

AN EXAMINATION OF LEGAL ISSUES IN CORPORATE
LEADERSHIP STRUCTURE AND PERFORMANCE
OF COMPANIES IN NIGERIA

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GENERAL INTRODUCTION

1.0.0 INTRODUCTION

Companies have been identified as business vehicles all over the world and they substantially control the economy of nations.¹ Incorporation of companies is regulated by the laws of individual nations. In Nigeria, incorporation and management of companies is regulated by the Companies and Allied Matters Act (CAMA). As a legal entity the company has a distinct identity and personality different from its owners or members and the investors are not personally liable for the liabilities of the company.²

Initially business owners managed the affairs of their business concerns, but in the process of growth and development corporations became complex and it is obvious that professionals need to be hired to manage the affairs of companies. This does not however, presuppose that companies cannot or should not be run by owners having the expertise in doing so. A process hence, evolved whereby shareholders engaged managers to handle the operations of the company and in such a situation, ownership is said to be separated from control. This created a dichotomy between ownership and control whereby owners may not necessarily be the managers of a company.

In Nigeria, CAMA provides that except as may be otherwise provided by the company articles, the business of the company shall be managed by the board of directors.³ This provision vests the management powers over the business of a company in the board of directors. With this, it is apparent that CAMA gave

¹Holdcroft, Jr. J. P. and Macey, J. R. 'Flexibility in Determining the Role of Board of Directors in the Age of Information'. 19 Cardozo L. Rev. 291 (1997) P. 10

² *Salmon vs Salmon Co Ltd (1897) A. C. p. 22*

³ Section 63 (3) CAMA

enormous powers to the board to provide leadership, which means, to direct, guide and control the business of the company as the most important organ of the company. Leadership has been described as the ability to facilitate individual and collective efforts to achieve shared objectives.⁴ It is therefore, clear that the sustainability of the company depends on the ability of the board of directors to provide the requisite leadership to make the company achieve its objectives, otherwise the company may suffer loss and failure.

The causes of failure of corporate organizations were attributable to lack of good corporate governance on the part of the board. This usually manifests in unethical conducts on the part of directors, ineptitude, fraudulent behaviours, poor organisational culture, leadership style and so on.⁵

In Nigeria, the board of directors which is the sole organ of the company responsible for the management of the company has a lot of powers and freedom provided for it by CAMA to operate. This situation as well as the weakness in regulatory and enforcement system has been explored by many boards to the detriment of shareholders and the company at large. Though there are measures put in place by company law to checkmate the excesses of the board like derivative actions by members, fiduciary duties of directors and so on, but the process of achieving these measure are so cumbersome that it makes them almost non-existence.

The Company Act does not give any indication as to the type of person who may be appointed and the quality or qualification they must possess. Though section 257 of CAMA listed certain categories of persons that are disqualified from being appointed

⁴Shaibu Ibrahim 'Leadership and Military Ethics' Published in Leadership and Complex Military Operations By Nigerian Defense Academy Publishing, Kaduna (2016) p.59

⁵ Toyin Ishola Lasisi 'The Relationship Between Corporate Governance and Organisational Performance in Nigeria Companies. A Walden University Dissertation and Doctoral Studies Collection (2017) p. 2

as directors in Nigeria but the challenge is in how to enforce such disqualification in a country where the processes and procedures for declaring a person insane or bankrupt are cumbersome and currently not been properly explored.

The effectiveness of the board is dependent on its size, composition and structure. The board must not be too big as to become unwieldy or too small that will exclude the necessary knowledge, skills and experience to make effective decisions. The right mix of the executive and NEDs is to bring a proper and genuine growth and quality decision backed by experience in an ideal world. It must be stated that the quality of the directors will reflect most certainly on the effectiveness of the company. **However, CAMA 2004 is silent on the selection of the directors and the mix required for effective performance.**

Though the SEC Code of Corporate Governance made some provisions necessary for effective management of companies in Nigeria, it is clear from the provisions of the code that it is not intended as a rigid set of rules but a guide to facilitate sound corporate practices and behaviour. Also, the responsibility to ensure compliance still rests on the board of directors.⁶ There is also no modality for enforcement, no facility for monitoring compliance and no specialised agency or department to monitor and enforce the Corporate Governance Code.⁷

The challenge therefore, is how to ensure that the interest of all stakeholders is adequately protected by the board, in other words how to make the board effective. This calls for appropriate structuring of the board leadership in a way for the board to be self-regulating and be able to effectively carry out its functions of formulating

⁶ Sections 1.3 (a) and (b) SEC code of Corporate Governance 2003

⁷ Kunle Aina 'Board of Directors and Corporate Governance in Nigeria' International Journal of Business and Finance Management Research IJBFMR 1 (2013) 21-24. Pp.25 to 32. Accessed from www.bluepenjournals.org/ijbfmr on 23/10/17

policies to advance the course of the company, supervise management to ensure accountability and probity.

