Metrics of Statutory Functionality: Corporate Governance and Nigerian External Auditors Examined

Okesola, Anthony Olabanji*

Abstract

Corporate governance refers to the process that governs and directs firm managers to take decisions that are in line with the shareholders goal of wealth maximization. The survival of most corporate organizations beyond the foundation shareholders depends on the external auditors. It is for this reason this paper examines the nexus between corporate governance and external auditors responsibilities in turning around the fortune of the companies in Nigeria. The paper argues further, that though an external auditor that give a positive report on a corporate organization, that fails within a reasonable time after the report resulting from financial scandals, is now answerable for the audit done, more stringent penalties should imposed on external. The paper concluded by suggesting among others that appointment and dismissal of external auditors should left with shareholder and not management and audit committee.

Keywords: Companies, Corporate Governance, Audit, Responsibilities, SEC.

1. Introduction

Companies are supposed to abide by the rules and regulations governing corporate practice. Consequently, concerns about corporate governance have grown over the years both locally and internationally. Corporate governance has succeeded in attracting a good deal of public interest because of its apparent importance for the general wellbeing of corporations and the stakeholders in general.

Before we proceed to corporate social responsibility, (CSR). It is apposite to answer the above question succinctly. Nigeria has witnessed it fair share of corporate failures/ scandals; ranging from Arthur Anderson, Cadbury Nigeria Plc, failed banks[1], just to mention a

* Ph.D, Lecturer, Faculty of Law, Ajayi Crowther University, Oyo State Nigeria; alabiojo1@gmail.com;08038280472

[1] Section (5) (g) CAMA

few. Outside the country, the crashing of Enron, Paramelat MCI, Ma River group. Northern Rock, Le,hman brothers, AIG, Royal Bank of Scotland, etcetera. The above corporate failures and scandals were as a result of poor corporate governance implementation in these companies, this has led to avalanche of responses from various countries. In the United States of America (USA), the Enron projects scandal led to the enactment of sarbanes Ox`ley Act of 2002 (Sox). The United Kingdom responded with Cadbury report published in 1992, which created a new set of code of Best practices for UK listed companies. There was the Maynors report 1995 which was targeted at institutional investors to ensure compliance with good corporate governance practices in UK. Another was Greenbury report (1995) which focused on directors' remuneration. Higgs report (2003) on role of non-executive directors and smith report (2003) on audit committees and Sir David Walkers report (2009) on bank crisis and finally UK code of corporate Governance (2012).

In Nigeria corporate governance is regulated by Companies and Allied Matters Act[2] Securities and Exchange Act.[3] There are also various Code of corporate governance presently operational in Nigeria. They include Securities and Exchange Commission Corporate Governance Code[4] and other industry specific code includes Central Bank of Nigeria Code of Corporate Governance[5] PENCOM code NAICOM code[6], for bank pensions and insurance industries respectively.

2. Advantages of Corporate Governance

i. It creates willingness on the part of directors to account to shareholders transparently in the interest of the company.
ii. Good corporate governance ensures that shareholders are given equal opportunity and treated equally. Both the majority and minority shareholders.
iii. It ensures that directors go beyond laws/codes, but inculcate their moral values, to ensure quality corporate governance.
iv. It encourages directors to think deeply of how to run the company in order to satisfy the interest of all stakeholders.

---

2 2020
3 2021
4 2011
5 2006
6 2008

v. It ensures that falsification and misstatement of accounting records are eliminated.
vi. It serves as a check and balance in the role of chief executive.
vii. Good Corporate Governance, also ensures commercial success.
viii. It attracts high profile investors because of the confidence reposed on the corporate entity as a result of good corporate governance.
ix. Good corporate governance affects the value of a publicly quoted share, as investor will only want to invest, where the integrity of the corporate management is not in doubt.
x. Good corporate governance can attract foreign investors and the inflow of foreign direct investment.[7]
xi. Good corporate governance also establishes good relationship with the community and the press.
xii. It leads to avoidance of expensive legal problem in form of civil and criminal suits due to corporate abuser.
xiii. Good corporate governance ensures that all employees both regular and outsources employees are treated fairly.
xiv. It ensures that a company avoids scandals that may lead to the collapse of such a company.

