CORPORATE GOVERNANCE CONVERGENCE AMIDST A MULTIPLICITY OF CODES IN NIGERIA

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ABSTRACT

This paper seeks to raise insights on the possible reality of establishing a universally acceptable set of corporate governance standards by convergence taking into consideration differences that exist such as board composition, ownership structures, value norms and local prevailing circumstances. By deploying the doctrinal method of legal research which is basically applicable to legal research, this thesis provides an opportunity for re-examination of how codes of corporate governance have impacted how businesses are administered in Nigeria. While acknowledging the benefits of corporate governance and the need for Nigeria to ensure its corporate governance standard is at par with international best practice, this paper seeks to consider the multiplicity of corporate governance Codes in Nigeria and the struggle that comes with implementation, proper monitoring and compliance To this end, this paper appraises several Codes of Corporate Governance which have evolved overtime in Nigeria and proffers suggestions on the need to modify certain provisions. The paper recommends the strict approach of punishment for offenders as well as amendment of Codes of Corporate Governance to include penalties such as imprisonment for wilful violations.

KEY TERMS
Corporate Governance, Convergence, Comply or Explain, Shareholders, Takaful, Sharia

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1. INTRODUCTION

The necessity for corporate governance codes cannot be overemphasized as the rights and interests of shareholders and investors must be protected from encroachment. The sole aim of corporate governance codes in any country, is to ensure that companies and their board of directors operate their businesses within acceptable business practices laid down by the law. The burden of ensuring that no one unjustly suffers the deprivation of his investments or profits from same, or that his rights as a shareholder in a company are denied without following the due process of the law is guaranteed by compliance with Codes of Corporate Governance. Such is the indispensability of justice that it is repeated in several portions of the Holy Books- the Holy Bible and the Holy Qu'ran. Consequently, it has been said that the basis of a just order on earth finds clear description in man giving to man what is his due. That, in essence, is what justice is all about. However, several incidences of companies in Nigeria acting ultra vires their objects of business abound. Several companies, in particular banks and other financial institutions have collapsed due to the reckless financial practices of their Board of Directors. The financial malpractices uncovered in 2008 showed that some banks in Nigeria gave loans on preferential basis to certain customers which were not backed by securities or collaterals.

While globalisation presents a strong incentive for convergence, the paper considers the regulation of certain corporate entities under sharia law; bearing in mind however that the realities of political diversity and national priorities among Islamic, developed and developing Countries cannot be glossed over.

The paper considers the efforts towards convergence and the route Nigeria has taken by highlighting if these efforts have been progressive; which albeit has been a slow and unreliable journey. Furthermore, the study appraises whether efforts towards convergence has ensured investor confidence, economic market sustenance and stability or whether same has forged an alien concept of what ought to be the acceptable standard to ease the minds of foreign investors.

Most importantly, discussions in this research work sheds light on aspects of corporate governance from the Sharia perspective, bearing in mind that the concept of convergence as being advocated is an actual necessity to ensure good corporate governance in Nigeria.

2. HISTORICAL DEVELOPMENT OF COMPANY LAW IN NIGERIA

The history of company law in Nigeria can be traced back to the colonial days before Nigeria gained independence from Britain in 1960. Before independence, the British colonial government imposed an Anglo-Saxon based system of corporate law and regulation on the country.[2]

Historically, most of the reforms in law and legal system are fashioned toward the Anglo-Saxon model. Consequently, the fact that Nigeria inherited the Anglo-Saxon framework of corporate governance is not surprising. The Company Act of 1968 contained elaborate provisions regarding the running of companies in relation to the role of board of directors and the members in general meeting. There were numerous criticisms from stakeholders that the principal legislation was ill suited to the financial structure in Nigeria, which led to the repeal of the Companies Act 1968. It was replaced in 1990 by the Companies and Allied Matters Decree 1990 (CAMA). It is now known as the Companies and Allied Matters Act Cap. C20 Law of the Federation of Nigeria, 2004 [3] and is the Principal Statute regulating companies in Nigeria.

[2] E.Adegbile,K.Amaeshi&C.Nakajima,' Multiple Influences on Corporate Governance Practice in Nigeria: Agents, Strategies & Implications'(2013) International Business Review

[3]2018 CAMA awaiting presidential assent.

