# ISLAMIC UNIVERSITY IN UGANDA

## JOURNAL OF COMPARATIVE LAW

# CORPORATE GOVERNANCE CHALLENGE AND SHAREHOLDER PROTECTION IN NIGERIA: A CONTEMPORARY OVERVIEW

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## Abstract

*The quest for a wholesome shareholder protection has given rise to the frenetic recourse to the institutionalization of regulatory frameworks, codes and rules of corporate practice in Nigeria in recent times. Drawing from over a decade long string of corporation failure, this paper undertakes an overview of the corporate governance challenges and draws a nexus between these and the spate of company failure in Nigeria. Overall, the finding is that the observance of corporate governance statutes, regulations and codes of best practice by companies in Nigeria has been inconsistent with the requirement of the companies and investment statutes; this coupled with a weak supervisory/regulatory regime. This paper recommends that all corporate governance laws and rules in operation in Nigeria be codified as a single instrument which would apply to all corporations.*

## Introduction

Corporate governance, though an emerging concept in Nigeria, gained momentum in the public domain at a period contemporaneous with the divestment of government's ownership of public companies. The term applies to the methodology of management and governance of corporations. Corporate governance in a company is generally undertaken by its controlling members. Tricker[1]explains corporate governance as 'giving overall direction to the enterprise with a view to overseeing and controlling the executive actions of management with satisfying legitimate expectations for accountability and regulation of interest beyond the corporate boundaries. If management is about running business, governance is about seeing that it is run properly'.

Agom[2] sees corporate governance as:

> Sound corporate governance would comprise elements as efficiency, effectiveness, transparency, honesty, accountability and fairness. It also entails an understanding by the board that management is usually tempted to make its decisions with own interest and the board of directors must ensure that other interest are not short changed in the process. Among other interests are shareholders… and other members of the business community. Good corporate governance therefore entails firm separation of board function from management function[3]…

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[1] Tricker, R. I. (1994), *Corporate Governance*, London, Gower Publishing, at 6.
[2] ibid
[3] Ibib at 236

The concept of corporate governance as it relates to shareholder protection is conceived from the increasing need to separate ownership from control and management of companies. Corporate governance in Nigeria is governed by the twin theories of stewardship and agency[4]. The theory of stewardship suggests that directors are ordinarily trustworthy and are therefore capable of acting *bona fide* in the interest of the public and the shareholders. The basic root of this theory is found in their fiduciary relationship with the company which in reality is constituted by the company's shareholders. Agency theory on the other hand presumes that directors cannot really be trusted to act in the public good in general and in the interest of the shareholders.[5]

The imperative for sound corporate governance as a pillar of corporations' management cannot therefore, be overemphasized. In consequence, checks and balance have been written into our laws[6] not only to put unscrupulous persons who may have found their ways into the position of directors in check but to generally monitor and control their direction so as to guarantee compliance with obligatory responsibilities and duties imposed on them by law. This paper questions the level of public and private company adaptation to corporate governance principles in Nigeria in spite of the copious provision of the laws and regulatory oversight.

**Corporate Governance Framework under the Nigerian Company Law**

Corporate governance in Nigeria is guided, in the main, by the Articles of Association of the company and the Companies and Allied Matters Act (CAMA). Section 244 of the CAMA provides that directors are to direct and manage the business of the company. Section 265(5) states that directors may delegate any of their powers to a managing director. By virtue of subsection (a) of the above section directors are empowered to elect a chairman of their meetings. A combined interpretation of the two subsections would suggest that the position of Chairman of Board and that the Managing Director is distinct[7]. A compendium of corporate governance rules in the form of duties and the responsibilities which the directors, as controllers must observe, include the common law duty of care, skill and diligence. In Nigeria these common law rules have been codified in section 282(1) of the CAMA as fiduciary duties. The Act provides that every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company, and shall exercise that degree

[4] Kolade, C. (2004) "Board Performance Analysis", Distinguish Management Lectures.
[5] Agom, A.R, "Shareholder Activism in Corporate Governance", *Modern Practice Journal of Finance and Investment Law*, vol. 4.no. 4 p235
[6] ibid.
[7] In public quoted companies the separation of the office of the Managing Director and the Chairman of the Board is more prevalent in the banking sector and coming only after the introduction of the Central Bank's Code of Corporate Governance

of care, diligence and skill which a reasonably prudent director could exercise in comparable circumstance. The Act further provides that failure of a director to exercise care, diligence and skill would ground an action in negligence and breach of duty[8].

