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# MULTIPLICITY OF CODES OF CORPORATE GOVERNANCE IN NIGERIA: A CURSE OR A BLESSING?*

## 1.1. Introduction

Long before the highly publicized corporate scandals and failures worldwide, the global corporate community had shown increasing concern on issues of corporate governance. The justification for this assertion is not farfetched as there exist various legislations in the countries governing the successful operation of companies. Nigeria, like any other countries is no exception to this, as there exist Companies and Allied Matters Act (hereinafter referred to as CAMA) among other legislations.

These laws, provides some mechanisms for corporate governance among which are appointment of directors by the company, removal of directors by ordinary resolution, duties and liabilities of directors, provisions for auditors and audit committee, mandatory involvement of shareholders in some corporate decisions.etc. In the governance of companies, the Board of Directors and Shareholders in the general meetings play significant roles. The Board of Directors exercise management power in the Company, while some corporate decisions cannot be taken without the resolution of members in general meetings.[1] Despite the control mechanism provided by those laws, there are cases of excessive remuneration of directors, manipulation of shares prices to raise money, deliberate mis-statements in accounts, buying over auditors to author or confirm fake accounts and scandals such as happened in Cadbury, have made the need for adequate control more necessary. These controls are called Corporate Governance.[2]

The recent widespread corporate scandals and failures had their root in dishonest management decisions and, in some cases, outright cover-ups of illicit activities and, has brought to the fore the role, which the pursuit of narrow group interests played in wrecking these corporations and, consequently, the lives of millions of innocent citizens who had stake in them. In particular, these developments have further raised the question of the responsibilities of the Board of Directors in ensuring that an appropriate balance is maintained between stakeholders' interests. It is also against this backdrop that there is now global commitment to pursue and promote good governance practices in corporations all over the world and with it came the establishment of standards, which corporations and countries are encourage to adopt.

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[1] Bhadmus, Y.H.,2009. *Bhadmus on Corporate Law Practice*.Enugu: Chenglo Ltd. P.158

[2] Op cit. P. 160

On this score, in modern times, the company has become subject of innumerable regulations pertaining to matters such as structure, composition of boards, the duty of full disclosure of accounts, payment of taxes, prohibition of monopolies, unwholesome business practices, compliance with employment laws, etc. Today, companies are required to comply with tenets of corporate governance as well as good corporate citizenship by way of corporate social responsibility, non- payment of bribes for contracts and sensitivity to the needs and interests of communities in their areas of operation.[3]

Corporate governance is a multi- faceted subject[4], however, it can be viewed from at least two perspectives: a narrow one in which it is merely as being concerned with the structures within which a corporate entity or enterprise receives its basic orientation and direction; and a broad perspective in which it is regarded as being the heart of both a market economy and a democratic society. The narrow view perceives corporate governance in terms of issues relating to shareholder protection, management control and the popular principal-agency problems of economic theory. In contrast, the broader perspective relies on the examples of the resultant problems of the privatization crusade that has been sweeping through developing countries since the 1980s, and the transition economies of the former communist countries in the 1990s. The issues of institutional, the legal and capacity building as well as the rule of law, are at the very heart of corporate governance[5].

The fact which the corporate governance debate takes as its starting point is the appearance in large companies, of a group of senior managers who are separate and distinct from the shareholders and do not simply do as the shareholders say. Thus, is identified the central issue of the corporate governance debate, which is the accountability of the senior management of the company for the extensive powers vested in them.[6] Accordingly, the gist of corporate governance is that companies adhere to their memoranda and article of association and the web of legislation, rules and regulations that orders their operation. Thus, companies do not have untrammeled powers to act and function in their quest for profit but

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[3] Oyebode, A. The Imperative of Corporate Governance in Nigeria. Accessed Nov 8, 2014, <http://www.nigeriavillagesquare.com/articles/akin-Oyebode/the-imperative-of-corporate-governance.html>.

[4] Danjuma, N. 2009. *The Role of the Company Secretary.* The Gravitas Review of Business and Property Law. 2GRB PLC No. 5 P.237

[5] Ademola T. and Soyinbo, A. A paper presented at the conference on Corporate Governance, Accra, Ghana, 29-30 Jan, 2001,P.237. Accessed Nov, 8, 2014, < http://www.nigerianlawguru.com/articles/companylaw/CORPORATE GOVERNANCE IN NIGERIA.pdf>.