3. DEVELOPMENT OF CORPORATE GOVERNANCE CODES IN NIGERIA

i. Corporate Governance from the Common Law Perspective

Following an identification of the need to attract foreign investment[4], the Federal Government of Nigeria sought to attract the global market through adherence to principles of good corporate governance. Consequently, the Securities and Exchange Commission (SEC) which is the Regulatory body over Companies in Nigeria set up the committee of corporate governance of public companies in Nigeria to:

"Review the practices of corporate governance in Nigeria and thereafter recommend a Code of best practices to be followed by the public companies in Nigeria in the exercise of its powers over the direction of the enterprise, supervision of executive actions, transparency and accountability in governance of these companies within the regulatory framework and market."[5]

- The committee was also to Identify weaknesses in current corporate governance practice in Nigeria
- Examine practices in other jurisdictions to adopt international best practice in corporate governance in Nigeria
- Make recommendations on changes to the current practice
- Examine other issues relating to corporate governance in Nigeria[6]

The main aim given was to ensure transparency and accountability in the running of affairs of companies to guarantee Investor's confidence, protection of shareholder's investment and flow of both local and foreign capital. [7] Corporate Governance within the Nigerian context has been defined as:

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[4] E.M.Okike 'Corporate Governance in Nigeria: The Status Quo' (2007) in 'Corporate Governance; An International Review', Business Source Complete EBSCO 173.

[5]SEC Committee on Corporate Governance in Nigeria 2000.

[6] ibid

[7] www.oecd.org accessed on 7th July, 2019

"A set of "best practice" recommending the behaviour and structure of the Board of directors of a firm… designed to address deficiencies in the corporate governance system by recommending a comprehensive set of norms on the role and composition of the Board of Directors, relationship with Shareholders and top management, auditing and information disclosure, and selection, remuneration and dismissal of Directors and top management [8]

There are other definitions of Corporate Governance which are more encompassing such as;

- Corporate governance is the system by which companies are directed and controlled. The Board of directors is responsible for the governance of their companies. The shareholders role in governance is to satisfy themselves that an appropriate governance structure is in place[9].
- Corporate governance defines a set of relationships between the company management, its board, shareholders and other stakeholders[10].

These definitions take cognizance of the fact that there are other stakeholders who are instrumental to the success of the Company and whose interests should also be given consideration to ensure the overall success of the Company. The SEC Committee in drafting the SEC Code 2011 placed reliance on the Corporate governance definition from the Cadbury Report and includes provisions for the consideration of other Stakeholders[11].

ii. Corporate Governance from a Sharia Perspective: Insurance and Takaful Policies

[8]B.J.Inyang 'Corporate Planning and Policy: Concepts and Application' (2004) Merb Publishers, Calabar, Nigeria, 14

[9] Cadbury Report 1992. www.ecg.org/codes/documents/cadbury.pdf. accessed 7th July, 2019

[10] OECD Principles of Corporate Governance www,oecd.org accessed 7th July, 2019

[11] SEC Code 2011 S.28.1

The concept of *Takaful* existed since the time of Prophet Muhammad (PBUH) as far back as 1400 years ago[12]. Arab tribes used *Takaful* as a pooled liability that indebted those who committed offences against members of a different tribe to pay compensation to the victims or their heirs. Over time, this practice spread across the Arab world, finding credence in trade across the seas among merchants who engaged in shipping business. Consequently, some merchants were recorded as making contributions to a common pool of funds where any member of the group who suffered mishap on sea voyages could be compensated. The Islamic Insurance Company is recorded as the first *Takaful* Company established in Sudan in 1979. In 1985, the Grand Council of Islamic Scholars of the Organization of the Islamic Conference formally gave the required permission for *Takaful* as the Islamic alternative to conventional insurance[13]. NAICOM has issued landmark guidelines to support the *Takaful* operations in Nigeria[14]. The approved models to operate in Nigeria *Takaful* include *mudarabah*[15], *wakala*[16] and hybrid *wakalah-mudarabah*[17]. The Takaful operator in all types of Takaful will usually provide an interest-free loan to cover any deficiency in the Takaful fund. However, the International Financial Service Board (IFSB) and the International Association of Insurance Supervisors (IAIS) has observed areas of conflict in the corporate governance framework of Takaful operators globally. Some of these issues relate to the protection of rights of shareholders particularly where members of the Sharia board of a Takaful operator is also a shareholder. These circumstances usually arise given the limited number of Sharia scholars competent in the field. Globally, gross Takaful contributions amounted to an estimated $14billion in 2014, up from $12.3billion in 2013[18]. Takaful has successfully supported acceptable business models in Nigeria as

[12] https://www.wikipedia.com accessed 4th February 2020
[13] https://www.wikipedia.com accessed 4th February 2020
[14] SS. 1 (3) NAICOM ACT OF 2013 and Section 2 (2) NAICOM ACT OF 2013
[15] This means profit-sharing
[16] This means agency
[17] This means agency-profit sharing
[18] https:\\www.britannica.com

the regulation of Takaful operators over the years by NAICOM has been hitch-free. Globally, multinational corporations such as the HSBC (Hong-Kong Shangai Banking Corporation), Chams and Hannover have adopted the Takaful model. The Takaful model is also operative in ASEAN countries (Brunei Darussallam, Indonesia, Malaysia, Singapore and Thailand. The GCC (Gulf Cooperation Council) including Saudi Arabia have all registered growth rates of Takaful operators. Globally, Saudi Arabia accounts for nearly half (about 48 percent) of the global gross Takaful contributions. Sections 3 (6) and 3 (11) of the NAICOM Act 2013 provides that in the event any Takaful operator in Nigeria has challenges in constituting their own Sharia advisers and experts, operators can refer sharia matters to a Takaful Advisory Council, which resides with NAICOM. This provision of the law has provided for financial inclusion, especially for Muslims, by intensifying insurance penetration in the Muslim population; this in turn contributes to Nigeria's Gross Domestic Product (GDP)

