effectiveness. Addressing Nigeria's institutional intricacies, including challenges like corruption, military influence, and colonial legacies that shape governance practices, is pivotal. Tailoring governance frameworks to local circumstances enables Nigeria to establish a more adaptable and resilient corporate governance system.

### **8.4 Promoting a Culture of Integrity and Accountability**

Cultivating a corporate culture that emphasizes integrity and accountability is crucial for enhancing governance practices. Continuous training for board members and senior management in ethical leadership and corporate

governance principles will equip them to lead with integrity and efficiency. Implementing and enforcing clear ethical guidelines, including policies on bribery, gifts, political donations, and conflicts of interest, establishes a framework for ethical behavior within organizations.

### **8.5 Enhance Financial Reporting Standards**

Aligning Nigeria's financial reporting with international best practices is essential for improving transparency and investor confidence. Ensuring that all public interest entities adopt International Financial Reporting Standards (IFRS) and Statements of Accounting Standards (SAS) in their financial reporting will promote consistency and accuracy.

### **8.6 Encourage Transparency and Market Competitiveness**

Promoting greater market transparency and competitiveness through initiatives like the Corporate Governance Rating System (CGRS) is key to enhancing governance practices. Encouraging all listed companies to participate in the CGRS, which rates companies based on their governance practices, will incentivize better governance and provide benchmarks for improvement. Requiring public disclosure of corporate governance ratings and practices will enhance transparency and allow stakeholders to make informed decisions