[6] Davies, P.L., 2008. Gower and Davies Principles of Modern Company Law. 8th Ed. London: Sweet & Maxwell P. 359-360

should also pay heed to matters such as fair labour practice, environmental pollution, global warning and sustainable development.[7]

## 1.2. Conceptual Clarification.

Like every other concepts bedevilled with definitional problems, corporate governance is not an exception, as there exist various definitions propounded by various scholars. The concept has been defined in a variety of ways. In other words, there is no universally acceptable definition of the concept of corporate governance. Simply put, it is a subject matter that has no generally accepted definition, as most scholars and stakeholders in the field tends to examine the concept from their own perspectives[8]. Nonetheless of this inability of scholars or authors to reach a consensus on what the concept connote, it is not escapist not to attempt to provide few working definitions in this piece of work as proffered by various scholars and authors. Therefore, few of the many definitions of corporate governance shall be given as follows:

Coyle[9] defines corporate governance to mean:

> The way in which companies are governed and to what purpose. It is concerned with practices and procedures for trying to ensure that a company is run in such a way that it achieves its objectives.

Similarly, Thomas gives an apt and succinct definition when he defines corporate governance to mean:

> *The way in which companies are governed. In a large company...It is concerned with how the company is structured and controlled internally, and how power is exercised by different groups (for example, the board and the shareholders) to ensure that the objectives of the company are achieved lawfully and ethically*[10].

Also, a concise working definition has also been given in the Cadbury Report[11] in the following words:

> *Corporate governance is the system by which companies are directed and controlled.*

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[7] Oyebode, A. Op cit P.2

[8] Asada, D.2006. Effective Corporate Governance and Management in Nigeria: An Analysis. M. Phil. Thesis. Faculty of Law, University of Jos. P. 187 Retrieved Nov 8 2014, <http://www.dspace.unijos.edu.ng/bitstream/10485/901/1/corporategovernance.mgtinnigeria.pdf>.

[9] Coyle, B.2010. Corporate Governance. London: ICSA Information & Training Ltd. P.3

[10] Thomas, L. 2009. Black's law Dictionary. 9th Ed. Thompson West Publishers. P.219

[11] Cadbury Report on the Financial Aspects of Corporate Governance. Published in Dec 1, 1992. Retrieved May 22nd, 2012. < http://www.ecgi.org/codes/country pages/codes_uk.htm>.

Adegbie[12] gives valuable explanation when he described the concept of corporate governance to mean:

> *Encompasses the mode of structure, the power that determines the rights and responsibilities of the various group involved in running the organization, the legitimacy expectation of the business, the method of operating and the overall accountability management and the director.*

Corporate governance has also been viewed to mean the systems by which organizations are run and the laws, regulations and best practices with which they are required to comply[13]. It is an exercise of authority which involves not solely the right to direct but also to lead and to control within an organization.[14]It refers to ways in which all parties interested in the well- being of the firm (stakeholders) attempt to ensure that managers and other insiders take measures or adopt mechanisms that safeguard the interests of the stakeholders. Such measures are necessitated by the separation of ownership from the management[15].

It also refers to the manner in which the power of a corporation is exercised in the stewardship of the corporation's total portfolio of assets and resources with the objective of maintaining and increasing shareholder value and satisfaction of other stakeholders in the context of its corporate mission. It then implies that companies not only maximize shareholders wealth, but balance the interests of shareholders with those of other stakeholders, employees, customers, suppliers, and investors so as to achieve long-term sustainable value. From a public policy perspective, corporate governance is about managing an enterprise while ensuring accountability in the exercise of power and patronage by firms[16].

From the avalanche of definitions given above, corporate governance can be simply put as ways by which a company is governed through the effective

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[12] Adegbie, F.J. 2010. Corporate Governance and Financial Distress in the Banking Industry: A case of Nigerian Economy. *International Journal of Research In Commerce and Management.* Vol No. 1, Issue No.5 (Sept). P. 15.Retrieved June 23, 2012, <http://www.ijrcm.org.in/download.php?name=Vol-1_issues-5_art-2>.

[13] Institute of Certified Public Secretaries Kenya. Retrieved Mar 28, 2012,from http://www.icpsk.com/pdfs/guideline

[14] Younkins, E.W.(2001). Corporate Governance does not Mean Corporate Management. Accessed June 23, 2012, <http://www.quebecoislibre.org/000513-11.htm>.

[15]Sanda, A., Mikailu A.S., and Garba, T. (Mar. 2005). Corporate Governance Mechanisms and Firm Financial Performance in Nigeria. *AERC Research Paper 149.*Accessed June 25, 2015. <http://www.aercafrica.org/documents/rp149.pdf>.

[16] Okeahalam, C.C., and Akinboade, O.A. (June 15, 2003) . A Review of Corporate Governance In Africa: Literature, Issues and Challenges. *The Global Corporate Governance Forum. P.3.* Accessed June 25, 2012, < http://www.aercafrica.org/documents/rp149.pdf>.

mechanisms (sets of rules and practices) in place. It defines the roles and relationships between company's managements, the board, shareholders and other stakeholders, and as well as the aims for which a corporation is governed.