4. THE SECURITIES AND EXCHANGE COMMISSION 2003 CORPORATE GOVERNANCE CODE

The recommendations of the Committee led to the Securities and Exchange Commission (SEC) Code of 2003 covering principles such as responsibilities of the board of directors, structure of the board, chairman and chief executive, appointment to the board, director remuneration, board performance and assessment, risk management, financial disclosure, relations with shareholders and the audit committee.

5. THE CENTRAL BANK OF NIGERIA (CBN) CODE OF CORPORATE GOVERNANCE FOR BANKS POST CONSOLIDATION 2006.

This Code was issued after the banks consolidation exercise in 2005. The introductory part of the Code stated that[19]:

'In Nigeria, a survey by the Securities and Exchange Commission reported in a publication issued in 2003 showed

[19] CBN Code 2006. Part 1 S.1.3

that corporate governance was at a rudimentary stage as only about 40% of quoted companies including banks, had recognized codes of corporate governance in place. Specifically for the financial sector, poor corporate governance was identified as one of the major factors in virtually all known instances of a financial institutions distress in the Country.'

Some of the key weaknesses identified in the Nigerian Banking Industry were increased levels of risk, high-level malpractices, insider-related trading, lack of transparency and inadequate disclosure of information. [20] Indeed even the former Governor of the Central Bank of Nigeria (CBN), Sanusi Lamido Sanusi, stated that[21]

"...Promoting corporate governance with its attendant challenges has become relevant and timely. Moreover, it is important to recognize that economic performance of any country is shaped largely by the quality and effectiveness of the nation's corporate governance. Thus, the world over, sound corporate governance has become major concern not only to business enterprises, but also to central banks and governments"

There have been other sector specific Codes issued in Nigeria, such as the Code for licensed pension operators issued by the Pension Commission (PENCOM), and the Code for good corporate governance for the insurance industry issued by the Nigerian National Insurance Commission (NAICOM).

6. THE SECURITIES AND EXCHANGE COMMISSION CODE OF CORPORATE GOVERNANCE FOR PUBLIC COMPANIES 2011

This Code reviewed the 2003 Code was to further improve upon corporate governance mechanisms and was applicable to all public Entities listed on the security Exchange in Nigeria, and

[20] J.B.Marshall 'Corporate Governance Practices: An Overview Of The Evolution Of Corporate Governance Codes In Nigeria' (2015) 3 International Journal Of Business And Law Research.49.

[21] www.bis.org accessed 7th July, 2019

all companies seeking to raise funds from the capital market were bound to show sufficient compliance with the provisions of the Code[22]. The aim of the Code was to ensure the highest standards of transparency, accountability and good corporate governance without unduly inhibiting enterprise and innovation[23].

The Code had provisions which made compliance by corporate bodies voluntary but there were provisions stating that; in the event of or where there was a conflict between the provisions of the SEC Code 2011 and any other existing Code, the Code with the stricter provisions would apply. [24]

Some of the provisions of the Code will be considered briefly. There was an attempt to align the 2011 Code with international best practices and ensure a comprehensive Code.

7. PROVISIONS OF THE SEC CORPORATE GOVERNANCE CODE 2011

The SEC Corporate Governance Code 2011 was issued to cater for the lapses and weaknesses in the 2003 Code and to ensure that there are improved mechanisms to enable implementation of the provisions of the Code.

Composition and Structure of the Board

The importance of the composition of a board is clear, as this will determine if members of the Board are able to effectively discharge their duties and properly manage the affairs of the Company. The provisions also seek to ensure the board is set up in such a way that no single member will dominate decision making and to ensure independence of some Directors such as the independent non-executive Director to properly oversee the functions of the Board.

Some provisions are;

[22] Section A, SEC Code 2011.
[23] *ibid*
[24] S.1 SEC Code 2011.

4.1. 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 with out compromising independence, compatibility, integrity and availability of members to attend meetings.

4.2. Membership of the Board should not be less than five (5).

4.3. The Board should comprise a mix of executive and non-executive directors, headed by a Chairman. The majority of Board members should be non-executive directors, at least one of whom should be independent director.