It is necessary to state that "Corporate governance keeps a company honest and out of trouble. If shared philosophy breaks down then corners will be cut, products will be defective and management will grow complacent and corrupt. The end result is a fact that will occur when gravity in the form of audited financial reports, criminal investigations, and federal probes finally catch up; bankruptcy of the company overnight. Dishonest and unethical dealings can cause shareholders to flee out of fear, distrust and disgust"[8]. However questions were asked about how the corporate collapse could happen to such well-established companies without warning, some common answers emerged. Investors were not kept informed about what was really going on in the company and the published financial statements were misleading. Some of the external auditors were accused of failing to spot the warning signs and in some cases collusion and unethical practices.

7 LPC Solicitors poor Corporate Governance and Corporate Failure: https//lpc-ng.com/poor-corporategovernance-and-corporatefailures-gov visited on 3/4/2021
8 Leo Sun, why is corporate Governance important? (https://www.businessdaydictionary.com/article/618/why-is-corporate-governance-important/a) visited 4/3/2020

3. The Development of Corporate Governance

The impetus for corporate governance practices began in the U.K. in the late 1980s and early 1990s. The Accountancy Profession, the London Exchange and Financial Reporting Council, set up the Cadbury Committees headed by Sir Adrian Cadbury, a former Chief Executive Officer of the Shell British Petroleum in response to the Widespread Corporate Scandals. The Report of the committee on the Financial Aspects of corporate governance (the Cadbury report) was published in 1992, and was later described as "a landmark in the thinking on corporate governance".[9] The Cadbury Report include a code of Best Practice and UK listed companies came wider pressure from within to comply with the requirements of the code.

On the strength of the Cadbury report, another committee was set up to review the progress on corporate governance in UK listed companies. This committee issued the Greenburg Report in 1995, which focused mainly on director's remuneration. A committee on corporate governance chained by Sir Ronald Hampel was set up in 1995 to review the recommendation of Cadbury and Greeebury Report s. the committee's report was published in 1998[10].

Its report covered a number of governance issues, such as the composition of the board, role of directors, directors remuneration, the role of shareholders (particularly institutional shareholders), communications between company and its shareholders, internal controls, auditing and financial reporting. In order to address these emerging issues, the UK government swiftly amended her company law to reflect the recommendations of the various committees and the combined codes of 1998 and 2003 in the companies Act, 2006[11].

4. Corporate Governance Defined

The concept of corporate governance has always been poorly defined because it potentially covers a large number of distinct economic phenomenon. As a result, different people have come up with different definitions that basically reflect their special interest in the field. Thus a few of this definition shall be considered. Corporate governance is a field in law and economics that investigates how to secure and motivate efficient management of corporations by the use of incentive medicuvism, such as contracts, organizational designs and

---

9 Mallin, C, Corporate Governance, 2nd Ed. (university press, 20070 p.90

10 Ibid

11 All listed companies are required to state in company reports whether there had been compliance with the Code and give reasons for any areas of non-compliance.

legislations. This is often limited to the question of improving financial performance, for example, how the corporate managers will deliver a competitive rate of ration.[12]

Corporate governance has also been defined as a term that refers broadly to the rules, processes, or laws by which businesses are operated, regulated, and controlled. The term can refer to internal factors defined by the officers, stakeholders or constitution of a corporation as well as to external forces such as consumer groups, clients, and government regulations.

Furthermore, corporate governance has been defined as a concept which "deals with the ways in which suppliers of finance to corporations assure themselves of getting a ration on their investment[13]. Also, corporate governance has been described as "*the system by which business corporations are directed and controlled"*[14]. The former president of the World Bank, J. Wolfensolm, has described corporate governance as a concept promoting corporate fairness, transparency and accountability.[15] The key imperatives of good corporate governance from the World Bank perspective are accountability, transparency and fairness.