### 1.3. Historical Development of Corporate Governance Codes.

At least two set of events are responsible for the heightened interest in corporate governance. During the wave of financial crises in 1998, in Russia, Asia, and Brazil, deficiencies in corporate governance endangered the stability of the global financial system. Just three years later, confidence in the corporate sector was sapped by corporate governance scandals in the United States and Europe, which triggered some of the largest insolvencies in history. The scandals and crises, however, are just manifestations of a number of structural reasons why corporate governance has become more important for economic development and a significant policy issue[17].

Concerns about corporate governance have grown over time. The main impetus for better practices in corporate governance began in the United Kingdom in the late 1980s and 1990s[18]. It has been a dominant policy issue in developed market economies for more than a decade. In the transition economies, it took some time for a corporate governance to advance the ranking of policy priorities, but since the late 1990s it became one of the most intensively debated issues[19]. During this period a number of companies collapsed unexpectedly due to serious accounting or financial reporting irregularities and inadequate internal controls and risk management.

The expression corporate governance started to appear in America law journals in the 1970s and was imported from America into the United Kingdom. It took firm root when Sir Adrian Cadbury was asked in May 1991 to chair the Committee on the Financial Aspects of corporate governance by the Financial Reporting Council, the London Stock Exchange and the accounting profession. The Cadbury Committee was born out of the scandals (Maxwell, Polly Peck, Barings), which hit the City of London and the United Kingdom financial markets during the late 1980s[20].The subject came to prominence in the United States with the work leading to the publication of the American Law Institute's principles of corporate governance in 1994 and in the United Kingdom the topic is associated above all with the Cadbury Committee Report of 1992 and its associated Code of Best Practice, which has provided a focal point for the subsequent spread of corporate governance codes throughout Europe. However,

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[17] Bobirca, A. and Miclaus P., 2007. Extensiveness and Effectiveness. *World Academy of Science, Engineering and Technology*. Vol 30, 2007, P. 7.Accessed June 23, 2015, <http://www.waset.org/journals/Waset/v30/v30-2. pdf>.

[18] Ibid. P.23

[19] Bobirca, A. and Miclaus P., Op cit. P.7

[20] Smerdon, R. 2007. *A Practical Guide to Corporate Governance*. 3rd Ed. London: Sweet & Maxwell Ltd.

one could say that corporate governance, whether recognized under that name or not is a topic which is as old as the large company[21].

The committee under the Chairmanship of Sir Adrian Cadbury at the instigation of the London Stock Exchange was to look into financial aspects of corporate governance, but its attention was widened to include the functions and the effectiveness of the board of directors. The committee published its report in December 1992 and its recommendation marked the beginning of an attempt to urge companies, particularly public limited companies to improve on their conduct[22]. The said report has been described as a landmark in thinking of corporate governance[23]. The United States appeared to show little concern for better governance throughout 1990s, although there were some activist institutional shareholders. The situation changed dramatically with the collapse of Enron in 2001 and some other major companies. Many other countries now have corporate governance codes and legislation covering aspects of corporate governance practice. The regulations and guidelines vary between countries[24].

In Nigeria, corporate governance gained importance in the post structural adjustment programme (SAP) era. This era witnessed the growth of private ownership of productive resources and the multiplication of banks and financial institutions. Because of the weak corporate culture in these banks, the nation witnessed a very high incidence of corporate failure and distress. Most of the business failures in the recent past are attributed to failure in corporate governance practices, for instance, the collapse of banks in Nigeria in the early 1990s and onwards was a result of inadequate corporate governance practices such as insider-related credit abuses and poor risk appreciation and internal control system failure[25].

A notable occurrence of such corporate scandal which brought corporate governance into fore front in Nigeria which can be better described as Nigeria's Enron is the Cadbury Nig Plc scandal in 2006, where the company deliberately overstated its financial position over a number of years (2004-2006) to the tune of between 13 billion naira (85 million dollars). Over this number of years, Cadbury Nigeria had assigned itself an ambitious growth target. To achieve these targets, several systems abuses occurred and the overstatements were directly traceable to these systems abuses (i.e. financial statements were

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[21] Davies, P.L., Op cit. P.359
[22] Thomas,L. Op cit. P.222
[23] Coyle, B. Op cit. P.23
[24] Coyle, B. Op cit. P. 25
[25] Ogidefa, I. Corporate Governance: An Appraisal of Disclosures in Nigerian Banks. Aug 3, 2008. Accessed July 18, 2015, < http://www.bizcovering.com/accounting/corporate-governance-an-appraisal-of-disclosures-in- nigerian-banks/3/>.

tampered with to create a false or deceptive impression), leading to its (Cadbury) collapse. This case particularly, and plethora cases of economic catastrophe, necessitated the resurgence of corporate governance activity.