The statutory fiduciary duties of the directors as provided in the CAMA may be summarized in the following terms:

a) Section 279(1) provides that a director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf. This duty is said to be owed by the director towards the company and the company alone[9]. Though the provision in subsection (2)(a) & (b) would seem to support this, we submit that the provision imposes a fiduciary duty on the director towards the shareholders. Section 283(1) makes directors trustees over the assets of a company which by extension includes share funds, specifically it states that directors shall exercise their power honestly in the interest of the company and all the shareholders and not in their own or sectional interest. Indeed the matters which director of a company must have regard in the performance of functions include the interests of its members.[10] However, in observing the duty of good faith, a director is not required by law to live in an unreal region of detached altruism and to act in a vague mood of ideal abstraction from obvious facts which must be present to the mind of any honest and intelligent man when he exercises his powers as a director.[11] It has been held that a director's failure to ensure that stock transfers were carried out in accordance with the procedures set out in the company's article was a breach of the director's fiduciary duties and that he was liable to indemnify the company for losses caused to it.[12]

b) Section 279(3) provides that a director shall act at all times in what he believes to be the best interest of the company as a whole so as to preserve its assets, further its business and promote the purposes for which it was formed and in such a manner as a faithful, diligent, careful and ordinarily skilled director would act in the circumstance. Though this provision would seem to be subjective and dependent on the belief of a director, it is submitted that director is under obligation not to fetter such

[8] S. 282 (2) of the CAMA.

[9] Olajide O., (2006) *Companies and Allied Matters Act and Investments and Securities Act, Synoptic Guide*, Lagos: LawLords publishers, at 42.

[10] S.282(2) of the CAMA

[11] Olajide, O. op cit at 42.

[12] S.278(4) the CAMA. See also *Cabia Estate Plc v Fulham Club (1994) BCLC 200*

discretion. Indeed a director is under obligation to exercise his powers for purposes for which he is specified and shall not do so for collateral purpose.[13]

c) In the context of a company's corporate governance, a director shall not fetter his discretion to vote in any particular way.[14] What this connotes is that since directors hold their powers as fiduciaries to the company, they cannot, without the consent of the company, nay the shareholders, fetter their future discretion.[15] Thus they cannot validly contract as to how they shall vote at future board meetings or otherwise conduct themselves in the future.[16] However, it has been held by an Australian High Court that where in a *bona fide* exercise of their discretion the directors enter a contract in the best interest of the company that the transaction should be entered into and carried to effect, they should be able to bind themselves to do whatever, under the transaction, is to be done by the board.[17] The no fettering principle is to prevent a situation where directors contract as to the advice to be given to shareholders on a matter which is solely within shareholder's power of decision which did not reflect the situation as the directors saw it, thereby putting the shareholders in a poor position to take the decision and perhaps lose a commercial opportunity which would otherwise be open to them.[18]

d) As fiduciaries, directors must conduct themselves in such a manner as to preserve a distinction between their personal interest and that of the company. Good faith must not only be done but must be manifestly seen to be done, and the law will not allow a fiduciary to place himself in a position in which his judgment is likely to be biased.[19] Under the Nigerian conflict of duties and interest doctrine[20] a director shall not, in the course of management of the affairs of the company or in the utilization of the company's property, make any secret profit or achieve unnecessary benefit. He shall be accountable to the company for any secret profit or unnecessary benefit made by him. The director or officer of a company has a duty not to misuse

[13] S. 279 (5)
[14] S. 279 (6)
[15] Davis L.P. loc cit at 228.
[16] ib id
[17] *Thornby v. Goldberg (1964) 112 CLC 597, AUS HC*.
[18] *John Crowther Group Plc v. Carpets International (1990) BCLC 460* and *Rackham v. Reek Foods Ltd. (1990) BCLC 895*.
[19] Davies in P. op cit 610.
[20] See section 280 (1), (2), (3), (5) of the CAMA.