The above brings about the need to closely look at the leadership structure of corporate bodies in line with the provisions of company law to propose the necessary reform in the law to reposition the board to be self-regulating and be able to carry out its functions of formulating policies and appropriately supervise management to advance the course of the company.

This thesis therefore, examines the legal frameworks on leadership structure of corporate entities in Nigeria which is currently structured in a way that it handles the dual functions of supervising the day-to-day running of the company and also monitors its own performance with a view to identifying the challenges in the practical operation of the provisions of CAMA and other regulatory provisions on the leadership structure. It will attempt to provide recommendations on how the board could be better structured to provide the necessary checks and balances in ensuring probity, accountability, fairness and finally, performance of corporate bodies in Nigeria.

The research work will also look at the company secretary being a key officer of the company and a conscience keeper within the board whose major role is to guide the board and at times, report misdeeds. It will assess how effective these roles are being performed under the provisions of CAMA and the code of corporate governance in Nigeria and to explore how best the secretary could discharge the duties to strengthen the effectiveness of companies in Nigeria.

1.1.0. STATEMENT OF THE PROBLEM

Nigeria like any other country of the world had witnessed horrendous cases of unethical practices and abuse of office by directors. For instance the scandals that led to the collapsed of corporate bodies like Oceanic and Intercontinental banks in Nigeria were traced to unethical conduct by the board leadership.⁸

The company law gave the board a wide range of powers and freedom to operate in the control and management of companies. This latitude coupled with the weakness in the regulatory and enforcement system has been explored by the board to perpetrate unethical conducts leading to scandals that had resulted in the collapse of many companies and put to question the effectiveness of legal and regulatory provisions available to safeguard the company especially on company leadership structure.

The current leadership structure of companies in Nigeria is such that the board has the sole power to control the management of the company and still super intend on the meeting of members at the general meeting where management performance is ordinarily expected to be appraised. This arrangement, no doubt, gives the board the opportunity to influence the decision of members at general meeting and render the general meeting a mere rubber stamp for the board decisions notwithstanding the safeguards provided by company law.

Consequently, this research work will examine the challenges in the current structure of the board of directors as provided by CAMA and other regulatory provisions and make recommendations for restructuring the board in a way to guarantee the needed internal regulation, checks and balances to enhance performance of corporate bodies

⁸See the unreported case of *FRN V Dr. (Mrs.) Cecilia Ibru FHC/L/297/2009*. See also Ayinla, L. A. et.al 'Applicability of ADR & plea Bargain in the Nigerian Criminal System. *Africa Nazarene University Law Journal* Vol. 2 (2) 2014 p. 186

and earn the confidence of stakeholders by reducing opportunities for fraud and other unethical behaviours by the board to the barest minimum in Nigeria. Also in ensuring adequate enforcement mechanisms are put in place to ensure perpetrators of fraud or unethical behaviours are not allowed to go unpunished.

1.2.0: AIMS AND OBJECTIVES

The Specific objectives of the research work are to:

1. analyze the legal and regulatory frameworks on the leadership structure of the board of corporate bodies;
2. examine the propriety of the present leadership structure of public companies;
3. examine the adequacy of enforcement mechanisms put in place in ensuring compliance of the board with corporate laws and regulations on leadership; and
4. examine the constraints in the effective discharge of the duties of the company secretary in the context of the leadership structure in the country.

1.3.0 RESEACH QUESTIONS

1. Is the framework on leadership structure of corporations adequate for effective management of corporate bodies in Nigeria?
2. Is the enforcement mechanism available to compel compliance with laws and other regulations adequate in ensuring compliance by corporate bodies in Nigeria?
3. Are there adequate self-regulating measures entrenched in the board leadership structure in Nigeria to safeguard unethical behavior?
4. Can the law on the appointment and removal of the company secretary adequately guarantee effective operation of a company secretary in the context of leadership structure?

1.4.0 METHODOLOGY

The methodology adopted in this study is qualitative comprising of doctrinal and non-doctrinal methods. The work will draw information from both the primary and secondary sources. The primary sources to be considered include; statutes, codes and case laws on the subject. These form the basis upon which actions and opinions are formed. Also works of scholars will be used as secondary sources which include; books, reports, seminars papers, articles, internet materials, journals, monographs, dissertations and other available related literature from both national and international writers on the subject of the study.