The central issue in corporate governance is how to make directors more accountable and more sensitive to the interest of shareholders, creditors, members of the public and the interests of the society[26].This is so because, powers to manage the affairs of a company are given to the board of directors, but most of these powers are delegated to a chief executive officer or managing director, and are delegated further to executive directors and executive managers. The board of directors should retain some powers and responsibilities, and certain matters should be reserved for board decision making rather than delegated to the management team[27].

An essential feature of a corporation is the separation of ownership from management. To this end, the shareholders (owners) delegate decision making rights to managers to act on their behalf. However, this separation of ownership from control implies a loss of effective control by shareholders over managerial decisions. Thus, the primary objective of corporate governance is to attempt an alignment of the managerial incentives with those of stakeholders. This is to check the tendency of selfishness by managerial employees especially the top ones to ensure that delegated decisions making powers are not abused to the detriment of shareholders and other stakeholders[28].

Corporate governance is a matter of much greater importance for large companies, where the separation of ownership from management is much wider than for small companies. Public raise capital on the stock markets and institutional investors hold fast portfolios of shares and other investments. Investors need to know that their money is reasonably safe. Should there be any doubts about the integrity or intentions of the individuals in charge of a company, the value of the company's shares will be affected and the company will have difficulty raising new capital should it wish to do so[29]. By institutional investor it means one who trades large volumes of securities, usually by investing other people's money into large managed funds. It is usually pension funds, investment companies, trust managers, or insurance companies'[30]etc.

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[26] Bhadmus, Y.H. Op cit. P.160

[27] Coyle, B. Op cit. P.4

[28] Oghojafor, B.E.A., Olayemi, O.O., Okonji, P. S. and Okolie, J.U. Poor Corporate Governance and its Consequences on the Nigerian Banking Sector. *Serbian Journal of Management* 5 (2) (2010) 243-250. Accessed July 2,2015, <http://www.sjmISSN1452-4864/5_2_2010_November_189_281/5_2_243_250.pdf

[29] Coyle, B. Op cit. P.5>.

[30] Garner, B.A. 2009. *Black's Law Dictionary*. 9th Ed. Thompson Reuters Publishing. Co. P. 904

However, it must be again stressed here that, there are legislations in place to regulate the company's activities in Nigeria prior to the introduction of the governance code. For the avoidance of doubt, the most significant among them are:

(i) Companies and Allied Matters Act (1990)[31] which prescribes the duties and responsibilities of managers of public Limited liability companies. It also requires all limited liability companies to appoint an auditor to report on their financial statements and abide by all financial reporting processes[32]. Others are

(ii) Banks and Other Financial Institutions Act (1991), which requires the Central Bank of Nigeria to register and regulate the banks and allied institutions.

(iii) Investment and Securities Act (1999), which requires the SEC to regulate and develop the capital market, maintain orderly conduct, transparency and sanity in order to protect investors.

(iv) The Nigerian Accounting Standards Board Act (2003), which empowers the NASB to enforce compliance with Statement of Accounting Standards issued by it by all the public limited liability companies.

(v) The Insurance Act (2003), which empowers the Nigerian Insurance Commission to register and regulate the insurance business in Nigeria[33].

### 1.4. Principles of Corporate Governance

Having understood the concept of corporate governance, it is worth noting that the concept is made up of some core elements regarded as its pillars, but which are better understood and referred to as principles of corporate governance. The most mentioned and discussed are fairness, accountability, responsibility, transparency/disclosure, and social responsibility. Each shall be briefly discussed hereunder for proper grasp of concept of corporate governance.

#### 1.4.1. Fairness.

By fairness it refers to the principle that all shareholders should receive equal consideration. Minority shareholders, for example, should be treated in the same way the majority shareholders. Although this might seem fairly straightforward in the United Kingdom, where the rights of minority shareholders are protected to a large extent by company law. In some countries, however, minority shareholder rights are often disregarded by the larger

[31] Cap C 20, Laws of the Federation of Nigeria,2004.
[32] Section 357 (1) CAMA
[33] See also the analysis of Kajola, S.O. (2008), Corporate Governance and Firm Performance: The Case of Nigerian Listed Firms. *European Journal of Economics, Finance and Administrative Sciences*. ISSN 1450-2275, Issue No.14. P. 19. Accessed July 2, 2015, < http://www.eurojournals.com/ejefas_14_02_pdf>.

shareholders and the board of directors[34]. Investor protection turns out to be crucial because, in many countries, expropriation of minority shareholders and creditors by the controlling shareholders is extensive. When outside investors finance firms, they face a risk, and sometimes near certainty that the returns on their investments will never materialize because the controlling shareholders or managers expropriate them. In this context, both managers and controlling shareholders are referred to as "the insiders". Corporate governance is, to a large extent, a set of mechanisms through which outside investors protect themselves against expropriation by the insiders[35].

