

**ABUAD PRIVATE AND BUSINESS LAW JOURNAL (APBLJ)**

Vol. 2, No 1, 2018, Pages 41-65 <https://doi.org/10.53982/apblj.2018.0201.03-j>

Published by Department of Private and Business Law, College of Law,

Afe Babalola University, Ado-Ekiti, K.M 8.5 Afe Babalola Way, Ado-Ekiti,

Ekiti State, Nigeria. ISSN: 2971-706X

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**Legal Framework for Corporate Governance in Nigeria: An  
Appraisal of the 2018 Code of Corporate Governance.**

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**Abstract**

Corporate Governance deals with the decision-making structures of corporations and organizations and establishes a relationship between shareholders' interests such as investors and owners of the issued shares of the corporation and other stakeholders' interests such as employees, customers, suppliers, individuals where the corporation interacts, etc. Great corporate governance is necessary for setting standards required by corporations to establish a distinctive business environment. Over the years there has been no uniform code on corporate governance of general application to regulate and monitor corporate governance in Nigeria. Therefore the study seeks to undertake an examination of the historical background as well as the processes and structure of corporate governance. In particular, the paper will carry out a critical review of the 2018 Nigerian Code of Corporate Governance (NCCG), the latest legal framework on corporate governance unveiled by the Minister for Industry, Trade and Investment on January 15, 2019. The paper will rely on both primary and secondary sources of data. Primary sources are legislations and judicial decisions. Secondary sources are books, journal, online articles and periodicals. The paper concludes that 2018 NCCG is in line with international best practices as it primarily seeksto institutionalize the maximum standard of corporate governance in Nigeria and sensitize the public on the significance of upholding corporate values and principles. The paper recommends that regulatory authorities and all interested parties in the corporate world must collaborate to ensure adequate compliance with the code for the attainment of an effective system of corporate governance in Nigeria.

**Keywords:** Corporate Governance, Institutional Framework, Shareholder, Stakeholder.

## 1.0 INTRODUCTION.

From time immemorial, corporate governance has been an issue of ultimate interest to governments, investors and corporations as a result of its apparent significance to economic wellbeing of a country<sup>1</sup>. Over the years, governments all over the world and international organizations have formulated codes and principles on corporate governance to serve as guidelines to organisations and investors or body of corporate directors and administrators<sup>2</sup>. Increased external investments by countries placed huge quantum of pressure on National Corporate Governance Systems, also due to market globalization, governments and policy advocates of developing economies now formulate and implement mechanisms fashioned towards advanced corporate systems in tandem with international best practices<sup>3</sup>. Thus corporate governance pioneered the framework for implementation and realization of the operational goals of corporate entities and present the processes of overseeing problems<sup>4</sup>. Corporate governance defines the extents and limits of rights of corporate entities, spells out the responsibilities and enumerates the rules and procedures governing sound decision-making for all principal actors in corporate

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<sup>1</sup>Surendra.Arjoon, Corporate Governance: An Ethical Perspective, (2005), *Journal of Business Ethics*

<sup>2</sup>Stilpon Nestor, 'International Efforts to Improve Corporate Governance: Why and How' <[www.oecd.org](http://www.oecd.org)> Corporate accessed 10 July 2019

<sup>3</sup>Junaidu Marshall, Corporate Governance Practices in Nigeria :Challenges and Prospects, (2015) (3) *International Journal of Business and Law Research*

<sup>4</sup> 'Basic Policy for Pioneer Group Corporate

Governance' <<https://global.pioneer.info/governance>> accessed 10 July 2019

entities. Through corporate governance the principles of fair play, transparency and accountability in corporations is assured<sup>5</sup>.

Furthermore, corporate governance provides a frame of reference for holding corporate managers accountable to those who have legitimate interests in the organizations<sup>6</sup>. Therefore, corporate governance is crucial to all spheres of corporate institutions be it banking, manufacturing, insurance, importation and exportation etc<sup>7</sup>. In recent times, financial institutions have focused their research majorly in areas of corporate governance. Much focus has been on separating ownership from control for the purpose of ensuring the institutionalization of a transparent and trustworthy system of governance in corporate organisations<sup>8</sup>.

Corporate organizations are legal persons in law, the legal position of corporate bodies are vital and usually conferred by statutes of the countries. By this nature, a corporate entity has the legal right to acquire property, sue and be sued and the right to perpetual existence<sup>9</sup>. The conferment of the legal status of a corporate institution varies amongst countries, in some jurisdictions corporate entities are created by statutory laws while some are subject to common law provisions.