The non-doctrinal aspect shall be based on interviews with stakeholders in corporate practice in order to have a broader view from practitioners' experience on the subject matter of this research work. The information gathered will be analysed theoretically with a view to forming an opinion and arriving at a conclusion concerning the subject of the study.

1.5.0 SCOPE AND LIMITATIONS OF THE STUDY

The scope of this study is limited only to public companies in Nigeria. However, best practices in some other jurisdictions will be examined for cross referencing and analysis.

The discussion will further be limited to issues of leadership structure of the board of directors which is imperative to board performance.

The research work will also be limited to challenges relating to company secretary within the leadership structure of the corporation.

1.6.0 SIGNIFICANCE OF THE STUDY

This research work seeks to examine the leadership structure of public companies in Nigeria in with a view to analyzing the legal and supervisory provisions and making recommendations for reform on identified deficiencies for an improvement on the operation of public companies in Nigeria.

The research work has the potential of making positive change in company management by bringing to fore the lacuna in legal and regulatory provisions and provides investors, financial analyst and regulators with insight into how to better regulate and reposition the board of directors for open and transparent practice to enhance the performance of corporate bodies.

The insight gained from this study will provide regulators with the knowledge of the deficiencies in the enforcement mechanisms of the control system to ensure the board comply with regulatory provisions. It could create more proactive strategies in the appointment and removal of company secretaries for the secretary to be more independent as a conscience keeper of the company. This will surely enhance the performance of the secretary and have overall positive effect on the company.

The overall effect of the research work is to reposition the board of directors legally for effective performance and economic growth in Nigeria as companies have been described as important engine for growth and vehicles for development.

1.7.0 LITERATURE REVIEW

Corporate entities acquired a distinct personality different from that of its promoters or shareholders at incorporation. As an artificial person, it has no mind or hands of its own to will and to act. There is therefore, the need for natural person to act on behalf of the company. This brings about necessary regulations as to the structure, guiding principles, and mode of operation to guide the human managers in order to ensure

accountability, probity and that corporation fulfil its aim of wealth creation. Literatures are reviewed hereunder for an understanding of the subject matter of this research work and to reveal the gaps which the work intends to fill.

Olakunle Orojo⁹ traced the evolution of corporate bodies or incorporated entities to individual traders being the oldest and commonest business undertaking in the world. Though the system of individual traders seems to be indispensable and satisfying as an important social and economic need, it lacks assured continuity and cannot easily attract capital for business development. Han, T. C.¹⁰ went further to state that overtimes as the risk of trading were becoming greater and more complex it became impractical for all but the wealthy merchants to continue to trade on their own account, then individuals began to come together to carry on business as partners on joint account. The scholar explained further that the joint venture were in many respects different from the modern companies as it could not raise fund on its own when funds are needed it would be raised by levies on existing members or partners.

Incorporated companies were seen as a more suitable vehicle for trade and investment. Bukola Akinola¹¹ opined that with the reception of English Laws into Nigeria due to colonialism, the first legislative attempt on company law in Nigeria was made in 1912 fashioned after British Company Law. With the doctrine of incorporation Pennington¹² explained that a company becomes a legal personality distinct from the individuals who are its members. Also, Lord Denning¹³ stated that a company may in many ways be likened to a human body having brain and nerve

⁹Orojo, J. O. *Company Law and Practice in Nigeria* (Mbeyi& Associate Nig. Ltd. 1992) P. 10

¹⁰Han, T.C. 'Corporate Governance and Independence Directors' (*Singapore Academy of Law Journal* 2003) PP. 358-360

¹¹Akinola Bukola 'A critical Appraisal of the Doctrine of Corporate Personality Under the Nigerian Company Law NIALS working paper series 002 (2014) P. 1

¹²Pennington's *Company Law* Seventh Edition (Butterworths' 1995) P. 64. See also *Salomon v Salomon and Co Ltd (1877) AC 22* and *Lee's Air Farming Ltd (1960) 3 ALL ER 420*

¹³In *Bolton (Engineering) Co Ltd v Graham and Sons (1934) 1KB 57*

centre, which controls what it does. It also has hands, to holds tools. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work while others are directors and managers who represent the directing mind and will of the company and control what it does.