By corporate governance we mean the way and manner in which the affairs of companies are conducted by those charged with that duty. Consequently, corporate governance is viewed as both the structure and the relationship, which determine corporate direction and performance. The board of directors is typically central to corporate governance. Its relationship to other primary participants, typically shareholders, auditors, management, is therefore critical.

Additional participants in corporate governance include employees, customers, suppliers, and creditors. The corporate governance framework in any economy also depends on the legal, regulatory, institutional and ethical environment. Hence, the corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the corporate such as the board, shareholder and other stakeholders and spell out the rules and procedures for making decisions on corporate affairs. By so doing, it also provides the structure through which the company objectives

12 Corporate Governance: https//en.m.wiki/corporate-governance; accessed on 3/3/21

13 Ibid

14 The new2 York times Sept. 21 2015, the Rights of corporation www.nytimes.com/2015

15 Ibid

are set and the means of attaining those objectives and monitoring performance.

5. Framework of Corporate Governance

Corporate governance is the framework of rules and practices by which a board of directors ensures accountability, fairness, and transparency in the company's relationship with all stakeholders' financiers, auditors, customer, employees, government and the community. This framework consists of the following: Explicit and implicit contracts between the company and the stakeholder for distributions of responsibilities, rights, and rewards, proceedings for reconciling the sometimes conflicting interests of stake holders in accordance with their duties privileges and roles, and procedure for proper supervision, control, and information flow to serve as a system of checks and balances.

Since corporate governance is concerned with holding the balance between economic and social goals and between individuals and commercial goals, it has been viewed and classified under four models – simple finance, stewardship, stakeholder and political models.

The simple finance model advocates that the central problem in corporate governance is to construct rules and incentives (that is implicit or explicit contract) to effectively align the behaviour of managers (agents) with the desires of principals (owners).

The stewardship model states that the company is a system of stakeholder operating within the larger system of the host society that provides the necessary legal and market infrastructure for the company's activities. The market infrastructure for the company's activities. The purpose of the firm is to create wealth and value for its stakeholders by converting their stakes into goods and services.

The political model recognizes that the allocation of corporate power, privileges and profits between owners, managers and other stakeholders is determined by how government favour their various constituencies. The ability of corporate stakeholders to influence allocations between themselves at the micro level is subject to the macro framework, which is interactively subjected to the influence of the corporate sector.

6. Approaches to Corporate Governance

There have been divergent views on the objectives of sound corporate governance. What should be the ideal objective of a company? There are different recognized approaches. These are (1) the shareholder value approach (2) the stakeholder approach (pluralist approach) (3) the enlightened shareholder approach (4) Integrated approach

(a) Shareholder Value approach

The shareholder value approach is well supported by the capitalist system that directors govern and manage the company in the interest of the owners, i.e. the shareholders. That the main objective of every company ought to be profit making only, in fact the best indication of success of a company is its ability to make profits, the more the profit the more the dividends that will accrue to the shareholders. The OECD principles of corporate Governance[16] states that a company perspective, corporate governance is about maximizing value subject to the company's financial and other legal and contractual Obligationas. This includes the need for the board of director to balance the interests of shareholders on order to achieve long term sustained value?[17] Adolf Beorle[18] had contended that the primary focus of the company is to ensure that the shareholders enjoy the maximum profit from their investment, and that social factors such as environmental protection or employee benefits and welfare are not within the objective of a company. Bearle contends that the managers owe a fiduciary duty to its shareholders to manage the company for their benefit only, because the power of corporate powers '… are necessarily and at all times exercisable only for the rateable benefit of all the shareholders as their interest appears'.[19] Bearle's assertion is an acknowledgement of Adam Smith's position and as explained by Silverstain[20] that individual and businesses cannot be "go-gooders" because they lack the required knowledge to make social decisions. Silverstain notes further, that "Individuals should simply seek to maximize profit seeking will invariably lead to the most economically efficient allocation of resources which in turn, will produce the greatest utility for the world taken as a whole"[21] Friedman who is also a proponent and supporter of Bearle also suggests that social factors ought never to be taken into consideration when determining

---

16 OECD Principles of corporate governance 2004 introduction www.oecd.org/daf/cu/oecd-principles-corpora. Accessed on 24/4/2016

17 Introduction to OECD principles of Corporate Governance 2004

18 Adolf Beorle, 'Corporate Powers as Powers in Trust' (1931) *Harvard Law Review, 44, 1049*

19 Ibid at 104

20 Silverstain D. 'Managing Corporate Social Responsibility in a changing Legal Environment' (1987) *American Business Law Journal* 25, 3, 523.