corporate information[21] and such duty shall not cease even if the director ceases to be a director of such company or is director of other companies. These duties imposed on the directors are not derogated by the inability or unwillingness of the company to perform any functions or duties under its articles or memorandum. It should also be noted that each director is individually responsible for the actions of the board in which he is a member and he is not exempted from such responsibility merely because he was absent from the boards deliberation except for justifiable reasons.

e) Another important consequence of being a fiduciary and in the context of the conflict of duty and interest principle is that directors must not use the company's assets, opportunities and information for their own profit without the consent of the company. Section 284 of the CAMA prohibits any arrangement where a director or anybody connected with the director acquires or is to acquire one or more non-cash assets from the company without a resolution in general meeting of the company. This prohibition also applies to holding companies as well as shadow directors. A director is prohibited from accepting a bribe, gift or commission either in cash or kind from any person or a share with profit of that person in respect of any transaction or arrangement involving his company in order to induce the company to deal with such a person or corporation.[22] An equally important consequence is that directors and officers of a company are personally liable for the misapplication of loans or money or property received as advance payment for work to be done by the company.[23]

**Observance of Corporate Governance Statutes by Companies in Nigeria**

Nigeria has frequently been referred to as a nation with an undeniable reputation and affinity for corruption and fraud related incidents, a history of management ineptitude or outright inability to manage big businesses and a growing penchant to be ready to pay the price for breaking the law based on a knowledge that it can be negotiated upon[24]. A categorization of this nature puts a great strain on the estimation of the country in the eyes of the international community. As far back as the year 2001, Oyejide and Soyibo[25]

[21] See section 112 of the ISA.
[22] S. 287 of the CAMA
[23] S. 290 of the CAMA
[24] Olufemi Awoyemi, Corporate Governance-Financial Crisis and the Nigerian Leadership Meltdown, Proshare Nigeria 2009 Vol. 1 No 22 at 7
[25] Oyejide, T. A. and Soyibo, A., "Corporate Governance in Nigeria" being a Paper Presented by at the Conference on Corporate Governance, Accra Ghana, 29-30 January, 2001

in their work "Corporate Governance in Nigeria" using the Organization for Economic Cooperation and Development (OECD) instrument and scoring guide surveyed the standing of Nigerian companies in the observation of corporate governance standards which is summarized hereunder.

1. **Shareholder rights**
   a) on fair conduct of shareholders' meeting, it was found that there exists compliance in critical areas by Nigerian companies.
   b) on effective prohibition of insider trading, it was found that while regulations and codes of conduct prohibiting insider trading rank slightly higher than the international average, compliance and enforcement were, however, found to be inconsistent in the country.
   c) on the requirement for regular publication of director's dealings, it was found that there is hardly any compliance with this regulation rather evidence was found of consistent abuse of extant regulations.

2. **Disclosure and transparency**

The survey found that there is a regular and consistent publication of performance results including audited reports by independent auditors of all quoted companies in Nigeria; however, it was found that all shareholders do not have equal access to their company's information.

1. **Role of board of directors**

The survey found that there is little evidence of the practice where directors owe responsibility to shareholders as required by regulations.

2. **Effective shareholder right enforcement by courts.**

The survey found that the enforcement of shareholder rights by the court is low and that there is no evidence of a legal/administrative system with respect to shareholder rights that works in Nigeria.

In the overall assessment, of the survey, Nigeria's corporate governance performance is average. While the accuracy of the survey results, relayed above, is a matter of empirical question, it is submitted that overall, they point to the fact that observance of corporate governance statutes, regulations and codes of best practice by companies in Nigeria is inconsistent with the requirement of the law. This, coupled with a weak supervisory/regulatory regime, is the bane of companies in Nigeria.