Holdcroft and Mancey¹⁴ explained that separation of ownership from control will permit specialization in the company and shareholders can enjoy the benefits of enhanced value without bearing the burden of managing the firm. **Though the author mentioned specialisation as part of the reasons for separation of ownership from control, the company law in Nigeria do not put specialisation as part of the prerequisites for appointment as a member of the board.**

Blair and Stout¹⁵ wrote that managers are, at times, seen as having interests at variance with that of shareholders for example, managers may be more interested in their own privileges. The challenge here therefore, is how to guarantee the confidence of investors which has been eroded by the scandals that rocked corporate entities world over. **Notwithstanding that directors are subject to fiduciary duties in the course of discharging their duties, the scandals that ravaged corporate bodies had shown that the enforcement processes of the duties are inadequate as it has not been able to deter perpetrators.**

Klaus Hopt¹⁶ opined that reforms in corporate organisations, stock exchange, and capital market were considerably due to corporate scandals. Prominent out of the scandals are Enron and Worldcom in the US, Parmalat in Italy, Vivendi Universal and France Telecom in France, the New Market in Germany etc. The writer however,

¹⁴Holdcroft Jr, J. P. & Macey, J. R. Flexibility in Determining the Role of the Board of Directors in the Age of Information.' *Cardozo Law Review* (1997) p. 15

¹⁵ Blair and Stout 'Directors Accountability and the Mediating Role of Corporate Board' 89 *Wash U. L. Q.* 403 (2001) p. 1

¹⁶ Klaus J. Hopt 'Comparative Corporate Governance: The State of the Art and International Regulation.' *The American Journal of Comparative Law* Vol. 59 No 1 (Winter 2011) pp. 16 - 17

pointed out that the positive aspect of scandals is that they show where regulation has lacunae or not effective. Ralph Heibutzki¹⁷ wrote that corporate scandals emboldened by corporate abuses engendered a shareholders movement to separate CEOs from holding additional titles like chairman which gained ground during the late 2000s. The irony of the issues surrounding the chairman of the board is that the chairman has no specific role prescribed by company law apart from managing meetings and have to rely on information he can glean from the CEO. This will definitely make such a chairman subservient to management especially in a company with dispersed shareholding pattern.

Dorothy Nelson¹⁸ pointed out that, though sections 310 – 312 of CAMA provided for derivative actions by shareholders for legal, unfairly, prejudicial or oppressive conduct but there are many impediments which practically renders the derivative action ineffective. Elizabeth Boro¹⁹ observed that the power of the general meeting to give directive to the board has been interpreted to be subordinate to the management powers of the board. As stated above, though shareholders have some supervisory powers through the members at general meeting and other derivative actions, it has been shown that the control measures are weak and almost ineffectual to properly deter the board from unethical conducts which have been identified to be at the root of corporate collapse. Therefore, there is the need to think of more effective ways to bring the board to account.

¹⁷Ralph Heibutzki 'The Difference Between CEO, President and Managing Director' (2015) p. 2 <http://smallbusiness.chron.com>. Accessed on 06/08/2015

¹⁸ Dorothy Nelson 'The Dilemma of the Shareholders Under the Nigerian Company Law' *Journal of Law, Policy and Globalization* Vol.37, 2015pg 90. Accessed from www.iiste.org on 10/6/17.

¹⁹ Elizabeth Boro How Does the Division of Power Between the Board and the General Meeting Operate? 2010, 31 *Adelaide Law Review* pp 171 & 172. Accessed from www.austlii.edu.au/journals/Adelaide_Law_Rew/2010 on 10/6/17

Mike Wahl²⁰ opined that it could be assumed that higher ownership stake generates more influence on the management of a company, hence the more dispersed share ownership of a company the more independent the management of such company. As stated by the writer, higher ownership stake generates more influence on the part of the shareholders with controlling shares over the board or management. The minority shareholders in such settings are always at the receiving end as the group with controlling share could manipulate the activities of the company to unduly benefit from the profit of the company. On the other hand, when shareholding structure is dispersed, there will be more independence for the board and elements of control of the board by shareholders are almost non-existence. In both cases, the company may be at disadvantage because group may be furthering their interest instead of that of the company.

Andrea Rea²¹ refer to corporate structure as the way the business is organized to achieve its objectives and it determines the ownership, control and authority of the company which are represented by three groups; the shareholders, the board and the officer of the company.

