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Corporate Governance: a Comparative Study of the Corporate Governance Codes of a Developing Economy with Developed Economies

Adenike Adewale

Tel: +2347059928139 Email: adenikeadewale@hotmail.com

Abstract

Anti-social financial practices are a regular occurrence in both developed and developing countries. The drive for monetary success has the tendency for corporate executives to exploit and/or disregard regulatory controls for the sake of financial gain. This research evaluates the ability of corporate governance codes in preventing corporate collapses. It compares corporate governance codes of developing economies and developed economies in identifying the weaknesses in the corporate governance codes of developing economies. The qualitative research method was employed to collect information. Descriptive data and critical analyses methods are used to compare the corporate governance codes.

Keywords: Corporate Governance, Corporate governance codes, Developing economies.

1. Introduction

In the present globalised world where the belief in free markets and democracy has gained an astounding popularity, and given the extensive effect of companies' operations on the wealth of nations and the distribution of economic well- being; it is clear that the governance of corporations must matter, as does political governance. Economic systems are an engine of progress and development but these engines have developed into something so complex and their abilities so swift and powerful, that it has outstripped the governance mechanisms designed in a simpler time. Markets are much more dynamic and far more pervasive. In the process, institutions and the principles and standards of judgment that ought to stand as a protection against conflicts of interest have been weakened critically (Thompson (2012), Solanke (2007)).

Corporate governance attracts public interest as a result of its apparent importance for the economic health of corporations and society. Corporate scandals that shook the economies of developed countries cast light upon the poor corporate governance practices in the developing economies of countries in Africa, Asia and South America. The OECD Observer (2000) argues that in the 21st century, stability and prosperity of corporations will depend on the strengthening of capital markets and the creation of strong corporate governance systems.

1.1 Theoretical Framework

Jensen and Meckling (1976) defined the agency relationship as a contract under which one or more persons (the principal(s)) engage another person (the agent) to perform some service on their behalf which involves delegating some decision-making authority to the agent. According to Eisenhardt (1989) the agency theory is directed at the relationship in which a party (the principal) delegates work to another party (the agent) who performs the work.

According to Friedman (1979) the sole purpose of a business is to maximise profits for its shareholders. These agents are the board of directors of organisations charged with maximising shareholder wealth. These directors in an ideal world are expected to act in the best interests of the corporation and its shareholders. Berle (1932) further argued that powers given to a corporation or its management can only be exercised for the benefits of its shareholders. However, these agents are human and imperfect. This relationship involves risk sharing between the two parties and could lead to conflict of interests on the part of the agent. Problems may arise in these principal-agent relationships when there is no congruence of goals.

According to Hart (1995) corporate governance issues arise in corporations whenever there is an agency problem or conflict of interest involving members of the organisation. Agents as in the board of directors' goals may not always be in line with the agents or corporation's goals. This self-interest of the agents may prevail over duty and they could shirk or steal from the organisation. Blair (1996) argues that managers acting as agents of corporation owners must be monitored in order to prevent abuse of power, there should be institutionalised checks and balances. However, it may be the difficult to measure and monitor an agent's performance and efficiency in carrying out his duties. Principals face problems in ascertaining whether the agents are acting in the best interests of the organisation. There may be information asymmetry which means that the agents have superior access to information (compared to the principals).

Corporate governance mechanisms especially the board of directors act as important tools and a form of corporate control in monitoring and ensuring that any problems that may be brought about by the principal-agent relationship are minimised. This further conflict the possibilities of proper checks and balances and prevention of agency problems. However, the corporate governance code is a concept that can set standards to overcome some of these issues. Corporate governance codes and financial regulations may act as proper checks and balances against agents' abuse of power and reduce agency costs (Kariyawasam 2011). These may also help in ensuring agents' goals are aligned with that of the principal.

2. Literature Review

Corporate governance has its origin in the last century with the creation of the modern business corporation. Many companies were owned and controlled by the proprietors. However, these proprietors could not provide all the necessary finance. The modern corporation was established with the separation between capital (broken up into units of shares in order to allow a spreading of the risk) and managers.

These managers did not own any substantial shareholdings. This separation of ownership from control implies a loss of effective control by shareholders over managerial decisions. To ensure that managers heed and fulfil the will of the shareholders, the board was created. The board was burdened with the exercise of governance within the corporation (Ugoji and Isele 2009).