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<sup>5</sup> Vincent Dessain and others, 'Corporate Governance and Ethics: Shareholder Reality, Social Responsibility or Institutional Necessity' (2008) (2), Dans M@n@GEMENT, p 65 <[www.cairn.info/revue-management-2008-2-page-65.htm](http://www.cairn.info/revue-management-2008-2-page-65.htm)> accessed 4 August 2019

<sup>6</sup> Adenike Adewale, 'An Evaluation on the limitations of the corporate governance codes in Nigeria: Preventing Corporate Collapses in Nigeria', (2013) (7)(2) *IOSR Journal of Business and Management*, 110-118

<sup>7</sup> Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property*, Columbia University, Council for Research in the Social Sciences (Macmillan, New York 1932).

<sup>8</sup> Mohammed Abudullah and Naheem Mahtab, 'Corporate Governance in Financial Institutions in Bangladesh: A preliminary Study', (2016) (6) *Arabian Journal of Business and Management Review*

<sup>9</sup> Sreeti Raut, 'An Analysis of Corporate Governance – Concepts and Issues', Research Scholar with the Institutes of Directors India In M Maradi and P Dasar: 'An Analysis of Corporate Governance Issues in the India Context: Challenges and Prospects', (2013) (7)(2) *International Journal of Management Research*

In order to minimize unproductiveness in the corporate system, corporate governance was introduced as a control mechanism. For instance, it is a tool for evaluating the performance of managers through the use of an independent third party (external auditor) who then authenticate the veracity of records put forth by the company administrators to investors<sup>10</sup>.

Wide incidence of a number of corporate bankruptcies experience around the world can be attributed to a lot of factors depending on countries institutional and regulatory policies, as well as their goals and financial competence. One factor common to countries experiencing economic depletion is lack of effective administration emanating from economic mediocrity<sup>11</sup>. An investigation conducted by the World Bank<sup>12</sup> in sixty developing Nations revealed that lack of transparency, accountability and corrupt practices are major hindrances to economic advancement in developing countries<sup>13</sup>. According to Adekoya<sup>14</sup>, the parameter use in gauging the performance of corporate entities is corporate governance. Mellahi<sup>15</sup> on his part attributes collapse of corporations to negligence by the principal management in providing good governance.

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<sup>10</sup> *Ibid*

<sup>11</sup> Adewale (n6)

<sup>12</sup> World Bank Documents and Reports' <documents.worldbank.org> accessed 13 June 2019

<sup>13</sup> Samathri Kariyawasam, 'Corporate Collapses - To What Extent Does Failure Follow Corporate Governance

Contribute' (2011) <Http://Www.Apbsrilanka.Org/General/03\_Articals/Articals\_23\_Ann.Html > accessed 3 August 2019

<sup>14</sup> Ayodele Adekoya A, Corporate Governance Reforms in Nigeria: Challenges and Suggested Solutions, (2011)(6)(1), *Journal of Business, Governance and Ethics* 38 -46

<sup>15</sup> Kamel Mellahi, 'The Dynamics of Boards of Directors in Failing Organisations, Long Range Planning' (2005)(38)(3)

<[https://www.researchgate.net/publication/222373979\\_The\\_Dynamics\\_of\\_Boards\\_of\\_Directors\\_in\\_Failing\\_Organisations#>261-279](https://www.researchgate.net/publication/222373979_The_Dynamics_of_Boards_of_Directors_in_Failing_Organisations#>261-279), accessed 7 August 2019

According to KPMG, 'alignment with leading corporate governance practices will guide companies in establishing a framework of processes and attitudes that increases their value, builds their reputation and ensures their long term prosperity'<sup>16</sup>. Generally, private and public corporate organisations recognize the significant importance of well-structured corporate governance as a booster of operational performance<sup>17</sup>. It is further recognized that a good corporate governance must; (i) improves strategic thinking at the top by inducting independent directors with wealth of experience, and a host of new ideas (ii) rationalizes the management and monitoring of risk that a firm faces globally (iii) limits the liability of top management and directors, by carefully articulating the decision making process (iv) assures the integrity of financial reports (v) has long term reputational effects among key stakeholders, both internally and externally<sup>18</sup>

## **2.0 HISTORICAL DEVELOPMENT OF CODE OF CORPORATE GOVERNANCE IN NIGERIA.**

There are several discrepancies in accounts of how the Nigerian corporate governance evolved as a result of lack of a uniform code in the corporate sector for many years<sup>19</sup>. However this system of legislation has its roots in Nigeria's colonial past<sup>20</sup>. After Nigeria attained

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<sup>16</sup> The Nigerian Code Of Corporate Governance 2018, Highlights and Implications Board Advisory Services January 2019, Available at <https://assets.kpmg>advisory> accessed on 7 July 2019