Nigerian Capital Market Report on the appraisal of the role of statutory regulators of incorporated entities in Nigeria found that "the worst and sustained decline in value of the capital market that occurred was driven in part by the breakdown of the needed rules of engagement in the market

place"[26]. The level of compliance with regulatory standards and code of the best practices was also appraised. On this, the report showed that:

> Most firms that tried to adhere to strict implementation of the corporate governance ethos it had embraced found themselves on the losing end of the game. The market had turned on its head as the regulators expected to maintain the decorum and apply the rules moved from establishing a level playing field to supervisory control by the highest bidder.
> Rather than move in tandem with the natural intent of the law, the pressure was now placed on individual CEOs and their Board of Directors to decide either to pursue a 'moral high ground' or 'adopt to the terrain' by doing the 'needful' to ensure business survival. In this process, outright criminality festered among some hard-core players and the natural laws of ethics, rights and responsibilities were jettisoned for market led expediency.[27]

While we do not completely agree with this generalization, there is no doubt that certain facts have been established by the report. The interplay of all these gave rise to the sustained manipulation of the system which culminated in the unbridled abuse of shareholder rights that has been witnessed in Nigeria in the last decade. A graphic picture of how, typically, this manipulation works was painted thus:[28]

> The audited financial sent to the CBN is usually profit-inflated since it is that same audited accounts that would be published showing bogus profits in order to make their shares attractive at the capital market… For the same period (of report), the audited accounts that would be forwarded to NDIC would have a depleted deposit base in order for the banks to pay as little as infinitesimal fraction of one percent insurance premium to NDIC. For the same period too, the audited accounts that would be sent to the FIRS would have a reduced profit so that these banks would not pay any corporate tax.

This scenario, even if it is exaggerated, questions the capacity and competence of regulatory agencies in the discharge of their statutory functions.

The insistence on the institution of corporate governance principles in companies is to prevent the abuse of the rights of shareholders. The violation of corporate governance statutes and codes in Nigeria by directors and team managers, in our opinion, is facilitated, basically, by the interplay of the following factors:

**1. Dispersal of share ownership.**

We have stated earlier in this work that share ownership structure in Nigeria is widely dispersed. With the divestment of government interest in most companies and the sale of wholly owned government companies there exist, now, a greater dispersal of the share ownership base. Some scholars

[26] Olufemi Awoyemi ibid at 9.
[27] Ibid at pp 9 and 10
[28] Seun Adeside, Fraud in Banks, Saturday Sun Newspaper, June 7, 2008 in Olufemi Awoyemi ibid at 11.

have argued that a dispersed shareholder base is indicative of good shareholder protection laws.[29] While this could be true in advanced countries the same cannot be said of Nigeria. As a result of the dispersed shareholder base, management decisions are made without regard to the fiduciary requirement of the law.[30] There is a detached relationship with the company by the greater majority shareholders. Company information only comes to this group of shareholders in form of printed annual performance reports in beautiful brochures accompanied with an invitation to the Annual General Meeting and a proxy form.

Annual General Meetings are held at venues most small shareholders (the majority minority) cannot attend. Surrogate proxies are then found to approve management proposals and financial reports. Management thus acquires discretionary control powers over the company far more than anticipated by the law[31]. A dispersed shareholder base means less ability, by majority of shareholders, to monitor management as envisaged by the law[32]. The result is that controlling members are able to pursue their own interest rather than those of the equity investors, by entrenching their position or engaging in behavior that could be sub-optimal for the equity investor[33].

2. **Weak Shareholder Activism**

A shareholder activist has been defined as a person who attempts to use his right as a shareholder of a publicly-traded corporation to bring about social change[34]. Shareholder activism has also been described as a corporate governance accountability mechanism.[35] It is those activities undertaken by shareholders in connection with contestations between managers of public companies and their owners[36] and entails monitoring and attempting to make changes in the organizational structures of firms by shareholders.[37] Shareholder activism therefore relates to activities embarked upon by shareholders in order to ensure accountability, integrity and wholesome conduct of the affairs of their company.

In Nigeria, shareholder activism was not a common feature of corporate governance until the privatization/commercialization of public

[29] La Porta, R. et al, 1996, Law and Finance, (National Bureau of Economic Research Inc.) Working Paper, 5661. See also Schleifer, A. and Vishay R.W, A Survey of Corporate Governance, 1979, Journal of Finance 52(2) at 731

[30] Section 279(2)

[31] Section 63(3) of CAMA. See also Sections 166 and 283(1) of CAMA.

[32] Section 63(5) of CAMA.