21 Silverstain D. 'Managing Corporate Social Responsibility in a Changing Legal Environment' *American Business Law J.* (1987) Vol. 25 p. 525.

objectives of a company to him the most important consideration is shareholder wealth and value. Friedman posits thus, "managers are merely augments of the stockholders, and thus have no right to spend or give away corporate monies except in the interests of increasing shareholder wealth….. any stockholder is free to use his dividends to support any worthy causes he may choose, but the chance should not be made for him by a company president who may not share his values of principles"[22].

Henderson also supports Bearle's position, and argues that shareholder primary theory is sound legal theory, and that CSR is a misguided virtue and that, 'CSR involves the voluntary adoption by business of broader objectives more complex procedures and more exacting standards, to this extent, it would tend to impair enterprise performance, with effects on both costs and services, short run and long run… the system effects of CSR as well as the enterprise effects will tend to make people in general worse off [23].

The stakeholder approach (pluralist approach)

The stakeholder or pluralist approach to Corporate Governance and CSR argues that the aim of sound CSR is not just to produce or enhance wealth of the shareholders but to take into consideration the interest of all stakeholders and all groups having an interest or stake in the company, including the community where the company is situated and the country at large. The revised OECD Principles of Corporate Governance[24] states'

> From a public policy perspective is about nurturing enterprises, ensuring accountability in the exercise, ensuring accountability in the exercise of power and patronage by firms. The role of policy is to provide firms with the incentives and discipline to minimize the divergence of private and social returns and to protect the interest of stakeholders.

It follows that stakeholder approach focuses on achieving equilibrium between economic and social goals and between individual and communal goals. The problem with this approach is

---

22 Friedman M. 'The social Responsibility of B. witness is to increase profits'. (1970) N.Y. *Times Sept. 1970 (magazine)* at 33

23 Henderson D. 'Misguided virtue: False Ntions of Corporate Social Responsibility' (2001) *New Zealand Business Roundtable June 2001*

24 http://www.oecd.org/corporate/principles-corporate-governance.htm accessed on 26/04/16

that company law does not recognize the outsider both in decision making or allocation of resources of the company. It regards as *ultra vires* any corporate resources utilized on activities not within the objects of the company. In fact "it is not charity that sits on the board of directors"[25] as charity has no business there.[26]there must be amendment in the law to accommodate the stakeholder approach.

The enlightened shareholder approach and" stakeholder include approach

The enlightened shareholder approach to corporate Governance is that directors of a company should pursue the interests of their shareholder, but in an enlightened and inclusive way. While the stakeholder inclusive approach to corporate governance was developed by the institute of Directors in South Africa and introduced in 1994: in the Kings Code III, it states that the board of directors should consider what is best for the company and in doing so it should have regard to the legitimate interests and expectations of all stakeholders. The director in acting in the best interest of the company should see the best interest of the company as not in terms of maximizing shareholder wealth, but within the parameters of the company as a sustainable enterprise and the company as a corporate citizen.

7. Duties and Responsibilities of External Auditors

An external auditor is an audit professional who performs an audit on the financial statements of a company government, individual or any other legal entity or organization and who is independent of the entity being audited. Stakeholders in the organizations financial information, such as investors, government agencies, and the general public rely on the external auditor to present an unbiased and independent evaluation of such companies.[27]

The exact roles and responsibilities of External Auditors and the processes they use vary from country to country, depending on regulatory provisions as found in each country. Professional auditing standards in many countries require that audits be planned and performed to obtain reasonable assurance that financial statements are free of material misstatements.