8. RELATIONSHIP WITH OTHER STAKEHOLDERS

This Section takes into consideration the importance of ensuring good relationship with other stakeholders considering the value that they bring to a corporation. The peculiar circumstances prevalent in Nigeria are also given consideration with provisions to ensure integrity and shun corrupt practices.

28. Sustainability Issues

28.1. Companies should pay adequate attention to the interests of its stakeholders such as its employees, host community, the consumers and the general public. Public companies should demonstrate sensitivity to Nigeria's social and cultural diversity and should as much as possible promote strategic national interests as well as national ethos and values without compromising global aspirations where applicable.

28.2. Companies should recognize corruption as a major threat to business and to national development, and therefore as a sustainability issue for businesses in Nigeria. Companies, Boards and individual directors must commit themselves to transparent dealings and to the establishment of a culture of integrity and zero tolerance to corruption and corrupt practices.

Transparency and Disclosure Provisions

The management of a company are to ensure transparency and disclosure to enable the shareholders and other stakeholders understand the state of affairs of the company and make necessary amends where needed. The information to be provided should be truthful and without ambiguity. The SEC Code 2011 requires companies to make websites or investor portals available to their shareholders and other stakeholders also.

34.4. The Board of a public company should ensure that the company's annual report includes a corporate governance report that conveys clear information on the strength of the company's governance structures, policies and practices to stakeholders. The report should include …

There is also a further recommendation[25] that:

"The board should use its judgment to disclose any matter, even though not specifically required in the Code to be disclosed if in the opinion of the Board such matter is capable of affecting in a significant form the financial condition of the company or its status as a growing concern"

9. FINANCIAL REPORTING COUNCIL OF NIGERIA (FRCN) CODE OF CORPORATE GOVERNANCE 2016

The Code of Corporate Governance was again reviewed in 2014 amending the status of the Code from a persuasive voluntary Code to a mandatory Code. Failure to apply the mandatory provisions attracts sanctions. The Financial Reporting Council of Nigeria (FRCN) has the statutory power to formulate a Code of Corporate Governance and ensure compliance for public companies, private firms, not for profit organisations and public interest entities. Its Directorate formed a committee in 2012 to fulfill the mandate given under the law and released a draft in 2015 which stated its aim as:

[25] SEC Code 2011.S34.12

'To usher in a unified corporate governance Code with safeguards that are more country specific, contextual and environmentally congruent, while also conforming to international best governance practices'.

The Code is divided into three parts, Code of corporate governance for the public Sector, where compliance with the Code is mandatory, but will only become operative after an executive directive is secured from the Federal Government of Nigeria. The other parts that became effective in 2016 are Code of corporate governance for the private sector, which is also mandatory but has been challenged before a court of law[26] and has been currently suspended by a directive of the Federal Government, and the Code of corporate governance for not-for-profit entities which is to be applied on a comply or justify non-compliance basis. The Code covers such areas as:

- Structure, composition and responsibilities of the Board[27]
- Dialogue with Shareholders[28]
- Insider trading and minority interest expropriation[29]
- Conflict of interest[30]
- Full disclosure[31]
- Audit committees[32].

10. FINANCIAL REPORTING COUNCIL OF NIGERIA (FRCN) CODE OF CORPORATE GOVERNANCE 2018.

This Code was issued in 2018 following the suspension of the National Code of Corporate Governance 2016 by the Federal Government of Nigeria.

[26]Eko Hotels Ltd v Financial Reporting Council of Nigeria FHC/L/CS/1430/2012 (unreported)
[27] Draft Code of Corporate Governance by the Financial Reporting Council of Nigeria, 2015 S.4
[28] Draft Code of Corporate Governance by the Financial Reporting Council of Nigeria, 2015 S20.4
[29] Draft Code of Corporate Governance by the Financial Reporting Council of Nigeria, 2015 S28 S29.
[30] Draft Code 2015 S.31
[31] Draft Code 2015 S.33
[32] Draft Code 2015 S.34

The Aim of the Code is to institutionalize corporate governance best practices and promote public awareness. Some of the highlights of the Code include;

1. Code Philosophy where companies are to adopt the "apply and explain" approach in implementing and monitoring compliance with the Code[33].
2. The Code also provides for flexibility for the Board with regard to decision making on the composition of the board and other matters[34].
3. There is the provision of a cool-off period before a director can be appointed the Chairman. While it was previously 7 years under the 2016 Code, the new provisions provide for 3 years[35].

Other provisions of the Code relate to issues such as;

Recommendations for the risk management committee to meet at least twice every financial year[36].Internal audit function[37], remuneration governance[38] and whistle blowing mechanisms[39]. It is also emphasized in the 2018 Code[40] that the Company has a duty to ensure that its shareholders understand the ownership structure of the company. The fiduciary duty of the Directors to act honestly at all times in the management of the company is reiterated.