[33] A. Oyedeji and A. Soyibo op cit at 6

[34] Investopedia, www.investopedia.com/terms, 7th November, 2012.

[35] Adegbite E, et al, *Journal of Business Ethics* 2012, 105 at 391.

[36] Schacht, K.N "Institutional Investors and Shareholder Activism: Dealing with demanding Shareholders", *Directorship*, 1995, 21(5) at 8.

[37] Smith M.P, Shareholder Activism by Institutional Investors: Evidence from CalPERS, *Journal of Finance*, 1996, 51(1) at 227.

company's policy of the federal government and the divestment of government shares in corporations. Government encouraged Nigerians to invest in company shares and indeed gave soft loans to facilitate this. This deliberate policy pursued actively in the year 2000 and the galloping returns on investment on stocks witnessed, prior to the crash in the capital market, led to a geometric rise in shareholder base in Nigeria from a few thousands in the 70s, after the indigenization programme, to over 10million at present.[38] As at today, over 122 government enterprises have been privatized by the Bureau of Public Enterprises (BPE)[39].

In consequence of this and in order to ensure probity by the management of the newly the emergent companies, government encouraged and indeed sponsored the formation of shareholder associations. The intention of government was to grow public participation in the ownership of business operations of privatized companies,[40] by the hitherto uncoordinated, severally small, passive and dispersed shareholders. By 1985 private shareholder associations had surfaced spearhead by the Akintunde Asala's Nigeria Shareholders Solidarity Association (NSSA). The major focus of NSSA at its inception was the question of unclaimed dividends which companies unlawfully returned to their treasuries and subsequently applied the money as if it was part of the profit. This marked the first form of activism by shareholders in Nigeria; that corporations conduct their businesses in a manner provided by law. Etukudo[41] opined that the function of a shareholder association includes:

i. educating and enlightening of shareholders on their rights and responsibilities;
ii. promoting solidarity and stimulating interest in the activities of their companies;
iii. facilitating representative participation in corporate decision making through regular attendance at annual meetings as well as extra-ordinary meetings
iv. nominating their representatives to serve on boards of directors of publicly quoted companies;
v. facilitating easy access to individuals to claim their dividends and share certificates, some of which remain unclaimed due to ignorance of their whereabouts.

[38] Ruth Pam, Shareholder Associations and the Rest of Us, Vanguard Newspaper 25th September, 2011.
[39] Disclosed by BPE to Senate Adhoc Committee in 2011. No Current data is available to the public on the BPE website-www.bpeng.org
[40] Ruth Pam op.cit
[41] Quoted in Amao, O and Awaeshi, K, 2008 'Galvanizing Shareholder Activism': A Prerequisite for Effective Corporate Governance and Accountability in Nigeria', Journal of Business Ethics 82(1) at 126.

Generally, directors are not bound to comply with directions of shareholders at general meeting as long as they operate within the ambit of the law. However, shareholders can and ought to ensure that directors and other directing staff of companies operate within the bounds of the law. Shareholder activism in Nigeria is nascent and developing. Its practice is evolving and there is no codified rules or regulations except the SEC Code for shareholders, which in the main, is not a rule of practice. Clearly, therefore, the practice of shareholder activism in Nigeria is subject to the whims of the executive members of the various shareholder associations. While it is true that shareholder activism has made some headway at impacting corporate governance in Nigeria companies, it is a thing of regret that it has been more of motion without movement; more of hot air than substance. This is in spite of Okike's assertion that "In Nigeria shareholders have been known to challenge the actions of management they believe were not taken in their best interest"[42]. It is on record that one of the factors that led the SEC to initiate the process of regulating shareholder associations was the conduct of shareholder associations. The SEC identified some key problem areas militating against effective practice of shareholder activism to include '…concerns over behaviour of some members at Annual General Meetings, intense competition towards getting on companies audit committees, governance problems and unclear succession arrangement and the inadequate members enlightenment on shareholder rights, privileges and responsibilities"[43]

Recent research findings have shown a steady regression, of shareholder associations, from the ideals of shareholder activism in Nigeria. The research by Adegbite *et al* made public in 2011 shows that the usual corrupt disposition of individuals, groups and institutions have crept into the ranks of shareholder associations. It was found that shareholder activism in Nigeria presents a platform where self-seeking individuals can potentially capture rent at the expense of the corporation[44] and by extension its members. Executive members were found to conduct themselves like politicians as they see their position as an avenue to dominate and for self-enrichment thereby allowing management of companies to hijack their independence.[45]

[42] Okike, E.N.M, Corporate Governance in Nigeria: the Status quo, *Corporate Governance: an International Review,* 2007, Vol. 15 no 2.