2.1 Corporate Governance mechanism

Corporate governance mechanisms are the process and systems by which a country's company laws and corporate governance codes are enforced. According to Nnadi (2006) governance mechanism is meant broadly to imply the entire set of incentives, safeguards and dispute resolution processes used to control and coordinate the actions of various self-interested parties interacting together.

The mechanisms incorporate the means for monitoring compliance by corporations. The corporate governance codes are enforced by professional bodies in collaboration with government institutions and the capital market regulator or vice versa. The effectiveness of a country's corporate governance mechanism depends largely on the country's regulatory frameworks and public governance systems. Recurrent corporate scandals and collapses around the world have questioned the transparency and accountability of directors to their shareholders (Okpara 2011). Meisel (2007) argues that effective corporate governance systems will allow organisations to realise their maximum productivity and efficiency, minimise corruption and abuse of power and provide a system of managerial accountability.

2.2 Corporate Governance Code

According to Adekoya (2011) the typical method for ensuring effective corporate governance reforms in most countries is through the invocation of corporate governance codes which supplement existing corporate laws. Corporate governance codes are documents which state the rules and procedures for governing and managing corporations.

These codes state the rules, principles and best practices for governing corporations properly. Most corporate governance codes are instituted by self-regulating professional bodies with the consent of the relevant government regulating agencies but the responsibility for adopting and implementing the codes lies on a corporation's board of directors.

2.3 Corporate Governance in Developed Economies

In the late 1980s and 1990s, the United Kingdom was affected by consecutive scandals which eventually led to the reform of UK listed companies. The collapse of different companies (Robert Maxwell Group, Polly Peck, BCCI and Coloroll), who despite having received clean bills of health from their auditors collapsed unexpectedly tarnished market confidence in the accountability processes operating in UK listed companies. An increasing lack of investor confidence in the honesty and accountability of listed companies prompted the creation of the Cadbury Committee and thus, corporate codes.

In the US, the financial crises of Enron, WorldCom with Arthur Andersen heated up the discussion about the proper governance of companies. The confidence of investors wavered by these prominent scandals as these firms were forced to file for bankruptcy (Kariyawasam (2011), Anup (2005)). These financial scandals posed questions about the role and value of external audits. The Enron and WorldCom scandals in the US led to widespread beliefs that Arthur Andersen had compromised WorldCom on its independence as auditors (Sikka 2009)). As a result of these scandals, the Sarbanes-Oxley Act was enacted in the US in 2002. This law imposes a number of corporate governance rules on all public companies with stock traded in the United States (Fearnley et al (2004)).

2.4 Corporate Governance frameworks in Nigeria

According to Okpara (2010) corporate accountability gained importance in the post structural adjustment program (SAP) era in Nigeria. This era noted the growth of privately owned corporations and financial institutions. In Nigeria, the informal nature of most business and the high level of government ownership enterprises pose challenges to the practice of corporate governance.

As a result of this weak corporate culture in these institutions, Nigeria witnessed a very high incidence of corporate failures. The need to develop and promote good corporate governance in Nigeria led to the Securities and Exchange Commission setting up the Peterside committee in 2003 whose report yielded the first comprehensive code of best practices for public companies in Nigeria. This was an attempt to regain the confidence of the public.

The 2003 Code of Best Practices on Corporate Governance in Nigeria issued by the Securities Exchange Commission was developed based on the UK combined Code and the Sarbanes Oxley in the United States. It emphasises the role of the board of Directors and management, shareholder rights and privileges and the audit committee.

In 2006, the Central Bank of Nigeria issued the Code of Corporate Governance for Banks in Nigeria Post Consolidation. This code was introduced to ensure the accountability of bank CEOs. It describes board composition and the qualifications of non-executive directors. It specifies the accountability structure within the organisation. It specifies fines and penalties including jail term for erring CEOs. It also specifies risk management measures within the organisation emphasising on the roles and qualifications of corporations' internal auditor.

3. Methodology

The methodology of a research is the theory indicating how the study should be performed in relation to the theoretical assumptions on which the research is based and its implications (Hancock 2002).

3.1 Research Methods

Scientific research consists of an investigation that seeks answers to a question systematically using a predefined set of procedures to answer the question. Research methods analyse and put data together in an order that achieve the objectives of the research (Denzin (2000), Saunders (2009)).