Fabian Ajogwu²² posited that the problem of how to make boards of directors more effective has been receiving greater attention in recent times with the codification of best practices in corporate governance by governments, regulators and institutional investors around the world. The author posited further that the code of corporate governance in Nigeria has no statutory or regulatory support for enforcement unlike the United Kingdom that makes compliance a condition for continued listing on the

²⁰ Mike Wahl – The Ownership Structure of Corporations: Owners Classification & Typology (2006) p.1. Accessed from www.academia.edu/.../The_ownership_structure_of_corporations on 15/03/16

²¹ Andrea Rea – What is Corporate Structure? – Definition, Types & Examples. Lesson Transcript (2015). P.1 Accessed from <http://study.com/academy/lesson>

²² Fabian Ajogwu, Corporate Governance in Nigeria: Law and Practice. Centre for Commercial Law Development (CCLD 2007) pp. 79 - 110

London Stock Exchange. He further pointed out that in Nigeria CAMA has not provided for appointment of non-executive directors, independent directors, use of nomination committee and that the Act is silent on whether the Chairman should be involved in the day to day running of the organisation. This author has touched on some of the vital issues in the management of 21st century companies which were not envisaged by company law. Though the SEC Corporate Governance Code had identified some of them, but the challenge now is that there is no statutory provision for their enforcement.

Jacob Dada²³ described management power in a company as shared powers in which the board and, to some extent, the shareholders are co-beneficiaries, but that the management powers of the shareholders are not co-terminus with that of the directors. The author quoting the Law Reform Commission stated that at present there is no statutory or Common Law specification on the quality of people occupying the seat of a boardroom and a board accommodates diverse personality some of whom are least qualified to be on the board. Klaus Hopt²⁴ in agreeing with the assertion above advocated for independence and firm specific knowledge on the part of directors while the capabilities of individual directors relevant to their service on the board should be disclosed.

In a statement by Australian Institute of Directors²⁵ it was stated that ‘a board needs to have the right group of people having particular regard to each individual’s background, skills and experience, and how the addition of an individual builds the collective capacity and effective functioning of the board.’ This was corroborated by

²³Jacob Abiodun Dada, Principles of Nigerian Company Law. Third Edition (University of Calabar Press 2008) pp. 352 - 359

²⁴Klaus J. Hopt (note 22) supra pp. 19 - 27

²⁵See the report of Australian Institute of Company Directors <http://www.companydirectors.com.au> p. 1 accessed on 08/08/2015

the statement of Spencer Stuart²⁶ that highly effective board include a mix of directors with the expertise and experience to fulfil their essential oversight roles, as responsibilities today are expanding and the number and complexity of issues are increasing, having a board made up of the right people with the relevant skill is critical to today's business environment. Also, agreeing with the above Metsa Board²⁷ in its report asserted that the composition and number of members of the board of Directors must facilitate effective fulfilment of the boards' task and take into account the development phase of the company, the special requirement of the industry and the need of the company operation.

Also, Pincent Mansons²⁸ stated in the same direction that the board of a company and its committees should consist of directors with appropriate balance of skills, experience, independence and knowledge of the company to enable it discharge its duties and responsibilities effectively. Uadiale²⁹ refers to board composition as the member of independent non-executive directors on the board of a company relative to the total number of directors.

One cannot agree less with these authors that qualification, knowledge of the company, skill, size of the board, and appropriate mix of the people with experience and expertise are imperative to the composition of the board in order for the company to achieve its objectives. However there is no provision prescribing the requisite qualifications for appointment as a board member of a company in terms of knowledge, skill and experience as stated above anywhere in the CAMA.

²⁶ Spencer Stuart 'Building the Best Board' in PWC Publication Title Board Composition and Behaviour (2012) p. 1 <http://www.pwc.com/us/en/corporate-governance> accessed on 08/08/2015

²⁷ Report of Metsa Board on Composition and Independence of the Board of Directors. March 2014 <http://www.metsaboard.com/investors/corporategovernance> . accessed on 04/08/2015

²⁸ Pincent Mansons 'Composition and Structure of the Board – the UK Corporate Governance Code.

²⁹ Uadiale Marte Olayinka 'The Impact of Board Structure on Corporate Financial Performance in Nigeria'. *International Journal of Business and Management* Vol. 5 No 10 Oct. (2010) P. 2

James Brickley et al³⁰ defined unitary leadership structure as the case in which the CEO and Chairman of the board titles are vested in one individual and dual leadership structure as the case where the two positions are held by different individuals. Quoting from the Presidential Address of Jensen to the France Association, the author stated further that the function of the Chairman is to run the board meeting and oversees the process of hiring, firing and compensating the CEO. Also, quoting from the works of Benjamin Rosen, the Chairman of Compaq Computers, the author declares that when the CEO is also the chairman, management has *de-facto* control. Yet the board is supposed to be in charge of management. Checks and balances have been thrown to the wind.