---

25 Ibid

26 Per Lord Bowen in *Hutton v West Cork Railway Co.* (1883) L.R. 23 Ch. D 654 at 673

27 OECD Principles of Corporate Governance 2004 introduction www.oecd.org/daf/cu/oecd-principles-corpora. Accessed on 24

Normally, External Auditors review the organization's financials information technology control procedures and assessment of the organization's overall internal controls. They also investigate any material issues raised by inquiries from professional or regulatory authorities such as the taxing authorities and other regulatory bodies.

Although external auditors are not, by definitions, part of an organization, hence not part of its internal control system, they have an important impact on the quality of internal controls through their audit activities, including discussions with the management and making recommendations for improvement on internal controls. Thus in spite of the regulatory functions conferred on External auditors as may vary from economies, there are general duties and responsibilities of the external auditors and these can be summarized as follow:[28]

a) Offering an opinion on, or to certify, the annual accounts of an organization; hence the external auditor must choose whether or not to rely on the effectiveness of the organizations internal control system.
b) Evaluation of the internal control system in order to assess the extent to which they can rely on the system in determining the nature, timing and scope of their own audit procedures bearing in mind the regulatory requirements.
c) Discovering significant weakens in the internal control procedures of an organization which may affect the accounts of such an organization and report any discovered material weaknesses to management either orally or in confidential management letters and in many countries, to the supervisory authority or the trustees.[29]
d) Examine, on a test basis, underlying transactions and records supporting financial statements, balances and disclosures.
e) Assessing the accounting principles used and significant estimates made by management and evaluate the overall financial statement presentation.
f) Examine and auditing the financial reporting aspects of an organization.

Having considered the general duties and responsibilities of external auditors it is imperatives to mention some guiding principles for external auditors in performing their functions effectively.

---

28 Introduction to OCED Principles of Corporate Governance 2004.

29 Adolf Beorle, 'Corporate Powers as powers in Trust' (1931) *Harvard Law Review,* 44, 1049.

i. External auditors ought to recognize that they must be perceived as the experts and professional regarding internal control and risk management and that this must be engrained as part of the service rendered.
ii. External auditors must improve the transparency of the audit standards and the communication process of audit reporting.
iii. Independence in the performance of the external audit functions must be crucial. For example, in the United States, certified public accountants are the only authorized non-government type of external auditors who may perform audits attestations on an organization's financial statements and provide reports on such audits for public consumption[30].

8. External Auditors in Investment and Securities Audit

According to the provisions of the Investment and Securities Act (ISA)[31] auditing the accounts of the Securities and Exchange Commission (SEC), report of such Audit shall be kept by Securities and Exchange Commission (SEC). The auditors are appointed by Securities and Exchange Commission (SEC) from the list and in accordance with the guidelines supplied by the auditor General of the Federation, such reports are submitted by to the Minister of Finance for not later than three months before the end of the year, for each preceding year.

The Auditor also prepares the annual accounts of an authorized Unit Trust scheme and in so doing shall give a true and fair view of the affairs of the scheme during each year covered by the accounts. The audit will be performed by the auditor appointed. The manager with the consent of the trustees. The auditor shall certify that the unit trust scheme has been operated within the provisions of the Investment and Securities Act (ISA), and the regulations prescribed by Securities and Exchange Commission (SEC)[32].

A copy of the auditors' report on the accounts and of such accounts certified by the auditor shall be sent by the manager to the commission and also published in national newspapers within three months after the end of the period to which the accounts relate or as Securities and Exchange Commission (SEC) may from time to time

30 Ibid at 1049.

31 Silverstain D. 'Managing Corporate Social Responsibility in a changing Legal Environment' (1987) *American Business Law Journal* 25, 3, 523

32 As used by Adam Smith, *American Bar law J. 25. 525*

specify.[33] This means that the auditor makes a representation to the public about the financial status of an organization, which representation the public are likely to rely on.

8.1. *External Auditors of Companies*

A company's external auditor or auditors are appointed at each annual general meeting to audit the financial statement of the companies and to hold office from the conclusion of the AGM until the conclusion of the next. Under companies and Allied Matters Act, for a person to qualify as an auditor such a person must be a member of the institute of chartered Accountant registered under Institute of Chartered Acts. In addition, such a person must not be an officer or servant of the company, a partner for in the employment of an officer or servant of the company; a body corporate. For a firm to qualify as auditor of a company, all partners must be qualified as above.[34]

The auditors of a company shall make a report to its members on the accounts examined by them, and on every balance sheet and profit and loss account, and all group financial statement, copies of which are to be laid before the company in a general meeting during the auditor's tenure of office.