Different scholars and researchers have used both qualitative and quantitative methods in analysing corporate governance in Nigeria. Quantitative methods are usually used in assessing the effectiveness of corporate governance on different variables such as productivity and profitability. Qualitative methods on the other hand are used to assess the effectiveness of corporate governance in preventing future collapses by analysing previous collapses. Most of these studies identify corruption, education and poverty but hardly evaluate the effectiveness of the corporate governance codes in preventing such collapses.

This study will be evaluating the corporate governance codes and its effectiveness in preventing future corporate collapses and scandals in Nigeria. It would compare the Nigerian corporate governance code to that of the United Kingdom and United states as a measure of its standard and effectiveness. It would analyse the rule based Sarbanes Oxley and the principles based (comply and explain) UK combined code, evaluating a plausible standard in Nigeria.

This analysis will be based on case studies. It will also be making use of secondary data. This secondary data will be in the form of recent publications in the area of corporate accountability in Nigeria and available data on the case studies used. Information on the corporate scandals would be from verifiable published reports such as the Central Bank of Nigeria. References may be made to other researcher's reports in buttressing arguments.

3.2 Justification for research method

A qualitative research was chosen because it is presumed to be more suitable for this kind of study. According to Denzin (2000) testing hypotheses may constrain the research results as quantitative research looks out for the relationship between variable and not processes. However, the qualitative analysis method is valuable in depicting a precise reflection of the nature of the problem. It also provides a detailed understanding of the observable facts. This research is evaluating processes and not variables. This research is evaluating the challenges and limitations to corporate accountability which makes the use of qualitative research more appropriate.

3.3 Corporate governance code as a valid measure

The research method used in analysing research questions is very important. The credibility of the research methods used in answering research questions increases the probability of achieving reliable answers. Saunders (2009) argues that in minimising the risk of achieving a wrong answer it is important to pay attention to validity and reliability. Corporate governance codes are the legal constraints put in place to ensure the corporate governance practices in most countries. Financial regulators and governments use these codes in protecting shareholder's interests, corporate accountability and maintaining organisational sustenance.

The validity of a research is also important. The validity of a research depends on the probability of the procedure in yielding the same findings. Although the contents of corporate governance codes vary across countries, most countries have a code providing expected corporate governance practices. This makes these codes a consistent measure of corporate governance practices in corporations. Corporate governance codes are comparable and reduce the probability of subjective findings in a qualitative research.

4. Analysis

Overview

In October 2008, the CBN discovered that some of the banks in the country were showing liquidity strain due to extensive use of its 'expanded discount window' (EDW) which extended credit facilities to banks on the basis of collateral in the form of commercial paper and bankers' acceptance (*Tell*, 31 August 2009). In 2009, joint inspectors from the CBN and the Nigerian Deposit Insurance Corporation (NDIC) were given the task of examining the books of Nigerian banks. Most of these banks were found to be experiencing liquidity problems (*Saturday Tribune*, 3 October 2009).

4.1 Case Studies

Intercontinental Bank

Intercontinental Bank Plc was a leading commercial bank in Nigeria. Its Chief Executive was Erastus Akingbola. In 2009, after examining the bank's records, the CBN Governor discovered that Intercontinental Bank Plc was troubled. It was unable to meet its maturing obligations without persistent recourse to the EDW of the CBN and was in dire need of capital. The bank showed excessive liquidity. However, the bank's auditors continually confirmed the financial institution as a going concern despite all the evidence. The Akingbola led management accumulated up to N210.9 billion non-performing loans. (The News, 14 September 2009).

The Bank records were prepared to portray an impression that certain non-performing loans granted in 2007 had been only recently granted in 2009. Furthermore, of the N26.78 billion worth of insider credits, N20 billion was non-performing. The bank's management had deliberately repackaged some non-performing credit in order to mislead the regulatory authorities. This resulted in a continual rendition of false returns.

CEO Akingbola was indicted for conspiracy to grant unsecured credit facilities, conspiracy to manipulate share prices, reckless consideration of credit facilities without adequate security, and failure to present monthly statements of accounts to the CBN. He was charged to court on a 22-count charge relating to money laundering, theft, market manipulation, tax fraud, obtaining by false pretence, the criminal granting of loans, and insider trading and abuse of office (EFCC News, 13 August 2010).