<sup>17</sup>Raut (n9)

<sup>18</sup> Ibid

<sup>19</sup>Olayinka Philips and others 'Code of Corporate Governance 2018' <<https://businessday.ng/insight-2/article/the-nigerian-code-of-corporate-governance-2018/,Nigeria>>accessed 5 July, 2019

<sup>20</sup>Elewechi Okike, Corporate Governance in Nigeria: The Status Quo, (2007)(17)(5), *Accounting, Auditing & Accountability Journal*, 705-730.

independence in 1960, there was an immediate need to review all British legislations applicable to Nigeria, the reason being that Nigeria's business venture was controlled majorly by the British masters at that time bringing with them their foreign legislation which failed to deal with cogent business and corporate issue and to take cognizance of the distinctiveness of Nigeria's socio-cultural and political environment. It also did not address the rapid economic and commercial developments of the country<sup>21</sup>. Consequently, Nigeria economic development was seriously undermined. Then the company's ordinance of 1922 (drafted after the UK Act of 1908) was expunged.

The 1922 Companies Ordinances later became the Companies Act of 1958. It developed to become Business Act of 1968 before the formal Companies Act of 1968 emerged as the Nigerian business law for about twenty years<sup>22</sup>. The Act improved better on previous laws by introducing a clause for giving accounts thereby encouraging accountability on the part of directors for better participation in the affairs of the company by the shareholders.<sup>23</sup>

In its earliest years, Nigeria did not have a consolidated law dealing with corporate governance. The first effort made at having an institutional framework on corporate governance was when the various legislations were amended and the Companies and Allied Matters Act (CAMA) enacted, leading to the establishment of Corporate Affairs Commission,

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<sup>21</sup>ibid

<sup>22</sup> Gabriel Adegbite, 'Corporate Governance of Banks in Developing Economies: Exploratory Longitudinal Study of Nigeria and Ghana', Final PhD Thesis Submitted, Glasgow Caledonian University, Chambers, B. (2009) *New Frontiers for Corporate Regulations in Nigeria* <http://www.Hg.Org/Article.Asp?Id=6228> accessed 3 June 2019

<sup>23</sup> Elewechi Okike, 'Corporate Audit Report and the Structure of the Market for Audit Services to Listed Companies in Nigeria: A Longitudinal Study'. A Research Report Submitted to the Research Committee of the Institute Of Chartered Accountants Of Nigeria (Ican). (1995)

a regulatory body vested with the powers to regulate incorporation and saddled with responsibilities to administer the Act. The establishment of CAC was informed as a result of governments' commitment to the advancement of corporate governance in Nigeria.

At the commencement of democratic governance in 1999, the government embarked on several initiatives to boost the economy of the country in terms of reforms in the form of medium-term strategy called the National Economic Empowerment and Development Strategy (NEEDS). Objectives of NEEDS were to improve on national economy, eradicate poverty and secure the attainment of Nigeria's Millennium Development Goals (MDG). To steer these objectives, the government embarked on addressing the country's corporate governance framework. This led to the review of CAMA in 2004 and the subsequent emergence of Central Bank of Nigeria Act. The Central Bank of Nigeria Act, the actual regulatory body for the operations of banking and other financial institutions was birthed. In 1991, the Banks and non-financial institutions Act (BOFIA) was enacted. Securities and Exchange Commission Rules came into being in 1995<sup>24</sup>.

According to Okpara<sup>25</sup> corporate accountability gained importance in the 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 owned enterprises pose challenges to the practice of corporate governance. A survey of enterprises in six selected states in Nigeria conducted by the Development Policy Centre in 1999 found that

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<sup>24</sup>Obigbemi Imoleayo and others, Corporate Governance Mechanisms and the Financial Performance of Companies in Nigeria (2006) *Journal of South Africa Business Research*

<sup>25</sup> John Okpara, Perspectives on Corporate Governance Challenges in a Sub-Saharan African Economy, (2011(5)(1) *Journal of Business & Policy Research* 110 - 122

only 13.3% of Nigerian companies were listed on the Stock Exchange. The results showed that close to 38% of businesses may be operating outside the purview of the company law provisions (operating as partnerships or sole proprietorships) while close to 87% of businesses operated outside the scope of stock exchange regulations<sup>26</sup>. A major finding carried out by Adegbite<sup>27</sup> revealed that corporate governance disclosures of banks have greatly improved in Nigeria due to general awareness and periodic review or improvements in the regulatory structures and codes by the SEC and CBN. Despite this development, different regulations are applicable to different sectors of the economy. As a result of this weak corporate culture in these institutions, Nigeria witnessed a very high incidence of corporate failures. Consequently, Nigeria like other countries continued to make conscious efforts at advancing effective corporate system. In 2003 the Security and Exchange Commission (SEC) set up a committee to look into the issue of corporate governance under the chairmanship of Atedo Peterside, with a mandate to identify weaknesses in the current corporate governance practice in Nigeria and fashion out necessary changes that will improve Nigeria's corporate governance practices<sup>28</sup>. As a result, a report was produced which yielded the first comprehensive code of best practices for public companies in Nigeria designed in line with the Organisation for Economic Co-operation and Development (OECD) principles of corporate governance, the king report of South Africa, the corporate