In addition to the auditors' general report, the auditor shall in the case of a public company also make a report to an audit committee, which shall be established by the company. Subject to such other additional functions and powers that the company's articles of association may stipulate the objective and functions of the audit committee shall be to-review the findings on management matters in conjunction with the external auditor and departmental responses thereon.[35]

It is the duty of the company's auditors, in preparing their report to carryout such investigation as may enable them to form an opinion as to whether proper accounting records have been kept by the company and proper returns adequate for their audit have been received from the branches not visited by them; and whether the company's balance

33 Silverstain D. 'Managing Corporate Social Responsibility in a Changing Legal Environment' *American Business Law j.* (1987) Vol. 25 p. 525.

34 Friedman M. 'The Social Responsibility of B. witness it to increase profits'. (1970) N.Y. *Times Sept. 1970 (magazine)* at 33

35 Henderson D. 'Misguided virtue: False Notions of Corporate Social Responsibility' (2001) *New Zealand business Roundtable June 2001.*

sheet and if not consolidated its profit and loss account are in agreement with the accounting records and returns.[36]

Where the auditors are of the opinion that proper accounting records have not been received from branches not visited by them, or if the balance sheet and (if not consolidated) the profit and loss account are not in agreement with the accounting records and nations, the auditors shall state that fact in their report.[37] Company auditors have a right to access at all time to the company's books, accounts, and vouchers, and are entitled to require from the company's office such information and explanation as they thank necessary for the performance of their duties. Any provision in the company's Articles to the contrary shall be completely ineffective.[38] Therefore, it is auditors' duty to consider whether the information given in the directors' report for the year for which the accounts are prepared is consistent with those accounts, and if they are of the opinion that it is, they shall state the fact in their report.

8.2. *External Auditors of Banks*

Specifically for banks in addition to the provision of companies and Allied Matters Act[39] Banks and other Financial Institutions Act[40] provides certain factors and circumstances that will qualify an auditor to audit for a bank. Hence, such a person must be, a member of one of the professional bodies recognized in Nigeria, resident in Nigeria; approved by the Central Bank of Nigeria, and carrying on in Nigeria Professional Practice as accountant and auditor.

A person is however, disqualified from acting as an auditor for a bank where such a person has an interest in a bank except as a depositor; is a director, agent or officer of a bank, which is a firm in which a director of a bank has any interest as partner or director; and is indebted to a bank[41]. When a person is already acting as the auditor, such a person shall be disqualified and should cease to be such auditor if he acquires interest in the bank other than as a depositor; becomes a director, officer or agent of that bank; and becomes indebted to a

---

36 http://www.oecd.org/corporate/principles-corporate-governance.htm accessed on 26/04/16

37 Ibid

38 Per Lord Bowen in *Huton v West Cork Railway Co.* (1883) L.R. 23 Ch.D 654 at 673

39 Ronald J. Gilson 'Globalizing Corporate Governance: Convergence of form or function (20010 American Journal of comparative Law 388

40 Cap. 116, Laws of the federation, 2004. The Act/provides for the A-Z of the establishment, Licensing, operation and winding of banks and other financial institutions

41 Sec. 29(3) BOFIA Cap. B3 LFN 2004

partner in a firm in which a director of a bank is interested as a partner or director.