Expropriation can take a variety of forms. In some instances, the insiders simply steal profits. In other instances, the insiders sell the output, the assets, or additional securities in the firm they control to another firm they own at below market prices. Such transfer pricing, asset stripping, and investor dilution, though often legal, have largely the same effect as theft. In still other instances, expropriation takes the form of diversion of corporate opportunities from the firm, installing possibly unqualified family members in managerial positions, or overpaying executives[36].

Minority shareholders are often viewed as an unnecessary burden, a dead weight, by majority owners of corporations. This view is widespread in many transitioning economies, where capital markets are weak, minority investors are commonly viewed as a source of capital, and incentives for long-term value-creation are distorted. In such economies, majority owners often feel that while having comparatively little at stake, minority shareholders can slow down or sidetrack crucial investment-related decisions, be inactive at times when the need for restructuring is pressing or place unreasonable demands on management. In other words, minority shareholders, in the eyes of majority owners, tend to increase transactions costs[37]. While widespread in transitioning economies, such sentiments are present in all countries. Majority owners feel that they should have the right to make the majority of all decisions because they have more at stake. Evidence shows that extremely concentrated shareholder structures have actually benefited firms in developed countries from the standpoint of performance[38].

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[34] Coyle, B. Op cit. P.16

[35] Porta, R.L., Lopez-de-Silanes, F., Shleifer, A. and Vishny, R.. Investor Protection and Corporate Governance. *Journal of Financial Economic* 58 (2000) 3-27. Accessed July 17,2014. <http://www.scholar.harvard.edu/sites/scholar.iq.harvard.edu/files/ip_corpgov.pdf>.

[36] Ibid

[37] Shkolnikov, A. Protecting Minority Shareholders in Emerging Markets. Published in Oct, 31, 2012 by the Center for International Private Enterprises. Accessed Nov, 9, 2015, <http://www.cpe.org/sites/default/files/ publication-docs/103106.pdf>.

[38] Ibid

Examples of such illegal techniques used to exclude minority shareholders from the decision- making process are abundant in developing countries. For example, in Russia in the 1990s, a simple way to prevent minority shareholders from meddling in the affairs of majority owners was to change the date and location of the general assembly meeting a day or two before the meeting would take place. Thus, minority owners would not get the information in time and could not adjust their schedules. They would show up at an empty meeting hall, while the actual meeting was held hundreds of miles away and decisions were made in their absence. Other techniques to reduce the power of minority owners and bar them from the decision-making process include changing registration procedures immediately prior to the meeting so that minority owners would not have the opportunity to vote, withholding financial information, and limiting minority shareholders' ability to hold the board accountable for violations[39].

Similar to this ugly experience, frequently, there is little compliance with the mandatory dispatch of notices of meetings to shareholders while the venues of important meetings are deliberately fixed in distant locations in a bid to ensure the absence of some shareholders[40].The principle of fairness entails that all shareholders should receive equal consideration regardless of the size of their holdings[41]. By this principle, the protection and participation of both majority and minority shareholders are assured.

**1.4.2.Accountability.**

Accountability principle implies that decision-makers within a company, or those who take actions on its behalf, should be accountable for what they do. It follows that shareholders should be able to assess the actions of their board and query them if necessary[42]. The basis for accountability in the governance of corporations has been observed to be germane, this is based on the fact that the world has shrunk. The major investing institutions seek attractive investing opportunities outside their domestic markets and aim to spread their risks geographically. In doing so, they demand high and consistent standards of reporting and in the treatment of shareholder interests. As a result, board accountability and standards of corporate governance have become a global issue. Board accountability is the key to the legitimacy of the corporate system. Corporations are seen to have power and their use of that power is only legitimized through being exercised within a recognized framework[43].

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[39] Ibid

[40] Prof. Oyebode, A. Op cit. P.3

[41] Thomas, L. Op cit. P.221

[42] . Ibid

[43] Smith, P. Disclosure and Accountability. A paper presented at the Organization for Economic Co-operation & Development (OECD) Symposium on The Role of Disclosure in strengthening Corporate governance &

The recent collapse of the stock market and uncovering of flagrant abuse of loans and perquisites in the banking sector and the high incidence of corruption in the Nigerian economy generally are enough to pose the question indeed of not (sic) corporate governance (accountability) but actually its absence. The massive fraud and cooking of the books in companies, a notable example of which is Cadbury, not to mention insider dealings and compromised boards in many countries is all a pointer of lack of accountability[44]. The concern over lack of accountability of boards of directors to shareholders, and more recently, to society in general, recognizes the pace of change in the corporate world. Companies have grown larger and become more complex and more international. The markets in which they operate are moving faster. Consequently, companies are finding that they need to respond to these stakeholder demands, not only by changing their practices, but by being more open in reporting, not only about their financial affairs, but how they have performed against key social, ethical and environmental dimensions of their behavior and impact[45].