11. FINANCIAL REPORTING COUNCIL OF NIGERIA (FRCN) CODE OF CORPORATE GOVERNANCE 2019

The new Code seeks to institutionalize best practices in corporate governance in Nigeria and makes recommendations for the Securities and Exchange Commission in its supervisory role, notes the provision for Directors culpability for

[33]Paragraph C; Introductory Paragraph to the Code 2018
[34]Paragraph 2.2
[35]Principle 3.3 2018 CG Code
[36]Principle 11.5.6
[37] Principle 18
[38] Principle 16
[39] Principle 18
[40] Principle 23

misappropriation, and the Economic and Financial Crimes Commission (EFCC) requirement that designated non-financial Institutions are duty bound to report suspicious transactions.

12. COMPLY OR EXPLAIN MECHANISM

The Comply or Explain mechanism has been widely adopted by many countries in their corporate governance Codes but the success or otherwise is dependent upon many factors. Countries with more robust regulatory mechanisms are better able to monitor companies and determine the approach such companies have adopted. Having such a wide berth in other countries however with poor regulatory authority to ensure compliance or otherwise, may make the concept of comply or explain less effective. Countries such as the United Kingdom and Nigeria use this mechanism, albeit to varying degrees, but the approach of persuasion or engaging companies to act on principle seems to produce the best results.

Nigerian Approach

Under the SEC Corporate Governance Code of Nigeria, the application of the principles by Companies is voluntary. Responsibility for compliance with the Code lies with the Board of Directors, Shareholders and the Securities and Exchange Commission. The requirement of the Code is for companies to indicate their level of compliance with the Code in their annual Reports.[41] Some of the problems that arise in Nigeria are as a result of multiple codes that duplicate requirements and cause conflicts in some other provisions. Companies are left wondering which Code they should comply with. The provisions of the Securities and Exchange Commission under the 2011 Code which states that 'the stricter of the two Codes

[41] The Future Of Corporate Governance In Nigeria: An Evolution From Principles Based To Rules Based Approach https://tennygee.wordpress.com/.../the-future-of-corporate-governance-in-nigeria-an-evolution from-principles based approach to rules based approach.pdf accessed 13 March 2017

should apply' is not particularly helpful to resolve the confusion.[42]

The Draft 2015 Corporate Governance Code[43] whose scope is to regulate public and private firms, not for profit organizations and public interest entities, makes compliance mandatory and failure to comply could result in sanctions[44]. The provisions under the draft FRC Corporate Governance Code 2015 seem to employ a heavy-handed approach, which dictates Rules and expects compliance. A more suitable approach would have been one that facilitated good corporate governance based on principles or at least given an option in some circumstances, such as the corporate governance code approach employed by Germany.

The German Commission on corporate governance (Cromme Commission) regulates corporate governance practice in Germany. Its corporate governance objectives have been listed as; to improve companies' performance, to improve competitiveness and the quality of information. The Corporate Governance recommendations are to be observed on "comply or explain" basis. The provisions are couched with the word "shall" indicating their mandatory nature, and other suggestions are indicated by the words "should" or "can" which means they are optional.[45]

Under the South African corporate governance regime, there was a change from the 'comply or explain' approach to the 'apply or explain' approach[46]. It means that organisations ought to disclose how principles relating to remuneration, board evaluation, director performance has been applied or not[47].

[42] SEC Code 2011.Section A

[43] Draft Code 2015.S.76

[44]J.B.Marshall 'Corporate Governance Practices: An Overview of the Evolution of Corporate Governance Codes in Nigeria' (2015) 3 International Journal of Business and Law Research.49.

[45]www.dcgk.de/en/home.html **accessed 10 March 2017**

[46] King III Report 2010.

[47]N.J.Moyo 'South African Principles Of Corporate Governance: Legal and Regulatory Restraints on Power and Remuneration of Executive Directors (2010) University of South Africa Press.

There are other guidelines under the South African Code that provide for alternative dispute resolution and non-binding advisory votes through which shareholders can express their views on the remuneration policy of a Corporation.

13. CONVERGENCE

Some of the questions this work sought to answer include if any evidence of convergence of corporate governance standards exist in Nigeria. While clearly, the development of corporate governance in Nigeria has been greatly influenced by the United Kingdom, as seen in the history and development of its corporate governance, it can be argued further that the Cadbury Code of 1992, was instrumental to the OECD Principles of Corporate Governance [48] from which many other Countries formed their respective corporate governance Codes. As a result thereof, we see many similarities in corporate governance Codes in matters relating to Board composition, appointment of Non-executive and Independent Directors, forming of committees such as audit, remuneration and ensuring adequate transparency and disclosure standards. Countries such as the United Kingdom, Germany, Denmark, France and Italy all make provisions for audit committees[49].

