

# **CORPORATE GOVERNANCE IN NIGERIA<sup>1</sup>**

**T. Ademola Oyejide  
and  
Adedoyin Soyibo  
Development Policy Centre  
Ibadan, Nigeria.**

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## INDEX OF ACRONYMS

AGM	ANNUAL GENERAL MEETING
BOFID	BANKS AND OTHER FINANCIAL INSTITUTION DECREE
CAC	CORPORATE AFFAIRS COMMISSION
CAMD	COMPANY AND ALLIED MATTERS DECREE
CBN	CENTRAL BANK OF NIGERIA
DPC	DEVELOPMENT POLICY CENTRE
FOS	FEDERAL OFFICE OF STATISTICS
IAS	INTERNATIONAL ACCOUNTING STANDARD
ISD	INVESTMENTS AND SECURITIES DECREE
MENA	MIDDLE EAST AND NORTH AFRICA
NAICOM	NATIONAL INSURANCE COMMISSION OF NIGERIA
NICON	NATIONAL INSURANCE CORPORATION OF NIGERIA Plc
NEPA	NATIONAL ELECTRIC POWER AUTHORITY
NDIC	NIGERIAN DEPOSIT INSURANCE CORPORATION
NNPC	NIGERIAN NATIONAL PETROLEUM CORPORATION
NITEL	NIGERIAN TELECOMMUNICATIONS Plc
NSE	NIGERIAN STOCK EXCHANGE
OECD	ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT.
Plc	PUBLIC LIMITED COMPANY
SEC	SECURITIES AND EXCHANGE COMMISSION
SOE	STATE OWNED ENTERPRISES
TCPC	TECHNICAL COMMITTEE ON PRIVATIZATION AND COMMERCIALIZATION



## I. INTRODUCTION

Corporate governance, as a concept, can be viewed from at least two perspectives: a narrow one in which it is viewed merely as being concerned with the structures within which a corporate entity or enterprise receives its basic orientation and direction (Rwegasira, 2000); and a broad perspective in which it is regarded as being the heart of both a market economy and a democratic society (Sullivan, 2000). 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, Sullivan (2000), a proponent of the broader perspective uses 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, that issues of institutional, legal and capacity building as well as the rule of law, are at the very heart of corporate governance. Besides, the bitter experience of Asian financial crisis of the 1990s underscores the importance of effective corporate governance procedures to the survival of the macroeconomy. This crisis demonstrated in no unmistakable terms that “even strong economies, lacking transparent control, responsible corporate boards, and shareholder rights can collapse quite quickly as investor’s confidence collapse”<sup>2</sup> and emphasizing the need for mutual cooperation between the public and the private sector in developing the capacity to ensure effective corporate governance with a view to ensuring the development of market-based economies and democratic societies based on the rule of law.

The adoption of various economic reform programmes in Africa in the 1980s, in which

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<sup>2</sup>M. R. Chatu Mongol Sonakul, Governor, Bank of Thailand, “Corporate Governance and Globalization,” Opening Address at the “Asian Economic Crisis and Corporate Governance Reform” Conference held on September 12 - 14, 1999, Bangkok, Thailand. Quoted in Sullivan (2000), p. 3.

privatization of government-owned enterprises form a major plank, has heightened the corporate governance debate in the continent. The bitter experience of massive governance in some countries of Eastern Europe like Czech Republic and Russia that rushed into large-scale privatization without the necessary corporate governance “infrastructure”, suggests that Africa needs to take stock of its corporate governance capacity. This paper is an attempt to do just that, using Nigeria as a case-study. In the next section, we provide some perspective of the current structure of ownership in the business sector in the country as well as assess the implementation of the privatization programme so far. In section III, following Ricardo(2000), we identify and review the different provisions of legislation governing corporate governance in Nigeria from three perspectives: disclosure and transparency; minority and shareholder rights; and oversight management. We evaluate the standard of corporate governance in Nigeria using the OECD scoring instrument in section IV and conclude in section V.

## **II. STRUCTURE OF OWNERSHIP IN THE BUSINESS SECTOR**

### **2.1 Introduction**

The relationships between ownership structure and firms’ performance are usually discussed within the context of the agency theory. The principal/agency literature suggests that hired managers will not have the same objectives as profit-oriented private owners; rather they will use firm’s specific rents to satisfy their own maximands. The limitations on managers’ discretionary powers, which tend to affect their efficiency and profitability, are usually imposed in part on the external constraints( e.g. posed by product and capital market) and also in part on internal constraints (posed by statutes and governance mechanism by the owners themselves). The main issue in the principal/agency literature is centered on asymmetric information because outside owners do not have access to full information on corporate performance or the reasons for under-performance. The separation of ownership and control, which occurs as a result of the introduction of external investors, brings to the fore the agency problem: managers are expected to represent the interest of the external owners.