Maarten Vandewaerde et al³¹ opined that performance gains can be expected when directors bring diversity of experiences, skills and personalities to the board room table and take leadership functions when they are the most suited for it. Carolina Azar et al³² postulated that the board is to direct and guide long term strategy, implement and monitor performance against the strategies set out. Eisenberg M.³³ opined differently that it is a fallacy to say board of directors managed the affairs of corporations, that the affairs of corporation are being managed by the executive officers particularly the CEO and not directors. The scholar concluded that the CEO dominated the board and hence the board cannot manage the company but in most

³⁰James A. Brickley, Jeffrey L. Coles, Greg Jarel. Leadership Structure: Separating the CEO and Chairman of the Board. *Journal of Corporate Finance* 3 (1997) 189 -220 pp.190-193

³¹Maarten Vandewaerde, Wim Voordeckers, Frank Lambrechts and Yannick Bammens, *Board Team Leadership Revisited: A Conceptual Model of Shared Leadership in the Boardroom. Journal of Business Ethics* (2011) 104:403-420 p. 405 Accessed from <http://www.jstor.org/stable/41476096>

³²Azar Carolina & Grimminge, Andreas. 'Achieving Effective Boards: A Comparative Study of Corporate Governance Frameworks and Board Practices in Argentina, Brazil, Chile, Colombia, Mexico, Panama and Peru' (2001) p. 12

³³Eisenberg M. 'The Structure of the Corporation' (1976) in George W. Dent Jr. 'The Revolution in Corporate Governance, the Monitoring Board, and the Directors Duty of Care'. *BOSTON University Law Review* Vol. 61:623 (1981) P. 624.

cases just rubber stamp whatever is presented by the executives headed by the chief executive (CEO).

Stephen Venuto³⁴ in the same vein described CEO as the most senior executive officer in a company, the responsibility of the CEO is to manage the company as the senior-most executive officer. The writer opined further that a chairperson is not an executive officer, and is merely in charge of running meetings of the Board of Directors except where a chairperson is an executive called executive chairperson who normally has all the authority of a non-executive chairperson and also the boss of all other executive officers. Executive chairperson therefore, has the responsibility of managing the company as the senior most executive officer and to manage and run the board meetings.

David Rose³⁵ opined that all power in the company ultimately stem from the Board of Directors, which represent the interests of all shareholders. The Board is responsible for the overall strategy of the company and major strategic decisions. The writer explained further that the CEO is the chief executive of the company and the highest ranking full-time employee to whom all employees of the company ultimately report. The only one exception to this structure is where an executive chairman is a full time employee.

It is clear from the opinion of writers above that when there is unitary board, the chairman who is the head of management will equally be the head of the board. Checks and balances are thereby thrown to the wind. Where there is duality of the chairman and the CEO, the statutory role given to such chairman by company law is

³⁴ Stephen Venuto. in a write up titled ‘ What is the Difference in Responsibilities Between CEO, President and Chairman of the Board?’ (2015) pp. 1 & 2 <http://www.quora.com> accessed on 08/08/2015

³⁵ David Rose see note 32 above pp. 2 & 3

to merely be in charge of running meetings of the board of directors. Whichever way even the board needs a supervisor to checkmate its excesses which is not available in any of the structures either unitary or dual board but the company law did not make adequate provision for this.

Derek Higgs³⁶ opined that the role of non-executive directors is frequently described as having two principal components: monitoring executive activity and contributing to the development of strategies. Schooley, D. et al³⁷ opined that outside or independent directors may be better monitors of the firm performance because they can limit the discretion of managers in assuming too much risk and from misusing corporate resources. Rosenstein, S. et al³⁸ asserted that it has been discovered that firms replacing inside directors with outside ones experience an increase in stock price, and boards dominated by outsiders are more likely to use performance-based executive and firms with poor performance are likely to replace inside directors with outside ones. In as much as outside directors are seen as better monitors of the firm's performance as stated by the authors above, the company law has no specific provision for appointment of outside or independent directors in Nigeria.