Some pertinent questions that must be raised while considering convergence include;

> Is convergence of corporate governance really necessary to ensure good corporate governance by Countries?
>
> Considering differences in ownership structures, legal and regulatory conditions, is it realistic to expect corporate governance convergence?
>
> Does any evidence exist of convergence exist in form and substance from Nigeria and other Countries?

[48] OECD Principles of Corporate Governance 1999.

[49] P.CollierM.Zaman 'Convergence in European Governance Codes: The Audit Committee Concept' (2005)

Convergence can be identified as the act or condition of coming together, and in corporate governance, this may be in aspects of company law and practice, securities, on the stock exchange and others. The role of culture in corporate convergence is very important also and has an impact on how companies are run[50]. There are many approaches to convergence, such as voluntary; where Countries have control over what and how convergence happens, and other situations where there has to be compliance, such as where a Company must abide by a jurisdictions corporate governance practice. There can be said to be a convergence of Codes and Board structures with the wide acceptance of the provisions enumerated above [51] . Other international bodies have influenced and shaped convergence alongside the OECD such as the World Bank and the UN.

There are arguments however, that the corporate governance Codes of most Countries did not evolve or emerge naturally but were either influenced to conform to industry standards or were legally compelled to comply[52]. Within the Nigerian Context, there have been arguments that there has been multiple influence by Agents such as International Organisations, Rating Agencies and Indigenous Institutions that have left Nigeria in a flux as the pressure to converge to international standards means the Country is being pulled in several directions by these factors[53]. Such International organisations as the OECD, World Bank, and International Monetary Fund (IMF), Corporate Rating Agencies such as Standard and Poor, and indigenous Institutions such as the African Development Bank (ADB) have been identified in this regard. This work agrees with the views that these external agents have a significant influence. The

[50] Rachael AjombohNtongho, "Culture and Corporate Governance Convergence" (2016), International Journal of Law and Management, Vol. 58 Issue: 5,pp. 523

[51]C.Mallin 'Corporate Governance' (2012) Oxford University Press 4th ed.

[52]Syeedun Nisa Khurshid Warsi 'The Divergent Corporate Governance Standards and the Need for Universally Acceptable Governance Practices' (2008) Asian Social Science Journal 9.

[53]E.Adegbile,K.Amaeshi&C.Nakajima,' Multiple Influences on Corporate Governance Practice in Nigeria: Agents, Strategies & Implications'(2013) International Business Review 524-538

International organisations and Banks play a significant role in granting facilities, ensuring access to grants and loans needed for development. They are strategically placed to make suggestions on policy and influence the direction a Country's corporate governance practice may take. Companies at the indigenous level also seeking to gain from an international organisation may adopt and converge to a standard practice to be eligible for such investment.

The Rating Agencies also give a favourable outlook of a country or otherwise and this may attract or discourage foreign Investors. Other important International Organisations can be said to be drivers of convergence also, such as the International Organisation of Securities Commission[54] (IOSCO), which has many World securities regulatory bodies as Members, who have entered into agreements on exchange of information and joint initiatives on OTC Derivatives and transparency. International accounting standards are also leading to convergence, with the International Accounting Standards Committee[55] (IASC) and the International Auditing Practices Committee (IPAC) working in collaboration with the IOSCO to ensure harmonization and standardization of financial reporting and auditing standards.

Globalisation of financial and products markets has also been a driving force of convergence. The Government of the Federal Republic of Nigeria sought to attract foreign Investors to boost its economy. This was one of the main factors that led to the inauguration of the committee on corporate governance development in the Country[56], with the instruction to ensure that corporate governance practice in Nigeria is at par with international best practice. The need arises to ensure foreign Investors of the safety of their investments and recourse to legal action, in the event that they should require it.

[54] www.iosco.org/library.pdf accessed 12th October, 2019

[55] www.ijrbsm.org.pdf, www.iasplus.com>africa>nigeria. Accessed 12th October 2019

[56] SEC Committee on Corporate Governance in Nigeria 2000.

A study by Christian Luez et al[57] showed that foreign Investors tend to shy away from investing in stocks of Companies incorporated in Countries with low disclosure requirements, weak governance rules and investor protection. Conversely, Companies wishing to compete on a global scale also may wish to adapt international best practices to attract investment. Following the influence of other International Bodies, China has set up its Company law rules following the framework of the World Trade Organisation, in order to create a congenial environment that encourages overseas investment[58]. Morley further opines that while there may not be global convergence to a single form of company law, there are similarities in the measures adopted by governments seeking to attract foreign investment. Some factors that could affect the investing climate are the political environment, policy actions, quality of infrastructure and taxation regime[59]. The increase of proximity of legal and institutional norms to comply with international best practices is a driver of convergence.