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<sup>26</sup>Patrick Ogebe and others (2013)<http://mpr.ub.uni-muenchen.de?46173> accessed 7 June 2019, 9

<sup>27</sup>Adegbite (n22)

<sup>28</sup>Code of Corporate Governance in Nigeria 2003, European Corporate Governance Institute <<https://ecgi.global/file/20190607>> accessed 7 June, 2019



governance standards codes in UK and Sarbanes Oxley in, USA<sup>29</sup>. It emphasizes the roles of the board of directors and management, shareholder rights and privileges and the audit committee. Hence the code of corporate governance was first published in 2003 by SEC<sup>30</sup>. Consolidating on this, the Central Bank of Nigeria released its code of governance for banks in Nigeria post consolidated 2006, thereafter came the code of corporate governance for insurance companies in 2007, and in 2008, the code of corporate governance for licensed pension operators emerged<sup>31</sup>. In 2007 the amended investment and securities act was introduced and the same year, an amendment was made to Central banks of Nigeria's Act<sup>32</sup>.

Several calls have been made on regulators across the world to toughen the code of corporate governance due to the incessant financial crisis and its detrimental effects on the global economy<sup>33</sup>. As a result of the need to develop a comprehensive financial and corporate reporting mechanism geared towards the enforcement and monitoring corporate efficiency, Nigeria, on her part enacted the Financial Reporting Council of Nigeria Act 2011. The Act provides for a financial reporting council responsible for issuing, monitoring and enforcing accounting, auditing,

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<sup>29</sup>ObigbemiFayoke and others, Corporate Governance Mechanism and Financial performance of Companies in Nigeria, (2016) *Journal of South African Business Research*

<sup>30</sup>*Ibid*

<sup>31</sup>Rosemary Obasi "Corporate Governance Research Opportunities in Nigeria: A National Development Issue, *International Letters of Social and Humanistic Sciences*", (2019) Vol. 87, p 13-22

<sup>32</sup>AmudaAfolabi, Examining Corporate Governance Practices in Nigerian and South African Firms, *European Journal of Accounting Auditing and Finance Research* (2015)(3)(1), 10-29.

<sup>33</sup>Corporate Governance :Lessons from the financial Crisis' <[oecdobserver.org/news/archivestory.php/aid/2931/corporate\\_governance\\_Lessons\\_from\\_the\\_financial\\_crisis.html](http://oecdobserver.org/news/archivestory.php/aid/2931/corporate_governance_Lessons_from_the_financial_crisis.html)> accessed 9 July 2019

and setting standards for Nigerian public corporations and public interest establishments. The FRC began operation in 2011.

Not until 2016, there was no common body of regulation promulgated for general application to corporation in Nigeria<sup>34</sup>. Out of determination to usher in a unified Corporate Governance Code in conformity with international best practices, the FRC developed the 2016 code of corporate governance<sup>35</sup>, the code made it mandatory for private sectors while the non-profit making entities were to operate on one principle of compliance or justify non-compliance “basis”<sup>36</sup>. Sadly, whatever respite the emergence of the 2016 NCCG brought was brief, as it was suspended due to controversies relating to its legality and the inability to create a conducive environment for business to thrive in line with the goals of the Federal Government of Nigeria<sup>37</sup>

Two years later, precisely in 2018, FRC pursuant to its powers under the 2011 FRCN Act, unveiled the draft of the Nigerian Code of Corporate Governance (NCCG) 2018<sup>38</sup> after the suspension of the earlier code of 2016. On 15th January 2019, the Minister for Trade and Investment

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<sup>34</sup> Highlights of the Nigerian Code of Corporate Governance 2018 <https://www.templars-law.com/highlights-of-the-nigerian-code-of-corporate-governance-2018/> Accessed on 4 July 2019

<sup>35</sup> Financial Reporting Council of Nigeria (FRC) Of Nigeria: National Code of Corporate Governance 2016 <<https://www.proshareng.com>> accessed 4 July 2019