In addition, seven non-executive directors and members of the Board of Directors of Intercontinental Bank were also arraigned. They were accused of making sure that the balance sheet of the bank did not give true and fair view of the state of affairs of the bank with regards to non-performing credit amounting to N87.6 billion (*ThisDay*, 1 September 2009). In January 2012, Intercontinental Bank was sold to Access Bank by the CBN to get back the tax payers money used in saving it. Akingbola was cleared of all charges in April 2012.

Oceanic Bank

Oceanic Bank was a commercial and Investment bank in Nigeria. It was part of a family conglomerate business owned by the Ibru family. In April 2007, Oceanic Bank International was ranked at number 12 of the top-ranking West African businesses and 16 in sub-Saharan Africa (*Black Herald*, 29 September 2007). Cecilia Ibru became Oceanic Bank's Managing Director and Chief Executive Officer in 1997. She was the first female CEO to post over N1bn profit in a financial statement.

In 2009, Cecilia Ibru was charged with financial crimes including money laundering and fraudulent conversion of depositors' funds for her own private gain. Cecilia Ibru was indicted of using several companies to launder funds. She entered a plea bargain against the charges brought up by the Nigerian Economic and Financial Crimes Commission (EFCC). This led to a reduction of her 25-count charge to three, to which she pleaded guilty (*The Sun*, 9 October 2010). The court sentenced her to six months' imprisonment on each of the charges, totalling 18 months. She also forfeited 199 assets and funds worth over N199 billion (*The News*, 9 October 2010).

Case 3 - Cadbury Nigeria

Cadbury Nigeria is a confectionary manufacturing corporation. Cadbury Nigeria was founded in 1965 as a subsidiary of Cadbury United Kingdom. In 2006, Cadbury Schweppes Plc, the UK parent company made considerable effort to increase its shareholdings from 46% to 50%. In the process of performing its due diligence of the Nigerian corporation, overstatements were discovered in the books.

In October 2006, the board of Cadbury Nigeria PLC declared to its stockholders and regulatory bodies of the discovery of overstatements in her accounts, which had spanned over a period of time (2003-2006). Price Water House Coopers (PWC), an independent audit firm was appointed to investigate these overstatements. The report submitted by PWC to the board of Cadbury PLC confirmed fraudulent accounting practices in the books of Cadbury Nigeria. Cadbury Nigeria stated that the overstatements were between 13billion and 15billion naira.

As a result of this scandal, Bunmi Oni, the CEO, and Ayo Akadiri, the Finance Director, were relieved from duty. Although the company did not accuse its sacked executive of personal gains, it did attribute the deliberate breaches in its accounting system and controls to efforts to achieve ambitious growth targets that were internally predetermined by its executives (Solanke 2007).

4.2 Findings

4.2.1 Board of directors

A CEO's influence on the board can reduce the board's effectiveness in monitoring managers. The greater a CEO's influence on the board, the less likely the board is to suspect irregularities that a more independent board may have caught. In a country like Nigeria, where CEO's are revered; a corporate governance code that stipulates the responsibilities of the CEOs and members of the board is necessary. The current corporate governance codes are ambiguous in setting out the responsibilities of the members of the board but rather discuss the structure of the board.

Liability

The UK combined code suggests that management has an obligation to provide information but directors should seek clarification or amplification where necessary. This prevents directors from claiming ignorance about the activities of

the CEO or CFO as in the case of the directors in Cadbury Nigeria. It creates awareness of the activities of the corporations allowing questions into decisions being made. Proper clarification into the effects of the EDW might have raised awareness of the liquidity problems of the banks.

The criminal certification of the Sarbanes-Oxley requires CEOs and CFOs to certify in each annual and quarterly report that the report fully complies with the requirements of the SEC Act concerning information contained in the report. It must fairly represent in all material respects, the company's financial condition and results of operations.

The Act imposes fines of up to $1,000,000 and/or up to 10 years imprisonment for making the certification knowing that it does not comply with the requirements of the SEC; and fines of up to $5,000,000 and/or up to 20 years imprisonment for wilfully certifying any periodic report knowing that it does not comply. This is a specified regulation which is a standard for failure in complying.