The Cadbury Report³⁹ defined corporate governance as 'the system by which companies are directed and controlled. Nmehielle and Nwuche⁴⁰ opined that the concept extends beyond systems for directing and controlling a company to holding

³⁶ Derek Higgs 'Review of the Role and Effectiveness of Non-Executive Corporate Law and Practice Course Handbook (Westlaw 1372 PLI/Corp 377, 2006) P. 20

³⁷ Schooley, D., Renner, C. and Allen, M. 'Shareholders Proposals, Board Composition and Leadership Structure' *Journal of Managerial Issues* Vol. 22 No. 2 (Pittsburg State University Summer 2010) P. 154

³⁸ See Rosenstein, S. and Wyatt, J. 'Outside Directors, Board Independence, and Shareholders Wealth'. *Journal of Financial Economics* (1990) 26:175-191 and Fields, M. A. and Keys, P. 'The Emergence of Corporate Governance from Wall St. to Main St.: Outside Directors, Board Diversity, Bear Risk'. *The Financial Review* 3:1-24 (2003) in Schooley, D. et al Ibid.

³⁹ Smerdon, R. A 'Practical Guide to Corporate Governance' (London Sweet & Maxwell, 2007) P. 1

⁴⁰ Nmehielle, Vincent. O. & Nwauche, Enyinna. S. 'External-Internal Standards in Corporate Governance in Nigeria' (A Paper Presented at the Conference on Corporate Governance in Sub-Saharan Africa at George Washington University Law School, October, 2004) P. 2

the balance between economic and social goals and between individuals and communal goals. The erudite scholars asserted further that the concept replicates the rule and regulations that ensure that a company is governed in a transparent and accountable manner for the enterprise to meet the expectation of shareholders, creditors and other stakeholders.

Ifeanyi Nworji et al⁴¹ stated that corporate governance aimed at reducing conflict of interest of the firm, the absence of which firm value is decreased. Also Mayer, F.⁴² opined that corporate governance means the sum of processes, structures and information used for directing and overseeing the management of corporate organization.

Bob Tricker⁴³ said that whilst management process has been widely explored, little attention has been relatively paid to governance hence, if management is about running business, governance is about seeing that it is run properly. Also that Corporate Governance is concerned with how powers are shared and exercised by different groups to ensure that the objectives of the company are achieved.

Sharma and Thakkar⁴⁴ opined that the company secretary of today is expected to play the role of a compliance officer, integrator, coordinator, counsellor, confidant especially of the board of directors and a variety of other roles. Sudheendhra Putty⁴⁵ sees the company secretary as being at the centre of decision making process in a

⁴¹Ifeanyi Desmond Nworji, Olagunju Adebayo & Adeyanju Olanrewaju David – ‘Corporate Governance and Bank Failure in Nigeria: Issues, Challenges and Opportunities. *Research Journal of Finance and Accounting* Vol. 2 No 2 2011 p. 2

⁴² Mayer, F. ‘Corporate Governance and Performance in Enterprise and Community: New Direction in Corporate Governance.’ Blackwell Publishers, Oxford UK in Ifeanyi et al supra p. 3

⁴³Prof. Bob Tricker, in the ‘ICSA Study Text in Corporate Governance.’ ICSA Publishing (2007) p.4

⁴⁴Sharma J.P. and Sona Thakkar Emerging Role of Company Secretary In Employment: A Study. A paper presented at the 40th National Convention of Company Secretaries held in Aamly Valley City, Ambavane, Dist. Pane Maharashtra (Near Lonnvala) India from 4th to 5th October 2012 p. 1. Accessed from <http://www.icis.edu/docs/40NC-souvenir> on 29/06/17.

⁴⁵Sudheendhra Putty Concept of Whistle Blowing and the Role of the Company Secretary in Souvenir for 40th National Convention of Company Secretaries cited in note 54 above pg 99.

company and by so doing being in a powerful position of influence. It is the role of the secretary to assist and guide the directors in their pursuit of profit and growth and act in integrity and independence to protect the interest of the company, shareholders and employees. In summary, the writer described the role of a company secretary as concerning varied stakeholders; the board, the company, shareholders, employees, regulators, the society, and as the conscience keeper of the company who needs to combine the elements of business, commercial viability and robust compliance.

Deloitte⁴⁶ opined that the responsibility of a company secretary has changed over the years from that of note taker or administrative servant to a broader role of advising the board and having responsibility for corporate governance requirements, practices and effective board processes. The writer concluded that ‘this specialized role of the modern day secretaries has position them as one of the key governance professionals within the organisation.’ Bisi Adeyemi⁴⁷ in agreement with Deloitte posited that the role of the company secretary has grown in importance as he is now the guidance of compliance with laws, regulations, corporate governance and ethics in a company. Though the secretary is expected to give impartial advice and act in the best interest of the company but establishing a structure that ensures the independence of the secretary is central to the entrenchment of corporate governance. As it is incumbent on directors to ensure the secretary is given the required independence to act, failure of which would erode the effectiveness of a significant in-built control available to the company. While Elizabeth Idigbe⁴⁸ described the company secretary as the life

⁴⁶Deloitte - The Changing Role of The Company Secretary (2015) pp 1 & 2. Accessed from <http://www2.deloitte.com/ie/en/pages/legal/articles/changing-role-secretary.html> on 15/3/2016.