One major problem associated with accountability is the measure to be used in deciding how the directors should be accountable and in particular over what period of time. According to financial theory, if the objective of a company is to maximize the wealth of its shareholders, this will be achieved by maximizing the financial returns to shareholders through increases in profits, dividends, prospects for growth and arising in price. It might therefore follow that directors should be held accountable to shareholders on the basis of the returns on shareholder capital that the company has achieved. However, there is no consensus about the period over which returns to shareholders and increases in share value should be measured[46]. Sequel to the above, it has been suggested that the performance can be measured over a short term of one year at a time, or over a long term of five or ten years- or even longer. However, it has been observed in practice, it is usual to measure returns over the short term and assess performance in terms of profitability over a 12 month period[47].

### 1.4.3. **Responsibility**

This principle is to the effect that the board of directors is given authority to act on behalf of the company, and a further principle of corporate governance is that it (the board) should accept full responsibility for the powers that it is given

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Accountability, Paris, France, 12-13 (Feb.1998).P.4 . Accessed July, 15, 2015. <http://www.citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.203.5>.

[44] Prof. Oyebode, A. Op cit. P.3

[45] Smith, P. Op cit. P.14

[46] Coyle, B. Op cit. P.16

[47] Ibid

and the authority that it exercises. A board of directors should understand what its responsibilities are, and should carry them out to the best of its abilities. Accountability goes hand in hand with responsibility. The board of directors should be made accountable to the shareholders for the way in which it has carried out its responsibilities. Similarly, executive management should be responsible for the exercise of powers delegated to them by the board of directors, and should be made accountable to the board for their achievements and performance[48]. To achieve this, it has been suggested that the board needs a range of skills and understanding to be able to deal with various business issues and have the ability to review and challenge management performance. It needs to be of sufficient size and have an appropriate level commitment to fulfill its responsibilities and duties. There are issues about the appropriate mix of executive and non-executive directors[49].

### 1.4.4 **Transparency/Disclosure**

Transparency means openness. In the context of corporate governance, refers to the willingness by the company to provide clear information to shareholders and other stakeholders about what the company has done and hopes to achieve, without giving away commercially sensitive information[50]. Disclosure of material matters concerning the organization should be timely and balanced to ensure that all investors have access to clear and factual information[51]. The principle of transparency in this regard simply connotes the company's ability to carry all stakeholders along, by being sufficiently informed about what the company is doing and also the proposed plan it intend to carry out in the future, as well as the risk involved in the company's business strategies. This is because, the quality of governance is of absolute importance to shareholders as it provides them with a level of assurance that the business of the company is being conducted in a manner that adds shareholder value and safeguards its assets. This means that there is less uncertainty associated with the investment. Furthermore, the higher the risk, the higher the expected rate of return. If a company adopts and implements good corporate governance practices, shareholders are retained and new investors attracted. Institutional investors have indicated a willingness to pay a premium for the shares of a well-governed company. Around the world, price: earnings ratios are higher among companies with good disclosure[52].

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[48] Ibid. P.17
[49] Danjuma, N. Op cit. P.243
[50] Coyle, B. Op cit P.17
[51] Danjuma, N. Op cit P.243
[52] Okeahalam, C.C., and Akinboade, O.A. Op cit. P.4

### 1.4.5.Social Responsibility

Corporate social responsibility is a concept whereby companies integrate social and environmental concerns in their business operations and their interaction with their stakeholders on a voluntary basis. It means not only fulfilling legal expectations, but also going beyond compliance and investing more into human capital, the environment and the relations with stakeholders'[53].By this principle, it simply connotes that a well managed company should be aware of and respond to issues of social concern[54].The long and short of it is that it is a disposition of organizations (especially the profit-oriented type) to exhibit a missionary rather than a mercenary attitude towards the society or environment in which they operate. It has to do with the idea that company has a duty to serve society as well as the financial interest of stakeholders. It is company's aim to earn society's trust and to work to achieve sustainable corporate growth and increased value. Flowing from all the principles above, among others, it is beyond peradventure that, corporate governance enhances the performance and ensures the conformance of corporations. Its principles stimulate the performance of corporations by creating and maintaining a business environment that motivates managers and entrepreneurs to maximize firm's operational efficiency, returns on investment and long-term productivity growth. They ensure corporate conformance with investors' and society's interests and expectations by limiting the abuse of power, the siphoning-off of assets, the moral hazard, and the wastage of corporate-controlled resources. Simultaneously, the principles establish the means to monitor managers' behavior to ensure corporate accountability and provide for the cost-effective protection of investors' and society's interests vis-à-vis corporate insider.