Many jurisdictions now recognise the importance of stakeholders' rights as a key factor in the growth and long-term development of Companies. The presence and growing influence of multinational companies also means that Stakeholders can come from many different Countries. Companies now consider an array of constituents and most have developed strategies to ensure that decisions are made in their best interests in accordance with international best practices[60]. Furthermore, Institutional Investors are becoming actively involved in monitoring the affairs of companies they have an interest in and ensuring adherence to best practices[61]. Most Companies seek to adopt unified strategies to handle issues

[57] Christian Luez Karl Lins Francis Warnock ' Do Foreigners Invest Less in Poorly Governed Firms?' (2009) 22 The Review of Financial Studies 3245.
[58]S.Morley 'The Subject Matter,Form and Process of Convergence and the Ever Increasing Role of the Foreign Investor' (2016) Company Lawyer 71.
[59] ibid
[60]G.CaratiR.Tourani 'Convergence of Corporate Governance Systems' (2000) Managerial Finance 26 www.emeraldinsight.com accessed on 27th March 2017.
[61] ibid

across national boundaries. While there may be a tendency for parent companies to adjust their international standards to conform to host communities' traditions, there may be pressure from the parent companies or scrutiny of their corporate governance practices and this can lead to adoption of new or uniform practices in all their international subsidiaries[62].

There is convergence on some level mainly form and composition of Boards Committees, disclosure and transparency standards, all pointing to the legal-regulative level. However, many issues arise due to the differences in culture, legal framework, ownership structures, and institutional capacity[63].

14. LEGAL FRAMEWORK FOR CORPORATE GOVERNANCE AND CONVERGENCE

The United Kingdom has a corporate governance Code that has evolved over the years from the Cadbury Report to the UK corporate governance Code that is reviewed annually to ensure that it is properly suited to accommodate the changes in the financial sector and improve diversity of Companies. The UK Code has influenced international institutions and corporate governance Codes all over the world. However, it has held over the years that the comply or explain mechanism is still valid and this enjoins all listed companies in the United Kingdom to comply with the provisions of the Code but they may not do so if, after a careful appraisal of the provisions, they have a justification for non-compliance.[64] It would be accurate to state that the United Kingdom operates a corporate governance Code, which is persuasive and principle based.

The Report of the Committee on Corporate Governance of Public Companies in Nigeria recommended, "the establishment of high standards of corporate governance be ideally based on

[62]J.VanBelkum et al 'Corporate Governance in The Netherlands' (2010) EJCL 14.
[63]T.LazaridesE.Drimpetas 'Corporate Governance Regulatory Convergence: A Remedy for the Wrong Problem' (2010) International Journal of Law and Management
[64]*UK Code 2016*

voluntary compliance coupled with disclosure, which should prove more effective than a strictly statutory code."[65] The recommendations of the Committee form the basis of the contents of the Code of Corporate Governance in Nigeria[66]. There have been attempts to answer whether there is convergence of corporate governance in Nigeria. To this end, one is tempted to agree that to a certain extent, with developments in Nigeria, there are efforts to conform to international best practices.

Multiplicity of Codes and Regulatory Agencies, Poor Record Keeping, Institutional Factors and Corruption as Factors Militating Against Convergence in Nigeria

Some of the Statutes that regulate the Nigerian state generally are in an archaic state urgently needing reform and indeed salient reviews.

There have been several attempts at implementing corporate governance Codes in Nigeria, and even though their efficacy is debatable, this is still an important step towards convergence. However certain factors mainly statutory and institutional militate against the progressive strides towards convergence in Nigeria. Most of the scholarly literature and commentary on comparative corporate governance has focused on issues of convergence, on whether corporate-governance systems in different countries are becoming more similar to one another[67]. The Anglo-American system indeed provides the basic point of comparison, and the basic thesis is often that this system provides a model to which other countries are slowly

[65] The Report of the Review Committee of the 2003 Corporate Governance Code 2009.

[66] Securities and Exchange Commission and Corporate Affairs Commission, *Code of Corporate Governance inNigeria* Code 2011.

[67]Lucian AryeBebchuk& Mark J. Roe,' *A Theory of Path Dependence in Corporate Ownership and Governance'*, (1999) 52 Stan. L. Rev. 127, Bernard S. Black, *The Legal and Institutional Preconditions for Strong Securities Markets*,(2001) 48 UCLA L. Rev. 781, 845–846 (2001); Ronald J. Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, 49 Am. J. Comp. L. 329, 332 (2001).

assimilating[68]. In as much as the Anglo-American system works properly, Nigeria's attempt to imitate this model is continuously riddled with bottlenecks. The complexities of Nigeria and its institutions, human factors such as corruption, institutional factors such as poor reporting and enforcement mechanisms create uncertainty.