The accounts of the Central Bank of Nigeria are audited by an auditor or auditors to be appointed by the Board of the CBN. The auditor – General of the Federation shall conduct an examination of the accounts of the Central Bank of Nigeria and accounts of the Central Bank of Nigeria are submit a report thereon relating to the issue reissue, exchange and withdrawal of currency, notes and coins by the Central Bank and the CBN shall provide all necessary facilities for the purpose of the auditors examination.[42]

The external auditors are required to maintain arms-length relationship with the banks they audit. Furthermore, quality assurance auditing should be engaged whenever the Central Bank of Nigeria suspects a cover-up by auditors, and where proved airing firms would be blacklisted from being auditors of banks and other financial institutions for a length of time to be determined by the Central Bank of Nigeria. An audit firm will not be allowed to provide audit services to a bank if one of the bank's top officials (Directors, CFO, and CAO, etc) was employed by the firm and worked on the bank's audit during the previous year.[43]

On an annual basis, banks shall appoint an audit or as approved by the Central Bank of Nigeria and whose duties shall be to make to the shareholders a report upon the annual balance sheet and profit and loss account of the bank and enemy sheet and profit shall contain statements as to the matters and such other information as may be prescribed from time to time by the Central Bank.[44]

Every auditor of a Bank shall have a right of access at all times to the books, account vouchers of the bank, and shall be entitled to resume from directors, managers and officers of the bank such information and explanation as he thinks necessary for the performance of his duties under the banks and other financial institutions Act.[45] The Bank's auditor must state by his report to the Annual General Meeting an analysis of the bad and doubtful advances in a form specified, from time to time, by the Central Bank. Two copies of such reports on the bank's activities must also be delivered

---

42 Section 49, CBN Act 2007, Cap. 117 LFN. The Act established the CBN of Nigeria to act as banker of banks and empowered immensely to promote sound financial system in Nigeria

43 Sec 26(2)

44 SECCRR(A) 2006

45 Ibid

to the Central Bank not later than three months after the end of the bank's financial year.[46]

However, External Auditors should not provide the following services to their clients: Bookkeeping or other services related to the accounting records or financial statements of the audit client, appraisal or valuation services, fairness opinion or contribution in kind, reports, actuarial services, internal auditing, outsourcing services, management or human resource functions including broker or dealer, investment banking services and legal or expert service unrelated to the audit contract.

8.3. *External Auditors and the Law*

The external auditor by law, shares a special fiduciary relationship with the company that it audits its accounts. As a result, the law require the auditor to exercise all due diligence and skills in at a reasonable auditor will deem necessary to exercise in the performance of his statutory duties, but does not guarantees the accuracy of his report, but guarantees his fairness and integrity.[47]

The duty of an external auditor is more succinctly stated in the decision of the court in *Re: London & Gender Bank (No. 2)*[48] where the court said

> "It is the duty of an auditor to bear on the work he had to perform that skills, call and caution which a reasonably competent, careful, and cautious auditor would use. What are reasonable skills care and caution must depend on the particular circumstances of each case. An auditor is not bound to do more than exercise reasonable care and skill in making inquiries…. He is not an insurer; he does not guarantees that the books do correctly show the true position of the company's affairs. He must be honest i.e he must not certify what he does not believe to be true and the must take reasonable care and skill before he believes that what he certified is true…. Where there is nothing to excite suspicion, very little inquiry will be reasonably sufficient…… where suspicion is aroused more care is obviously necessary, but still an auditors is no bound to exercise more than reasonable care and skill, even in a case of suspicion….".

---

46 Sec. 403(1) CAMA 2020
47 Sec. 404(7) CAMA 2020
48 (1913) AC 76

The general principle of negligence under the common law has been made to apply to statutorily appointed Auditors.[49] This is because as stated above, auditors share statutory fiduciary relationships with their clients, the companies. Negligence is a breach of legal duties to take care, which breach result is damages undesired by the party in breach, to the other party.

Company and Allied Matters Act (CAMA)[50] provides that a company's auditor shall, in the performance of his duties, exercise all such care, diligence and skill as is reasonably necessary in each particular circumstance. Although the odds against Nigerian audit are weighty, it is submitted that all he has to do is to comply with various accounting standards available locally and internationally and embrace the current corporate governance issues highlighting causes of corporate collapse. Incidentally, financial Reporting Council of Nigeria recently released the National Code of Corporate Governance. The exercise was done in accordance with the provisions of the Financial Reporting Council of Nigeria Act.[51]

The new code among other things requires the Directorate of Corporate Governance to develop the principles and practices. If corporate Governance applicable in Nigeria. Details of code indicated that the code of corporate governance for the private sector is mandatory while the code of governance for Not-for-profit entitles is "*comply or justify non-compliance"*. It also stipulated that the code of governance for the public sector will not be applicable immediately until an executive directive is secured from the Federal Government of Nigeria.