However, as beautiful as the principle is, its desired objectives may hardly be realizable if not impossible, due to numerous factors which have bewildered its full implementation in Nigeria, one of such major problems is the existence of several corporate governance codes with grave disparities, with the aim of achieving same purpose. To date, in Nigeria, too much of corporate governance codes exist, the corollary effect of same has resultant effect in the popular saying *"too many cooks spoil the broth"*. In effect, when too many people work together on a project, the result is inferior. It is the opposite of a proverb which says *'there is safety in numbers"*. Simply put, the existence of many codes with several disparities has led to treatment of the symptoms and not the cause, as will be discussed *infra.*

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[53] The European Union Definition in a Green Paper on Corporate Social Responsibility in 2001. Coyle, B. Op cit P.235

[54] Thomas, L. P.221

## 1.5. Codes of Corporate Governance in Nigeria.

A critical look reveals that Nigeria has multiplicity of codes of corporate governance with distinctive dissimilarities namely; Security and Exchanged Commission (SEC) code of corporate governance 2003 addressed to public companies listed in the Nigeria Stock Exchange (NSE); Central Bank of Nigeria (CBN) Code 2006 for banks established under the provision of the bank and other financial institution ACT (BOFIA); National Insurance Commission (NAICOM) Code 2009, directed at all insurance, reinsurance, broking and loss adjusting companies in Nigeria and Pension Commission (PENCOM) Code 2008, for all licensed pension operators[55]. It has been observed although, that all the Nigerian codes contains the key elements of corporate governance (i.e. composition of board of directors, independent directors, multiple directorship, Board of directors committees, accountability and transparent reporting; and mandatory and self-regulatory requirements of the provisions of the codes), but there are disparities in the content of their provisions and enforcement mechanisms. An attempt has been made to provide a statement of problem to the multiplicity of the aforementioned codes with disparities in their regulatory mechanisms as follows:

1. The problem or difficulty of companies that are quoted or listed on the Nigeria stock exchange and also operating in one of the sector above that is regulated by other codes is how to comply with these two codes. For instance, while the provision in the SEC Code (2003) is not mandatory, that of the CBN Code (2006) is mandatory[56]. There is no express provision on the NAICOM Code (2009) as to whether it is mandatory or not other than stating in clause 11.0 that it applies to all insurance companies.

2. Composition of Board of Directors The CBN codes 2006 have no minimum but maximum number of 20 directors[57]. This is at variance with the PENCOM code 2008 that has no limit as to the number of directors in the board of companies licensed as pension operators. The NAICOM code (2009) provision prescribes not less than 7 directors in the board of directors of insurance, re-insurance and loss adjusting companies. While SEC Code of 2003 provides for maximum of 15 Directors but not less than 5[58]. These disparities in the provisions of the Nigerian codes need to be harmonized with a prescriptive optimum board size for all the codes. An oversize or undersize board may lead to an ineffective enforcement of

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[55] Demaki, G.O.: Proliferation of codes of Corporate Governance in Nigeria & Economic Development: Business and *Management Review Vol. 1(6)pp.01-07, August, 2011.* Accessed Nov 9, 2014, <http://www.businessjournalz.org/bmr>.

[56] See Preamble to SEC Code (2003)

[57] Part 1, Clause 5.3.5

[58] See Part A, Clause 1(a)

corporate governance codes.

3. Independent Directors: The SEC Code (2003) and the CBN Code (2006) stipulated that independent directors should be Non-executive Directors (NED)[59]. The PENCOM Code (2008) and NAICOM Code (2009) have no such provision. The NAICOM Code (2009) and PENCOM Code (2008) need to be up scaled to include provisions specifying directors eligible to be NED. The extents of independence directors from management is an important factor of the board of director's oversight function over the management of companies. They have no stakes in the companies and it enable them act in the company best interest.

4. Multiple Directorships: The SEC Code (2003) and the CBN Code (2006) requires the board of directors of companies listed in the NSE and banks to determine the number of board directorship, duties and responsibilities of board members[60]. The PENCOM Code (2008) states that board committee of pension operators should include nominating committee, among others. NAICOM code (2009) provide for finance and general purpose and investment committees respectively in the insurance industry. The vienot II code in France require that French companies should disclose the number of meetings of the board of directors during the year. The German code (2010) overcomes this problem of inadequate monitoring of the executives of the company and lack of devotion of substantives amount of time by the board over company's management by recommending that a person should not be a member of more than 5 board of directors and should be reported in the supervisory annual report if a member defaulted by attending less than half of the board meetings[61].

5. Accountability and Transparent Reporting: SEC Code (2003) and PENCOM Code (2008)[62] provides for accountability and transparent reporting by including sections 60-65 of the 2007 Investment and Security Act (ISA) making it mandatory for operators of public companies to file with the Security and Exchange Commission on a periodic or annual basis, it's audited financial report and such other returns as may be prescribed by the commission from time to time. The CBN code (2006) went further to prescribe the category of officers that should be held accountable for duties and responsibilities attached to their respective

[59] See Clause 5 of SEC Code & Part 1, Clause 5.3.6
[60] See Part A, Clause 1 (c) of SEC Code.
[61] Demaki, G.O. Ibid
[62] Clause 5 of PENCOM Code 2008

offices and the clear lines of responsibility and hierarchy. The NAICOM Code (2009) is germane to the provision of the OECD standard principles which require carrying out annual auditing through independent auditors.