<sup>36</sup> Highlights of the Nigerian Code of Corporate Governance 2018 <https://www.templars-law.com/highlights-of-the-nigerian-code-of-corporate-governance-2018/> accessed 4 July 2019

<sup>37</sup> George Etomi & Partners Nigeria: The Financial Reporting Council of Nigeria-National Code of Corporate Governance, <[www.mondq.com/Nigeria/x/589962/corporate+GGgovernance/The+financial+reporting](http://www.mondq.com/Nigeria/x/589962/corporate+GGgovernance/The+financial+reporting)> accessed 4 July, 2019

<sup>38</sup> Pursuant To The Powers Of The FRC Under Section 11(C) And Section 51(C) of the Financial Reporting Council Of Nigeria Act, 2011 in Line with International Best Practices on Corporate Governance

issued the Regulation on the Adoption and Compliance with Nigerian Code of Corporate Governance, 2018. The code came into being due to the need merge manifold of laws of corporate governance and adapted to create public awareness on the essentials of corporate values and ethical practices, to raise the probity in doing business and recondition public reliance in the country's economy<sup>39</sup>.

### 3.0 PRINCIPLES OF CORPORATE GOVERNANCE<sup>40</sup>.

Clearly, corporate governance is clearly defined on the principles of accountability, responsibility, transparency and fairness<sup>41</sup>. No single factor can exist independent of the other, as all highlighted element must intersect for there to be an effective system of governance in corporate institutions. The Organisation for Economic Co-operation and Development published its 'Principles of Corporate Governance' in 2004<sup>42</sup>. It follows that all companies who aim towards an effective system of governance and interested in upholding ethical value in corporate governance must put up an internal mechanism in line with the OECD principles which provides for':

- **Rights of shareholders:** Legal frameworks promulgated to regulate corporate governance should protect shareholders and facilitate their rights in the company. The principle requires companies to generate investment returns for the risk capital put

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<sup>39</sup>National Code Of Corporate Governance 2018: Learning From The 2016 Controversies, www.Blackwoodstone.Com accessed 15 July 2019

<sup>40</sup>TitilayoFowokan and others, Comparative Analysis of Nigerian and the United Kingdom's Corporate Governance Codes: Tax Risk Management Approach(2018)(1) *Special Edition Caleb International Journal of Dev.Studies*, 1-52

<sup>41</sup>Reut (n9)

<sup>42</sup> OECD Principles of Corporate Governance 2004 Edition

<<http://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf>>accessed 4 June 2019

up by the shareholders. Managers of companies should also make necessary disclosures by presenting the true position of events to interested parties and the public. An account of the financial position of the corporation should be clearly given<sup>43</sup>.

- **Equitable treatment of shareholders:** shareholders should be treated equitably (fairly), including those who constitute minorities, individuals and foreign shareholders. Shareholders should have redress when their rights are contravened or where an individual shareholder or group of shareholders is oppressed by the majority. Fairness in governance must be the hallmark of the board of directors. The board must be impartial in discharging their duties and must seek advice and opinion from experts in the fields where they lack adequate knowledge
- **Stakeholders:** Corporate governance framework should recognise the legal rights of stakeholders and facilitate cooperation with them in order to create wealth, employment and sustainable enterprises.
- **Disclosure and transparency:** Companies should make relevant, timely disclosures on matters affecting financial performance, management and ownership of the business. Transparency in governance is of utmost importance. Directors and shareholders must be able to have a clear evaluation of dealings and performance of the company, which in turn will provide means for shareholder to monitor the board<sup>44</sup>. Functions and duties of the board and management of the companies should be publicized. Similarly, practical mechanism should be put in place to make

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<sup>43</sup> Felix Lessambo, The International Corporate Governance System: Audit Roles and Board Oversight, The International Journal of Accounting. (2014)p.7

<sup>44</sup>*Ibid*

independent verification so as to determine the veracity of facts put forward.

- **Board of directors:** Board of directors should set the direction of the company and monitor management in order for the company to achieve its objectives. The corporate governance framework should underpin the board's accountability to the company and its members. Stakeholders in a company as of right can prescribe certain standards as guidelines to compel companies' administrators to efficiently discharge their duties. Therefore a well-structured system of corporate governance will concentrate on ensuring that the board of governors and management team are held accountable for their actions or inactions, good corporate governance will focus on accountability on the part of; (a) the governing body (the board), and ( b) the management team<sup>45</sup>

#### **4.0 PERUSAL OF THE 2018 NIGERIAN CODE OF CORPORATE GOVERNANCE CODE<sup>46</sup>**

As clearly posited, good corporate governance is a key driver in the establishment of sustainable enterprise<sup>47</sup>. To experience lasting economic growth, there is a need to provide standardized legal framework for corporations by providing benchmark for their