Thus, it said, was given because the laws that get up most government establishments already carry some form of governance structure that will require an umbrella legislation to unify the different provisions of those laws to synchronize with this code.

Before the release of the code, the Federal High Court, Lagos had in a suit brought before it,[52] challenging the code, the court agreed with the Financial Reporting Council's preliminary objection and struck out the suit. In its ruling, the court essentially held that the plaintiffs lack the *locus standi* to institute the suit as they are not

---

49 Section 415 CAMA 2020

50 Ibid

51 2011, the Act repeals the Nigerian Accounting standards Board Act, 2003 and established the financial council of Nigeri saddled with the responsibility of developing and publishing accounting and financial reporting standards to be observed in operations of financial statements of public entities I nigeria, amongst others.

52 FHC/LA/OF17/7/2010

within the purview of public interest entities, public companies or private companies as recognized wider the financial Reporting Council of Nigeria Act and the Draft/proposed National Code of Corporate Governance it said.

The plaintiffs had instituted this suit against the defendants by an originating summons dated May 11, 2015 essentially seeking declarative and injunctive reliefs against the Defendants. The crux of the plaintiffs suit was to seek a declaration that it is ultra-vies of the first second and fourth defendants to promulgate, make or issue the proposed National Code of Corporate Governance 2015 same not falling within the power conferred on the first and second defendant by the Financial report of council of Nigeria Act. This ruling of the court has brought the matter to an end, subject to the plaintiff right of appeal.

9. Recommendations and Conclusion

The high level of negative publicity connected with the financial scandals of African Petroleum Plc AfriBank Plc and Cadbury Plc has left little doubt that the auditing profession in Nigeria is facing integrity crises. Therefore, if the external auditor would improve its role in ensuring good corporate governance, then appropriate legal and policy framework must be out in place. To this end, it is suggested;

a. That the Nigerian Law Reform Commission and the National assembly should enact a quick legislative amendment in our company law to incorporate the emergent corporate governance issue in our law. We should also try to relate the corporate governance principle to our local circumstance instead of enslaving ourselves with the old colonial laws which is no longer in use even in United Kingdom.
b. External auditors should not rely on one single client for their existence as that often makes them to compromise their roles to the investing public. An external auditor that gives a positive report on a corporate organization that fails within a reasonable time after the report resulting from financial scandals is now liable to be sued for the audit done[53]. Besides, the external auditors practicing license should be withdrawn for a period of fifteen years.
c. They should be the development of more statutory and effective accounting standards to provide the auditor with reference points

53 See Sec. 415(2) CAMA 2020

against which to exercise his professional judgment. This position is strengthened where the standard is statutory and do not allow for alternative accounting treatments.

d. After the consolidation exercise, issues have arisen in a couple of banks on the capital base. This situation could be likened to Enron. In view of the dire consequences of such misstatements, a more stringent criminal provisions should be included into the body of our laws to make auditors and companies alike alive to their responsibilities to the stakeholders and the public in general.
e. The Nigerian External auditors should emulate his counterparts overseas by applying the international financial reporting standards guideline in the preparation of his financial report.
f. Appointment and dismissal of the external auditor should not be left in the hands of management and audit committee but to the shareholders whose interests the external condition protects. The auditors are responsible to the owners of capital and not the management. This position will go a long way to enhance the performance of the external auditor to give expert and independent opinion about whether the financial statement give a true and fair view of the financial position of the company at the end of the financial year. He will also give an honest and independent opinion on whether the financial statement comply with the relevant laws.
g. External auditors should design statutory audit procedures that will provide reasonable reassurance that material fraud or error has not occurred, and that financial statements give a true and fair view of the company's financial position and performance.

Finally, our external auditors should always avoid the areas that could rob them of their independence, objectivity and most importantly, integrity.