Erastus Akingbola, the CEO of Intercontinental Bank presented false reports and did not get any legal sanctions while Cecilia Ibru was sent to eighteen (18) months in prison. Bunmi Oni and Ayo Akadiri of Cadbury Nigeria were prevented from running any corporations within Nigeria again. The Nigerian code has no specific regulation concerning false returns or sanctions thereon; allowing CEOs use political connections to redeem themselves from responsibility from their actions.

Independence

The Sarbanes-Oxley Act and the stock market rules in the US on corporate governance assume that outside directors are more effective in monitoring management. The importance of the non-executive directors in protecting the rights of the shareholders of the corporation has also been emphasised in the UK Combined Code. Concerns about a CEO's influence on the board have led the NYSE to propose that each board have a nominating or corporate governance committee that is comprised solely of independent directors.

The UK combined code requires that the board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. According to Section 402(a) of the US Sarbanes-Oxley, it is unlawful for a company to extend credit to any director or executive officer. The Nigerian governance codes split the role of the chairman and CEO but do not emphasise on the activities that may alter the independence of non-executive directors.

Intercontinental Bank, Oceanic Bank and Cadbury Nigeria lacked independent directors who could challenge the influence of the CEOs. Intercontinental banks' non-executive directors' secured loans for institutions in which they were directors. Oceanic bank had non-executive directors who were members of the same family as the CEO of the bank and incidentally the largest shareholders of the bank. The UK code specifies circumstances that may conflict the independence of directors. The UK combined code states that appointments to the board should be made on merit and against objective criteria.

The Sarbanes-Oxley prevents individuals to be appointed to a second chairmanship of a FTSE 100 company. The UK combined code requires that the board should ensure plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board. This succession plan was lacking in Nigerian corporations. CEOs enjoyed life tenure until recently when a line of succession was required for CEOs of Banks. CEOS of Nigerian Corporations do not have any succession plan. This allows individuals with no knowledge of business as CEOs of organisations till they choose to retire.

Responsibility

The Sarbanes-Oxley requires the CEO and CFO of each company to prepare a statement to accompany the audit report to certify they have personally reviewed the report and based on their knowledge, the report does not contain any material misstatements or omissions. Furthermore, that the financial statements and other financial information included in the report fairly present in all material respects the company's financial condition and results of operations. This increases the liability of the CEO; a violation of this section must be knowing and intentional and gives rise to liability. The Nigerian Corporate governance codes lack any legal sanctions which give rise to the liability of a CEO or CFO. Although, the CEO and CFO of Cadbury Nigeria were sent to jail and also the CEO of

Oceanic Nigeria; these were court injunctions. There are no legal measures that ensure the liability of CEOs for disclosing false reports.

The UK combined code (2003) recommends that the chairman should hold meetings with the non-executive directors without the executives present. Also, the non-executive directors should meet without the chairman present at least annually to appraise the chairman's performance and on such other occasions as are deemed appropriate. This is a check and limits the power of any individual on the board. It also ensures all board members perform their functions as required by law.

The responsibilities of the chairman in the Nigerian codes of corporate governance are not specified. The chairman in Cadbury Nigeria lacked information concerning the financial reporting of the organisations he headed. The UK combined code specifies the chairman as responsible for ensuring that the directors receive accurate, timely and clear information. The chairman should also ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees. The UK combined code spells out the responsibility of the chairman. This prevents chairmen of corporations from being figureheads but knowledgeable individuals; unlike Nigeria where retired military men or civil servants with no knowledge of the business are appointed by politicians to head organisations.

The Nigerian code provides a limit on the number of years that can be served by a member of the board to allow for innovation as in the provisions of other codes. However, the UK combined suggests trainings about the activities of the company by the company for its directors. This is more detailed as it allows for fresh ideas and a deeper understanding of the operations of the corporation.

It also provides that the board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. Individual evaluation should aim to show whether each director continues to contribute effectively and demonstrate commitment to the role. The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

This appraisal method ensures that the board is comprised of the right people for the job. Re-election of board members in Nigeria is automatic. A more objective re-election process based on previous satisfactory performance as provided in the UK combined prevents a dormant board. The board should ensure planned and progressive refreshing of the board.

4.2.2 Internal Control

"A company's objectives, its internal organisation and the environment in which it operates are continually evolving and, as a result, the risks it faces are continually changing. A sound system of internal control therefore depends on a thorough and regular evaluation of the nature and extent of the risks to which the company is exposed. Since profits are, in part, the reward for successful risk-taking in business, the purpose of internal control is to help manage and control risk appropriately rather than to eliminate it" (Higgs report (2003)).