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<sup>45</sup>*Ibid*

<sup>46</sup>Financial Reporting Council Of Nigeria Federal Ministry of Industry, Trade and Investment Adoption and Compliance With Nigerian Code Of Corporate Governance 2018, <<https://www.proshareng.com/news/Business%20Regulations,%20Law%20&%20Practice/The-FRCN-Nigerian-Code-of-Corporate-Governance-2018/43590>>, accessed 19 August 2019

<sup>47</sup>The Nigerian Code Of Corporate Governance 2018, Highlights and Implications Board Advisory Services January 2019, <<https://assets.kpmg>advisory>> accessed 7 July 2019

operational ceiling<sup>48</sup>. The objective of the code is to regulate corporate governance and enhance it in line with international best practices in Nigeria. As a result, the core values and principles of corporate governance will be strengthened and subsequently public confidence bolstered, thus facilitating increased trade and investment. The Code adopts an “Apply and Explain” approach<sup>49</sup>. This simply means that companies can adopt principles favourable for operation irrespective of the nature, sizes and types of operation<sup>50</sup>. Specifications for board’s structure and composition (to be occupied by persons of considerable knowledge, skills and experience)<sup>51</sup> is provided in the code so as to enable companies function effectively in executing their goals and in realizations of their roles in directing the affairs of the Company. Under the code, the board shall be composed of ; a Chairman, managing director/chief executive director, company secretary, executive directors, non-executive directors and independent non-executive directors as officers of the board. Also corporate entities will need to include in their annual reports for the financial years ending , a report (in the form and manner to be prescribed by FRCN) ,their compliance with the NCCG<sup>52</sup>. The 2018 NCCG Code consists of seven (7) parts and twenty-eight (28) principles<sup>53</sup> that focus on the following areas: Board of directors and

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<sup>48</sup>*ibid*

<sup>49</sup> ( n 35)

<sup>50</sup>*Ibid*

<sup>51</sup> Principle 2

<sup>52</sup>Udo-Udoma and Bello Osagie, ‘Update: What You Need To Know About The Nigerian Code Of Corporate Governance 2018,<<https://www.uubo.org/news-events/what-you-need-to-know-about-the-nigerian-code-of-corporate-governance-2018/>> accessed 19 August 2019

<sup>53</sup>Para E; Structure of the Code

officers of the board, assurance relationship with shareholders business conduct and ethics sustainability; and transparency etc. The code require that public companies (whether listed company or not), all private companies or other regulated entities, all concessional or privatised companies; and all regulated private companies being private companies that file returns to any regulatory authority other than the Federal Inland Revenue Service (FIRS) and the Corporate Affairs Commission (CAC) to adopt and comply with the regulations contained in the code as soon after commencement<sup>54</sup>. Highlights of the 2018 NCCG is as follows;

### **1. Board of directors / Officers of the Board<sup>55</sup>**

The code is not specific on the number of members of the board but states that board members must adequately meet the demand of the size of the business enterprise.<sup>56</sup>

Responsibilities of the board of directors are expressly spelt out under the code<sup>57</sup>. Also, where intending directors of a company presently occupy the board membership in another company such facts must be disclosed. This is expedient for assessing the capability of such a person to perform dual directorial responsibilities effectively.

The code prescribes an intermingling of executive, non-executive, and independent non-executive members with larger number of non-executive directors. However, the Code does not specify the number of

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<sup>54</sup> National Code Of Corporate Governance 2018: Learning from the 2016 Controversies, <<https://blackwoodstone.com/wp-content/uploads/2018/06/CGC-Learning-from-the-2016-controversies.pdf>, Accessed>19 August 2019.

<sup>55</sup> Part A Para 1

<sup>56</sup> Principle 2(2.1)

<sup>57</sup> Part A Principle 1

members required on boards but recommends that majority of the non-executive directors must be independent non-executive directors<sup>58</sup>.

The above provisions by implication allocate to companies the liberty to determine the size and composition of their Boards, within the confines of the requirements set out by their sectorial regulators. As a result, company administrators have control over their cost of governance.

## **2 Chairman, Managing Director and Chief Executive Officer**

The Code states that the offices of the Chairman of the Board and Chief Executive Officer shall be occupied by different individuals<sup>59</sup>. The Chairman of the Board is also required to be a Non-Executive Director. It further prohibits the Managing Director and Chief Executive Officer or an Executive Director of a company from taking a subsequent appointment as the Chairman of that company<sup>60</sup>, though with a proviso that a former managing director intended to be appointed as board chairman will have three years' interval before assuming the position<sup>61</sup>. Furthermore, while the board chairman is vested with the inclusive role of providing leadership to the company and putting forward a competent body of administrators<sup>62</sup> he is not required to be involved in the daily activities of the company<sup>63</sup>. The chairman is however required to meet frequently with non-executive directors<sup>64</sup>.