6. Regulatory Mechanisms Mandatory and self-regulatory requirement of the SEC code (2003) and the NAICOM code (2009) are self-regulatory and compliance to their provision is not obligatory. Only the CBN code (2006) and PENCOM Code (2008) are mandatory. All the Nigerian codes should be mandatory for effectiveness[63].

**1.6. Conclusion.**

Considering the indices of corporate failures in the recent years in the Nigerian corporate sector, one will be at his/her wit's end whether the various corporate governance codes as it exists have gone far to proffer or defer solution to this serious corporate menace which has thwarted the economy of the nation. Therefore, the followings are hereby recommended for effectiveness of corporate governance, firstly, the need for harmonization of the Nigerian codes and not a plethora of codes with grave disparities as we have at the moment. The global economic meltdown is a manifestation of lack of corporate governance, so also a major cause of crisis in the banking sector in Nigeria experienced recently. Secondly, even after the harmonization, there is need to constantly monitor, evaluate and review the code so as to be in tune with the current realities.

Furthermore, the situation in Nigeria may not be a matter of "lack of laws", but that of the institutional capacity and political will to ensure enforcement irrespective of a national code of conduct. Thus, in delineating a space for more effective governmental participation, there is a clear need to assess the effectiveness of government's policies in ensuring that there exists a robust, yet flexible and competitive regulatory mechanism to promote good corporate conduct. Indeed public policy responses to corporate failures should be strategically formulated to ensure corporate vitality and minimize market failures[64]. More so, the application of the harmonized code should also be extended to include Government Ministries, Departments and Agencies. This is because; Nigeria requires foreign capital for development and promotion of its economic policy of privatization and commercialization. Better still, like what is obtainable in the United Kingdom (UK), the financial reporting council is the

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[63] See Generally Demaki, G.O., Op cit.

[64] Adegbite, E. Corporate Governance in Nigeria: Messes, Problems and puzzles. Accessed Nov 9, 2014. <http://businessdayonline.com/2013/09/corporate-governance-in-nigeria-messes-problems-and-puzzles/#.VGEq2VczKSo>.

only organ saddled with the responsibility for producing the code and its guidelines. It is hereby recommended that Nigeria should tread in the same path.

Evidence suggests that the presence of conflict among the various codes not only contributes to reduced compliance by firms but to ineffective enforceability by warring regulatory agencies. The danger in having too many of these codes is that it will in no way help effort to fortify from corporate scandal, as a company may be hiding under one of the codes to perpetrate fraud especially where it finds out such code avails it (company) even though the other condemns such act.[65]

The Nigerian Cadbury scandal which was brought to public glare of engaging in deliberate over statement of the financial position of the company for years undoubtedly raised serious concerns and implication about corporate governance and the effectiveness of the role of regulatory bodies saddled with monitoring functions in corporate governance. One would come to the conclusion that the Nigerian Stock Exchange and the SEC had scrutinized Cadbury financial report before placing same at the disposal of the general public, but unfortunately, the reverse is the case, as this anomaly did come to public knowledge through either of them, but through investigation carried out by an audit firm. It is on the premise that it is recommended that regulatory bodies concern should sit tight by living up to their responsibilities of ensuring that issues on corporate governance are enforced to internationally accepted standards. This is because failure to do same is capable of eroding investors' confidence in the capital market and thereby making investment unattractive.

In conclusion, the words of Arthur Levitt[66] is germane on the importance of having a robust and strong corporate governance practice when he opined that

> *"if a country does not have a reputation for strong corporate governance practice, capital will flow elsewhere. If investors are not confident with the level of disclosure, capital will flow elsewhere. If a country opts for lax accounting and reporting standards, capital will flow elsewhere. All enterprises in that country regardless of how steadfast a particular company practices may be- suffer the consequences".*

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[65] See S. 1 (3)(g)
[66] Cited by Demaki, G.O. Ibid. P.1

The checks and balances in an organization is strengthened through corporate governance. Directors without corporate enforcement mechanism may paint misleading pictures of financial performance of their company to lure unsuspecting investors. The purpose of introducing corporate governance code is to help sustain investors confidence and also serve as benchmark for monitoring and implementing corporate policies and practices, poor corporate governance is identified as one of the major factors in virtually all known instances of financial institution distress in Nigeria. The current various codes in Nigeria only serve as mere cosmetic treatment of corporate governance failures, leaving the grievous wound unattended to, hence, the need for a formidable and combined code.