The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets. According to the UK combined code (2003) the board should, at least conduct annually a review of the effectiveness of the group's system of internal controls and should report to shareholders that they have done so. The review should cover all material controls, including financial, operational and compliance controls and risk management systems. According to the Sarbanes-Oxley, annual reports are to include an assessment of the effectiveness of the internal controls for the previous fiscal year. It also requires corporations to disclose whether it has adopted a code of ethics for its senior financial officers

The board should also establish formal and transparent arrangements for considering how they apply the financial reporting and internal control principles and maintain an appropriate relationship with the company's auditors. It requires the board to establish an audit committee consisting of independent non-executive directors with at least one member of the audit committee having recent and relevant financial experience. It requires that the main role and responsibilities of the audit committee should be set out in written terms of reference and should include monitoring

the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgements contained in them.

It should review the company's internal financial controls and company's internal control and risk management systems. It should monitor and review the effectiveness of the company's internal audit function. It should further review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant professional and regulatory requirements. The terms of reference of the audit committee, including its role and the authority delegated to it by the board, should be made available separate section of the annual report should describe the work of the committee in discharging those responsibilities. These gives light in to the effectiveness of the board in carrying out its function.

The audit committee should monitor and review the effectiveness of the internal audit activities. Where there is no internal audit function, the audit committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained in the relevant section of the annual report. The audit committee should also have the primary responsibility for making a recommendation on the appointment, reappointment and removal of the external auditors. The annual report should explain to shareholders how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded.

As previously mentioned the Sarbanes-Oxley also requires the CEOs and CFOs to certify that they are responsible for establishing and maintaining internal controls, and have designed and reviewed the effectiveness of internal controls to ensure that they receive material information in a timely manner, and have presented their conclusions about the effectiveness of internal control in a report based on their evaluation. By the end of 2003, all major U.S. stock markets (NYSE, NASDAQ, and AMEX) started requiring that all members of the audit committee be financially literate and that at least one member have financial expertise (reference). The rules assume that members with no experience in accounting or finance are less likely to be able to detect problems in financial reporting.
The Nigerian codes identify transparency and accountability issues in the corporations. They identify weak internal control systems. The failure or lack of internal control systems is evident in all three corporations. The fraudulent activities of the CEOs were perpetuated for several years without any concerns being raised. Fund transfers by Akingbola went undetected so did that of Ibru. The Codes for banks attempt to enhance the role of internal auditors but mainly emphasise on the hierarchy to be followed in appointing auditors and the profile of persons that can be appointed.

There are no policies emphasising transparent measures of financial reporting. There is also a lack of review or assessment of the risk management systems of corporations in the Nigerian codes. The role of the audit committee is well laid out in the UK combined code, aligning responsibility to members of the committee. The Nigerian codes do not have a detailed or laid out plan of responsibility in ensuring an effective system of internal control. They remain abstract in the responsibility of audit committee in ensuring internal control. These gaps in regulation make it easy for organisation to evade the proper enforcement by corporations. The Nigerian codes states it is the responsibility of the board to ensure proper internal control. However, it doesn't go further to apportion responsibility for internal control.

4.2.3 Financial Auditors

The UK auditing standards closely aligned with international auditing standards, state that the auditor's procedures necessarily involve a consideration of the entity's ability to continue in operational existence for the foreseeable future. In turn that necessitates consideration of both the current and the possible future circumstances of the business and the environment in which it operates.

According to the section 104 of the Sarbanes –Oxley, annual quality reviews (inspections) must be conducted for firms that audit more than 100 companies, all others must be conducted every 3 years. The SEC and/or the Board may order a special inspection of any firm at any time. It prohibits an audit partner from being the lead or reviewing auditor for more than five consecutive years (auditor rotation).

The Nigerian codes prohibit financial auditors from performing other financial activities for firms they audit in line with the Sarbanes-Oxley and UK combined code. It also outlines punishments for audit firms that intentionally

certify falsified financial reports. However, the UK code goes further in emphasising that auditors certify that corporations can exist in foreseeable future, this eliminates any ambiguity in the responsibility of auditors in ensuring that corporations' financial statements do not mislead the public. Furthermore, the Sarbanes-Oxley's inspection of these audit firms ensures the quality of the reports provided to the public by audit firms.