This provision articulates separation of functions between the non-executive directors, the chairman inclusive and the executive directors.

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<sup>58</sup>Principle 2.3(b)

<sup>59</sup> Principle 2.7

<sup>60</sup> Principle 2.9

<sup>61</sup>Principle 3.3

<sup>62</sup>Principle 3

<sup>63</sup> Principle 3.2

<sup>64</sup>Principle 3.6



The roles and responsibilities of each director should be formally articulated in the board charters and appointment letters to directors<sup>65</sup>. By providing, that a former chief executive officer or an executive director must have retired and waited for a period of three years before they can be considered for the position of chairman will curtail the possibility of conflicts of interests.

### **3. Company Secretary**

The duties and functions of company secretaries are well spelt out. Company's secretaries provide supports and guidance for the board necessary for the smooth operation of the company<sup>66</sup>. The code mandates companies to create an enabling environment for company secretaries to function optimally<sup>67</sup> and to also embark on periodic performance evaluation and approval of promotion as and when due<sup>68</sup>. Where the Company Secretary is an employee of the Company, he should be a member of senior management and should be appointed through a rigorous selection process similar to that of new Directors<sup>69</sup>. The Company Secretary should have both functional and administrative responsibilities. The functional responsibility is to the Board through the Chairman, while administratively, he reports to the MD/CEO<sup>70</sup>.

### **4. Meetings of the Board**

Accordingly, under the code, board meetings are the principal vehicle for conducting the

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<sup>65</sup> Principle 12.8

<sup>66</sup> Principle 8

<sup>67</sup> Principle 8.3

<sup>68</sup> Principle 8.5

<sup>69</sup> Principle 8.2

<sup>70</sup> Principle 8.4

business of the board and successfully fulfilling the strategic objectives of the Company<sup>71</sup>. Board meetings are required to be held at least once in three months annually for the board to effectively carry out its oversight functions and to monitor the performance of the management<sup>72</sup>. Attendance at meetings are prerequisite for the return of a director, as a result, the code enjoins directors to attend board meeting regularly<sup>73</sup>. For directors to make meaningful contributions at meetings it is expected that they are kept abreast of proposed discussions before and therefore the Minutes of meetings of the Board and its committees should be prepared and forwarded to the directors<sup>74</sup>.

## **5. Board Committees**

To ensure efficiency and expertise, the code requires the Board to delegates some of its functions, duties and responsibilities to well-structured committees, without abdicating its responsibilities<sup>75</sup>. Boards are to establish committees such as remuneration, nomination and governance, audit, and risk management committees, and are allowed to delegate some of their functions to these committees for optimal operation. It is allowable to merge the roles of at least two committees if situation demands. The Code also allows for double membership for one or more members of the audit and risk management committees because of their interconnected where the functions are vested in separate committees<sup>76</sup>.

## **6. Protection of Shareholder Rights**

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<sup>71</sup> Principle 10

<sup>72</sup> Principle 10.1

<sup>73</sup> Principle 10.2

<sup>74</sup> Principle 10.3

<sup>75</sup> Principle 11

<sup>76</sup> Principle 11.1.7

The code demands an equitable treatment of shareholders and the protection of statutory and general rights, particularly the interest of minority shareholders to promote good governance<sup>77</sup>. The Board is to ensure that shareholders at annual general meetings preserve their effective powers to appoint and remove directors<sup>78</sup> and that all shareholders are treated fairly and equitably. Also shareholders, however large his shareholding or whether institutional or otherwise, should be given preferential treatment or superior access to information or clarifications on demanded facts and figures<sup>79</sup>. The code protects the minority shareholders are from abusive actions by controlling shareholders<sup>80</sup>

## **7. The Internal Control**

Under the Code, responsibilities are ascribed to the audit committee<sup>81</sup>. Specifically, the audit committee is required to see to it that a comprehensive internal control framework is enacted. The audit committee must also ensure that internal and/or external reports are submitted annually<sup>82</sup>. The Code expects companies to have an established internal audit unit to be headed by a member of the senior management<sup>83</sup>, adjudged competent in governance, risk management and internal control systems<sup>84</sup>. And also ensure the establishment of an exercise of oversight on the internal audit function which in turn provides assurance on the effectiveness of the internal controls. It is