[43] From an interview granted by the then Director General of SEC Musa al Faki to the Daily Sun Newspaper in Adegbite et al op cit at

[44] Ibid at 397

[45] In the finding too, a Respondent, a director of a major financial institution who was known as (D41) was quoted to have said that Shareholder Associations are not effective because all they want is money. Once you give them money they shut up and things continue as usual.

Pam[46] opined that there now exist a close and dangerous affinity between some leaders of shareholder associations and certain major interests in the market. The remit is that these leaders lend themselves, for lucre, to be manipulated and to advance negative policies which work to the interest of their paymasters and to the detriment of the corporation and fellow investors. Shareholder activism has thus become a platform for bullying of corporate managers so as to access economic benefits and to leverage relevance for the same purpose instead of being a vehicle for value sharing and for influencing good corporate strategy and advancement for the benefit of the corporation and its shareholders.

### 3. Regulatory Dysfunction

Regulatory dysfunction can be said to be those regulatory barriers which impede the entrenchment of a corporate governance culture, whether inherent in the operational statutes or codes of the agencies or are derived from the exercise of their statutory function. As we have pointed out earlier in this chapter, regulatory agencies have performed below par in their over-sight responsibilities. The major issue here is how do the regulatory agencies ensure that the 'management team manages the company so that the owners-the diffused shareholders-can meet their legitimate expectation'.[47] In this regard, regulators are expected to assure the safety of companies as well as the investment of shareholders.

It is submitted that the lack of will to ensure compliance with the laws and to enforce same, by regulatory agencies, is the greatest challenge to corporate governance in Nigeria. We wish to set out two examples to elucidate this.

Under CAMA, a cardinal pillar of corporate governance in the Annual General Meeting (AGM) where annual statements of accounts and accounting policies are brought to shareholders for approval.[48] Such statements of accounts would have been audited by external auditors, appointed at AGM[49] by shareholders, who CAMA provides should exercise all such care, diligence and skill in the conduct of their assignment[50]. There is also an imperative on companies to file these statements of accounts with the CAC annually[51].

Section 359 of CAMA provides that a public company shall submit an audit report to an Audit Committee who shall:

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[46] Pam R, "Shareholder Associations and the rest of Us", Vanguard Newspaper, 25 August 2017

[47] Nmehielle and Nwauche, op. cit at 22

[48] s. 334

[49] s. 357

[50] s. 360

[51] section 370 provides that companies file annual returns showing in details the business accounts for the year being reported.

(a) Ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;
(b) Review the scope and planning of the audit requirements;
(c) Review the finding of management matters in conjunction with the external auditor and departmental responses thereon;
(d) Keep under review the effectiveness of the company's external auditors
(e) Authorize the internal auditor to carry out investigation into activities of the company which may be of interest or concern to the company.

In the course of this work we undertook to find out how the CAC ensures compliance with these corporate governance standards or in the event of none or partial compliance what sanction, if any, have been meted on such companies. We found that there is no mechanism to check the veracity of the reports companies file annually; the reports of the audit committees do not form part of the document to be placed before shareholders at general meetings or filed with the CAC; there is no evidence as to what use the CAC puts the reports filed annually with it to; there is no evidence of any sanctions except penalties for non-filing of annual returns at the appropriate time. In any case, most companies file their annual returns as a statutory ritual rather than a process for integrity check.