4.2.4 Shareholder Activism

It is possible that even if a CEO is influential on the board, he is deterred from hindering the board in its oversight by other control mechanisms such as the monitoring by large shareholders or institutions, or labour market concerns (kay 2010). The UK combined code emphasises the importance of shareholders. It allows shareholders to determine the remuneration of the non-executive directors within the limits set in the Articles of Association.

It specifies that shareholders should be invited specifically to approve all new long-term incentive and significant changes to existing schemes. There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place. The board should keep in touch with shareholder opinion in whatever ways are most practical and efficient.

The chairman should discuss governance and strategy with major shareholders. Non-executive directors should be offered the opportunity to attend meetings with major shareholders and should expect to attend them if requested by major shareholders. The senior independent director should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders.

The board should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of major shareholders about their company. This provides an opportunity to for shareholders to understand the running of the organisations and to be involved as well.

The Nigerian corporate collapses emphasise the weakness in shareholders involvement. The information asymmetry between shareholders and the management of these corporations is vast. As a result of the seemingly obscure nature of business with false financials provided for making investment decisions; and the lack of information arising, shareholders know so little, and can do so little, more often than not. The Nigerian governance code provides for shareholder involvement through the annual general meeting. However, these meetings do not protect the interests of minority shareholders. The UK combined code puts a bridge to the information asymmetry between the shareholders and the board of directors in organisation.

4.2.5 Whistle blowing

According to the Sarbanes- Oxley, employees of corporations and accounting firms are extended "whistle-blower protection" that would prohibit the employer from taking certain actions against employees who lawfully disclose private employer information to, among others, parties in a judicial proceeding involving a fraud claim. Whistle blowers are also granted a remedy of special damages and attorney's fees.

The UK code also protects whistle-blowers. According to UK combined code the audit committee should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters.

The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action. Sarbanes-Oxley also prevents retaliation against analysts by employers in return for writing negative reports. The Nigerian corporate governance codes do not protect the rights of whistle-blowers. This plays a major role in preventing the act contrary to assumptions of poverty and illiteracy argued by different scholars. A rule protecting the rights of whistle blowers in corporate Nigeria would aid in employees coming out with corporate malpractices.

4.2.6 Executive Remuneration

According to the UK combined code the levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

The aim should be to avoid rewarding poor performance. They should take a robust line on reducing compensation to reflect departing directors' obligations to mitigate loss. The Nigeria corporate governance code does not link employee performance to remuneration of directors. This allows the board of directors to be lazy in carrying out their duties.

There should also be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. The Sarbanes-Oxley prescribes the use of independent executives. No director should be involved in deciding his or her own remuneration.

The Nigerian code post consolidation does not mention a policy in deciding executive remuneration. This allows bank executives to decide their packages. The abuse of shareholders' funds by Akingbola and Ibru shows the problem in the lack of policy.

4.2.7 Regulatory bodies

According to the Sarbanes-Oxley, the SEC would study off-balance sheet disclosures to determine the extent of off-balance sheet transactions (including assets, liabilities, leases, losses and the use of special purpose entities) and whether generally accepted accounting rules result in financial statements of companies reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion and make a report containing recommendations to the Congress.

The CEO and CFO must forfeit certain bonuses and compensation received if the company is required to make an accounting restatement due to the material non-compliance of a company. It also mandates regular, systematic SEC review of periodic disclosures by issuers, including review of an issuer's financial statement.

The UK Combined code and Sarbanes-Oxley also created the Financial Reporting Committee to enforce compliance by corporations and the Public Company Accounting Oversight Board to enforce professional standards, ethics, and competence for the accounting profession. It also strengthens the independence of firms that audit public companies. The Sarbanes-Oxley and UK combined code both specify responsibilities for regulatory bodies and established these bodies to ensure enforcement of corporate codes.

The Nigerian corporate governance code has no established body ensuring compliance, the CBN acts as the major regulatory body. The UK and US have supervisory bodies established to monitor the activities of corporations. However, in Nigeria the CBN together with judicial system monitor the activities of corporations. These are usually politically motivated and do not enforce the laid down rules. The EFCC established to examine financial crimes is also highly politicised, with felons not prosecuted most times.