⁴⁷Bisi Adeyemi – The Role of the Company Secretary in Corporate Governance Compliance (2015) p. 3. Business Day online. Accessed from <http://businessdayonline.com/2015/05> on 15/8/2015.

⁴⁸ Elizabeth O. Idigbe – Nigeria: Company Secretary Effectiveness in Promoting Good Corporate Governance with Focus on the Nigeria Jurisdiction (2015) pg 7. Accessed from <http://www.muedaq.com/Nigeria> on 29/6/16.

wire of the company but the position could be very challenging particularly when support needed especially from directors are lacking.

Simeon Osborne⁴⁹ described the company secretary position in an organisation as unique as the secretary is a key point of contact for the chairman of the board and also a central member of the senior management team who bridges the gap between the boardroom and the executive while having privilege access to both. Kaushik Mukherjee⁵⁰ described the company secretary as a compliance officer and a conscience keeper who should be independent and have moral obligation to report misdeed but should be ready to put in his paper without compulsion after blowing the whistle. The writer finally opined that an independent company secretary can only happen if his appointment, approval and removal are in the hands of an independent body like Audit Committee of the Board of Directors.

From the opinions of writers above, it is apparent that the company secretary has important roles to play in ensuring that the company attain its objectives. The roles include ensuring compliance with the rules and regulation and even reporting misdeeds as the conscience keeper of the company. The appointment and removal of the secretary rested mainly on the board whom the secretary may at times need to give adverse report on. To be effective the secretary need to be independent of the management board. Hence, there is the need to review the law in the areas of appointment and removal of the company secretary in order to give the secretary independence from the board.

⁴⁹ Simeon Osborne – Rise of the Company Secretary (2014) p.1. Accessed from <http://www.lawgazette.co.uk> on 30/6/16

⁵⁰ Kaushik Mukherjee – Company Secretary Whistle blower or Conscience Keeper in Souvenir for 40th National Convention for Company Secretaries cited in note 54 above pp 115 – 117.

1.8.0 CONCLUSION

The literature review has revealed gaps in the composition, size, skill and experience of board members. It shows further that no specific function is prescribed for the chairman of the board while there is no mention of independence or non-executive directors in the law for appropriate check. Though it was shown that these are some of the challenges corporate governance intends to address by introducing codes of best practices, but the codes in Nigeria has no statutory or regulatory support for enforcement.

The secretary has been said to be in a key position of influence on the board and to other stakeholders. Also as the conscience keeper in the company but the challenge is how can the secretary adequately carry-out these functions giving its subordinate position to the board. These and other gaps are what this research work aimed at filling and to provide further literature on the impact of legal and regulatory framework on the leadership structure of corporate bodies and performance in Nigeria.

In dealing with this challenge this proposal gave the statement of the problem, aims and objectives of the study, scope and limitation of the research work as well as the significance of the study. It went further to state the methodology to be adopted and reviewed related literature by scholars.

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1.9.0 PROPOSED BUDGET

1.	Tuition fee	-	469,100.00
2.	Internet subscription	-	180,000.00
3.	Books and Journals	-	450,000.00
4.	Equipment		
a.	Laptop	,-	200,000.00
b.	External Hard Drive	-	20,000.00
c.	Printer	-	60,000.00
5.	Stationary Items		
a.	A4 Papers	-	30,000.00
b.	Toner	-	60,000.00
6.	Research Assistance	-	450,000.00
7.	Accommodation	-	500,000.00
8.	Transportation	-	600,000.00
9.	Secretarial Services	-	600,000.00
10.	Telephone Services	-	30,000.00
	TOTAL	-	3,649,100.0

1.10 STUDY TIME PLAN

	STUDY TIME PLAN																																																
Year	2014		2015												2016						2017												2018																
Task/Month	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S														
Registration																																																	
Collection of Research Materials																																																	
Writing and Submission of Research Proposal																																																	
Defence of Research Proposal and Correction																																																	
1 st Seminar Presentation and Correction																																																	
2 nd Seminar Presentation and Correction																																																	
Writing of other Parts of the Thesis and Submission																																																	
Thesis Internal Defence and Corrections																																																	
Final Defence, Corrections and Submission																																																	