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<sup>77</sup>Principle 23

<sup>78</sup> Principle 23.1.1

<sup>79</sup> Principle 23.1.2

<sup>80</sup> Principle 23.1.3

<sup>81</sup> Principle 11.4

<sup>82</sup> Principle 11.4.7.3

<sup>83</sup> Principle 11.4.3

<sup>84</sup> Principle 11.4.4

expected that a review of the report is submitted by the internal auditor to be assessed by the audit committee<sup>85</sup>

## **8. Whistle Blowing**

Company boards are required to institute a whistle blowing framework whereby investors will report unethical conduct and violations of any laws or internal/external policies.<sup>86</sup> This requirement is geared towards evaluating the behavioral conduct or possible violation of the internal framework and prescription of the deserving penalties to prevent a repeat of such illegality. Under the whistleblowing policy, the identity of the whistleblower should be made confidential and protected from any kind of disadvantage as a result of the disclosures made, if the whistleblower suffer any kind of loss due to his/ her role, then adequate compensation must be given<sup>87</sup>. By implication, stakeholders in cooperation with regulatory bodies must work in consonance to ensure that the excesses of violators of corporate frameworks are curbed and to ascertain that corporate entities conform to international best practices in their institutional operations.

## **9. Transparency**

The importance of accountability and communication cannot be overemphasized in the attainment of transparency in corporate governance. To achieve these goals companies are expected to interact with their shareholders with a view to keeping stakeholders informed of the activities of the company so that they can make informed decisions<sup>88</sup>.

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<sup>85</sup> Principle 11.4.7.2

<sup>86</sup> Principle 19

<sup>87</sup> Principle 19.2

<sup>88</sup> Principle 27

In addition the board is required to reveal actions or inactions which even though not explicitly stated, they are of the opinion that failure to disclose such will have detrimental effects either presently or in future on the company's integrity<sup>89</sup>. Also, companies will be required to disclose the extent of their compliance with the principles of the code in their annual report<sup>90</sup>.

## **10. Sustainability**

To achieve a continuing business performance the code requires that companies will give consideration to issues pertaining to the durability and sustainability of its operations such environmental, social, occupational and community health and safety hazards<sup>91</sup>. Policies related to this issue is expected to be implemented by company board.

Inarguably, the 2018 NCCG is a welcome development, the code contain far-reaching provisions which cannot be completely exhausted in this work. However, this study has attempted a review of some of the salient sections. It is hoped that as stipulated in the code companies' boards will take up their responsibility by ensuring that their companies comply with the laws of the country and other applicable laws relating to corporate governance. To achieve this purpose companies will need to develop structures and processes needed support and promote a system of regulatory compliance.

## **5.0 CONCLUSION.**

Corporate governance is important to all legally established corporate entity irrespective of size, nature or type of business dealings. Corporate

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<sup>89</sup> Principle 28.4

<sup>90</sup> Principle 28.3

<sup>91</sup> Principle 26

entities must be regulated and monitored accordingly as decisions taken and actions executed could have lasting effects on groups, organisations, individuals and the country at large. Most importantly corporate managers must ensure that there is transparency in decision-making processes so that responsibilities can be appropriated before taking actions and also ensure that accountability is entrenched for the purpose of promoting and preserving the interests of investors and stakeholders in the company.

As earlier mentioned in this work the importance of corporate governance cannot be overemphasized. It was this realization that birthed the 2018 NCCG, formulated in tandem with international best practices. Similarly, the need for Nigeria to have a consolidated corporate governance system after many decades of operating sectorial legislation also necessitated the enactment of the 2018 NCCG.

The code will no doubt contribute immensely in ensuring that corporate entities in Nigeria enjoy a robust and vibrant corporate governance practice looking at the underlining principle of “Apply and Explain” employed therein, a shift from the mandatory approach. In this regard, where a company regulated by the Code, finds out that substantial compliance to one or more recommended principle or practice under the Code may not be in its best interest; it may choose to apply some other practice, or adopt a different approach, as long as it still achieves the central tenets of good corporate governance such as, fairness, accountability, and transparency

An important factor is the role of all key players in corporate governance in Nigeria. They must ensure compliance by formulating policies and putting in place processes to reflect all essential provisions

of the code so as to have successful corporate governance practices. They must also ensure that sanctions for non-compliance are applied appropriately.

Due to the newness of the code, considerable implementation may be cumbersome for those who in the past have not been regulated by a code of corporate governance. Therefore, this study, suggests that corporations who in the past have not been regulated under any code of corporate governance, should carry out preliminary assessment of the current corporate governance system and ensure it aligns with the principles set forth in this code. Also business entities to which this code apply should endeavor to put in motion appropriate processes and practices to address any observed gaps.