This allows corporations with individuals with political connections to perpetrate financial crimes without being punished; this can be seen in the case of Akingbola who was acquitted of all his crimes. The existing regulatory bodies are also usually filled with individuals who lack the understanding of the financial systems they are expected to monitor.

4.3 Discussion

4.3.1 Effectiveness of the UK Corporate Governance Code and the US Sarbanes-Oxley

The UK Combined Code on Corporate Governance addressed issues about executive remuneration and performance. It also emphasised shareholder activism in furthering corporate accountability and transparency. Its 'comply or explain' principle recognises that one size does not fit all, and that there will be circumstances where it is in the interests of the company and its owners to adopt practices that differ from those set out in the provisions of the Code.

According to FRC Review (2006) the scandals in the US provided evidence of the failure of the US regulatory framework for financial reporting. According to Anup (2005) wide-range legislative and regulatory changes were adopted in response to the widespread outcry that followed these corporate scandals. These regulations are prescriptive in nature and to be obeyed in totality by US registered corporations. However, several scholars have argued that while parts of the U.S. corporate governance system failed in the 1990s, the overall system performed quite well. They suggest that the problem the U.S. governance system now faces is the possibility of over-regulation in response to the scandals.

In the UK corporate Governance Code, non-executive directors are seen as present on the board to protect the interests of shareholders. Non-executive directors should be independent of management and free from any business or other relationship which could materially interfere with the exercise of independent judgement. The presence of a robust team of non-executives directors is seen as an important contributory factor to effective governance practice. However according to Pass (2006) non-executive directors perform their duties on an irregular basis meeting only a few times a year (Board meetings typically once a month and Committee work 3 to 5 times a year). As a result of this, it could be argued their limited involvement, familiarity with and time spent on company matters compromises their effectiveness in protecting shareholder interests.

Furthermore, although a non-executive's contact with the company in any one year is limited this may be counterbalanced by a continuing involvement with the company over a run of years, providing them with cumulative knowledge and familiarity of the company's affairs and thereby enhancing their contribution as time goes by. Conversely, longevity of service can be challenged (as personified by the Codes new 9 year limit guideline) on the grounds that it is likely to lead to a loss of independence. Also, long-serving non-executives may become too subservient and too dependent on executive patronage (for example nomination for their re-election as a nonexecutive) that they are less likely to cause trouble or oppose executive directors' policies and decisions.

Corporate governance aims at promoting corporate transparency and accountability. According to Olayiwola (2010) the objective of corporate governance is to enhance the directors' fiduciary duties and their ethical conduct in managing the affairs of a corporation. Thompson D. (2012) argues that history has shown that increased regulation can never cover all possible forms of corporate abuse. While measured regulatory framework promotes transparency and more uniform and accurate information is good, there are limits to any regulatory regime. Rules become complex or seek to advance social policy preferences unrelated to the general economic welfare which can, and often do, stifle innovation.

However, the Nigerian codes evaluated in this research, show that in comparison to that of developed economies like the UK and US, they may be less effective in ensuring corporate accountability. The Nigerian codes construct hierarchies within organisations without apportioning responsibility in ensuring best corporate governance practices. In a country like Nigeria, where the endemic corruption has been emphasised a system of corporate governance that ensure accountability should be used.

The UK combined code's (which is a major influence in the formation of the Nigerian codes) 'comply and explain' nature allows companies to explain reasons for non-compliance. This allows a level of freedom in its enforcement and makes its adoption easier. However, the US rules based code outlines the procedure for compliance which must be followed and has sanctions attached to it non-compliance. This seems more suitable for a country like Nigeria. Outlining rules and attaching sanctions ensures the liability of erring directors and ensures accountability.

5. Recommendation

Corporate governance codes alone cannot be used in preventing financial scandals. In enhancing effective governance within organisations, a culture promoting this must exist in corporations. Management must imbibe ethical financial cultures in preventing corruption and ensuring a system where internal control measures will be effective. Corporate governance and financial regulations can only function so effectively with a supportive corporate mechanism.

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Adenike Adewale was born in Nigeria. She graduated from Obafemi Awolowo University Ile-Ife, Osun state, Nigeria in 2009 with a bachelor's degree in Accounting. She furthered her education graduating with a Masters' degree in Accounting and Finance from the University of Hertfordshire, Hatfield, United Kingdom in 2012. This research was carried out as part of the requirements for the completion of her masters' degree.

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