Under the Banks and Other Financial Institutions Act (BOFIA) there are entrenched standards for banking operations and conduct of employees of financial institutions. The financial institutions also have the corporate governance codes of the CBN[52]. One provision of this Act which, in our opinion, is pungent enough to instill corporate governance in banking operation is section 18(1). This section prohibits a manager or any other officer of a bank from having any direct or indirect interest in any advance, loan, or credit without declaring such interest and he shall not grant any of these facilities without authorization in accordance with the rules and regulations of the bank. Directors of banks are equally prohibited in like manner.[53] But over the years these provisions have been observed more in breach than compliance. A few instances would suffice. In the case of *FRN v Ajayi*[54] the founder of the defunct Republic Bank Ltd was found guilty of granting loans and other facilities to his companies without declaring his interest contrary to section 18(3). He as equally found guilty under section 46 of BOFIA. In *FRN v Sheriff & 2Others*[55] the accused were found guilty of granting credit and loans to companies in which they were also directors, without security contrary to section 18(2) and 20(1) of BOFIA.

[52] loc cit, 2006 as amended
[53] S. 18(3) and (4) of BOFIA. See also S. 46
[54] (1998) 3 FBTLR 32
[55] (1998)2 FBTLR 109.

The issue of insider related loan facilities without requisite authorization or adequate security has dogged the banking sector of the Nigeria economy in spite of repeated reforms in the banks. The efforts of the CBN in the exercise of its regulatory and supervisory jurisdiction have not shown to yield the needed discipline and this has resulted in the collapse of many banks with the concomitant loss of shareholder funds and spiral dive of the share index in the capital market.[56] The question to be asked is how come these monumental frauds still persist in spite of the routine inspection and oversight by the CBN and the NDIC? We have found that the Central Bank of Nigeria, as a regulatory body, is not subject to any Code or rules of good governance except its parent statute. With its assumed superiority over the financial institutions and its practical shield from scrutiny by any other body, by the CBN Act, it has become a lord unto itself. Thus, it has been alleged that only banks whose management are in the bad books of the CBN operators get sanctioned.[57] Equally disconcerting and, in our opinion, inexplicable is the elasticity of the latitude given by all codes of corporate governance to agencies to "comply or explain". This to our mind engenders a laissez- faire conduct to a rule otherwise should conduce a peremptory compliance.

**Conclusion**

There seem to be a nexus between the political culture of Nigeria and corporate governance in companies. The Hydra head that has under minded development in Nigeria equally rears its ugly head in the board room and market places - good laws, good policies but a complete or near disregard of the other component; a vibrant and virile application of the laws and policies to ensure that shareholder rights are protected.

The Nigerian economic space is fraught with manipulation. Discretionary power in the observance and compliance with code of governance renders itself readily available for fraudulent manipulation. This sore issue would seem to have been addressed by the National code of Corporate Governance 2016. Compliance with the provisions of the code is mandatory[58]. The code asserts that sanctions would lie against individuals and companies directly involved in its violation.[59] However, it failed to state the precisely what sanctions or pursuant to what law the sanctions would be

[56] In the Oceanic Bank Plc Fraud Saga, the Managing Director was found guilty of a five-court charge on 8/10/2010 involving the embezzlement of millions of dollars of shareholder and depositor funds of a bank she founded. She was sentenced to six months imprisonment and ordered to refund N150billion.

[57] Awoyemi, op cit, speaks of 'Incestuous relationship' where the Chairman of Stanbic IBTC Bank, a bank still under the CBN's audit scrutiny, spear headed the CBN's Town Hall Meeting in London, in August, 2009.

[58]Sec. 2.3 & 37.1 National Code of Corporate Governance for the Private Sector in Nigeria 2016

[59]Sec.37.1,Financial Reporting Council (FRC) of Nigeria National Code of Corporate Governance 2016.

meted out on erring companies and directors. The beneficial effect of this code is doubtful and is unlikely to address the corporate governance challenges outlined in this article.

To invigorate corporate governance rules, operation and compliance in Nigeria is recommended that Nigeria enacts its own "Sarbanes – Oxley Act" with special attention paid to its peculiarities. We advocate that enforcement of corporate governance codes and rules through legislation is appropriate at this point in time in Nigeria. All corporate governance codes and regulations should be codified and a single instrument enacted. It is our opinion that the interplay of regulatory statutes and a corporate governance Act will assure a sustainable economic development eliminate the unbridled abuse of shareholder rights witnessed in Nigeria in the last two decades.