The corporate governance laws in Nigeria adequately create regulatory institutions but their regulatory and enforcement powers are not clearly defined. The Corporate Affairs Commission[69] is established by statute[70] for the registration, supervision and monitoring compliance of companies with laid down rules, the Central Bank of Nigeria[71] for regulating banking business, Nigeria Stock Exchange[72] and the Abuja Stock Exchange which was re-designated Abuja Commodities Market for operating stock and commodity market floors and conduct listing for these securities, the Securities and Exchange Commission[73] for regulation of activities in the capital market and the Investment and Securities Tribunal[74] for trial of capital market offenders

Most of the Agencies over the years have developed corporate governance Codes which leaves companies at a loss to which provisions they should comply with. Presently, the requirements laid out in the Code are enforced by the NSE (the Nigerian Stock Exchange) as it is self-regulating and can monitor

[68]Michael Bradley et al.' *The Purposes and Accountability of the Corporation in Contemporary Society' (1999)*, 62 L. & Contemp. Probs. 9, 14 (1999)

[69] S.1 CAMA, 1990 now revised as Cap C 20 Laws of the Federation of the Federal Republic of Nigeria, 2004.

[70] CAMA Cap C20 Laws of the Federation 2004

[71] S. 1 Central Bank of Nigeria Act Cap. C.4 Laws of the Federation of the Federal Republic of Nigeria, 2004.

[72] Established by the Nigerian Stock Exchange Act 1977 which was credited with transforming the Lagos Stock Exchange to NSE. See Investment and Securities Law Journal, 2006, Vol. 1 p.6.

[73] S.1, Investment and Securities Act No. 45 of 1999 now revised as ISA Cap 124 Laws of the Federation of the Federal Republic of Nigeria 2004.

[74] ISA Cap 124 Laws of the Federation of the Federal Republic of Nigeria S.224

companies, which default on the requirements for listing securities. Unfortunately, not all public companies in Nigeria are listed on the Stock Exchange.

15. RECOMMENDATIONS

The purpose of corporate governance is to encourage companies to make good business decisions, properly assess and manage risks, be accountable to shareholders for capital expended, have due regard for other stakeholders who are instrumental to the success of the Corporation and consideration for other factors such as their Host Communities and the environment[75].

- It is recommended that for effective corporate governance, there should not be compulsion to follow corporate governance Codes but companies should want to abide by corporate governance rules and implement good corporate governance as a matter of principle. This can only be achieved by ensuring that people who are admitted to direct the affairs of a corporation have integrity, discretion and are committed to the success of the corporation.
- The problem of shareholder apathy must be critically addressed in Nigeria. Shareholders should be more proactive in the affairs of Companies and hold management to a certain standard; demanding comprehensive explanations where the management deviates or decides not to follow the provisions of the Code.
- There should be necessary political, institutional and legal framework to complement good corporate governance practice. Schools or Institutes should formulate curriculum content specifically suited to the Nigerian environment that provide teaching and promote good corporate governance practices that conform to international best practice.

[75]J.Casson' A Review of the ethical aspects of corporate governance regulations and guidance in the EU. https://www.ibe.org.uk/.../ibe_report_a_review_of_the_ethical_aspects_of_corporate accessed on 3 April,2017.

- Initiatives to transplant Anglo Saxon or any other corporate governance model which does not take into account the peculiarities of the Nigerian Context should be discouraged. The Code should retain flexibility and can adopt some principles or provisions from other jurisdictions. Indeed, this has been the case with wide adoption of principles relating to audit committees and independent Directors.
- Nigeria should strive to conform to international best practice while ensuring a stable business environment, to attract foreign investment and appoint people with proven credentials and integrity to manage affairs of a company.

16. CONCLUSION

To this end, it is submitted that Nigeria may be its own worst enemy in ensuring good corporate governance practice, the resolve to attain international best practices and convergence to Anglo-Saxon or any other model of corporate governance is in peril because of the problems that exist within its domestic laws and practices. There need to be changes to the company laws as governed by the Companies and Allied Matters Act 2004 to ensure good corporate governance practice and its enforcement. There ought to be consideration of the peculiar circumstances of Nigeria, and regard to the local values, beliefs and culture in development of corporate governance framework. Furthermore, the practice of developing nations being encouraged to automatically transplant laws from other developed Countries must be discouraged. If the Nigerian government and regulatory agencies are able to properly monitor and supervise the corporate governance Codes in place, there will be better compliance and this will position the Country and its companies to do well, thereby boosting the economy and confidence of shareholders, stakeholders and other potential Investors. Where the Country is able to properly adopt the corporate governance Codes in the best way to suit the Nigerian context, there will be good corporate governance practice whether or not there is convergence to any model.

It is important to note here that the 2018 Code of Corporate Governance issued by the FRCN pursuant to S11(c) & S41 (c) Financial Reporting Council of Nigeria Act 2011 makes provision for flexibility. Companies and businesses are given the ability to apply the Code in a wide range of circumstances to fit the peculiarities of their different sizes and models. This will hopefully increase compliance and implementation of the principles of the Code.