Shleifer and Vishny (1998) were of the opinion that managers and equity investors should

be capable of entering into a binding contract, which could ensure that investors' interests are fully represented. The difficulty here lies in the possibility of specifying ex ante what accommodates all future contingencies. If unforeseen circumstances arise, managers assume contingent control rights that provide them with potentials to operate against investors' best interests, by for example, expropriating investors' funds or engaging in assets stripping. The discretionary control rights of managers are further increased by the existence of asymmetric information between themselves and external investors. This advantage allows managers the freedom to conceal some pieces of information from external investors. Such action serves to increase the cost of monitoring and therefore enables managers to pursue their own rather those of the equity investors, by entrenching their position or engaging in behaviour that could be sub-optimal for the equity investors. The possibility of higher monitoring costs is particularly strong if there are large number of dispersed external investors, because a free-rider problem emerges if there are large costs to monitoring while the benefits accruing to each individual are relatively small. The free-rider problem could be minimized and internal constraints on managerial discretion can be imposed if ownership is concentrated in the hands of large block of shareholders (either individuals or investment funds). In this event, the returns to monitoring will increase monitoring activities, which may be subject to economies of scale. Large block shareholders will be more likely to be able to utilize their voting power to influence managerial behaviour, although, as Shleifer and Vishny (1986) noted, this will require share holding-voting rights. This leads to the proposition that large block-holders will exercise more effective corporate governance.

In the next sub-section we assess the extent to which these concepts can promote better corporate governance in Nigeria by analyzing the ownership pattern of businesses in Nigeria. This will help to isolate the extent to which the operations of Nigerian enterprises are subjected to the provisions of the company law and capital market legislation. The provisions of these legislation are expected to mollify some of the principal/agency problems referred to earlier.

## **2.2 Structure of Ownership of Private Businesses**

In Nigeria, most businesses in the formal sector are not publicly listed. DPC(1999), in a

survey of enterprises in six randomly selected states<sup>3</sup> found that only 13.3% of the enterprises are listed on the Nigerian Stock Exchange(NSE), while 48.5% are limited liability companies. Thus close to 38% of companies operating in the formal sector operate outside the provisions of the company law and nearly 87% of formal sector businesses may be operating outside the legislation governing the capital market. However, Lagos state leads in the number of publicly listed companies. In fact, over 71% of firms surveyed in Lagos operate under the company law while more than 20% operate under capital market legislation. Based on this finding, and because of the fragmentary nature of enterprise data in Nigeria, we shall use data on Lagos State for our analysis in this subsection. Besides, Lagos being the business and commercial capital of Nigeria, the insight gained from such analysis will reflect, to a large extent, the general situation as regards the structure of ownership of businesses.

In 1997, there were 599(6.05%) public limited companies<sup>4</sup> in Lagos State while private limited companies were 2.688(27.15%). Sole proprietorships form the form of businesses in the formal sector in the state as they constitute nearly 59% of registered enterprises(Table 1). Partnerships constituted about 7% of the enterprises. Thus, most enterprises in Nigeria operate outside the provisions of the company law and capital market legislation.

**Table 1 :Distribution of establishment by activity group and by type of ownership**

Activity Group	Sole Proprietorship	Partnership	Public Ltd.	Private Ltd.	Cooperative	Statutory	Others	Total no	%
Agriculture and Forestry	24	1	0	12	0	0	0	37	0.37
Mining and Quarrying	1	0	3	15	0	1	0	20	0.20
Manufacturing	1220	67	105	509	3	6	7	1923	19.43
Electricity, Gas and Water	9	1	2	11	0	3	0	26	0.26

<sup>3</sup>The states surveyed were Abia, Bauchi, Kano, Lagos, Plateau and Rivers.

<sup>4</sup>An enterprise is a public limited company(Plc), if it has 50 or more shareholders. However, a Plc can be quoted or unquoted on the Stock Exchange.



Activity Group	Sole Proprietorship	Partnership	Public Ltd.	Private Ltd.	Cooperative	Statutory	Others	Total no	%
Building and Construction	43	6	14	80	0	1	0	144	1.45
Wholesale and Retail Trade	918	75	132	614	4	4	3	1750	17.68
Hotel and Restaurant	534	17	13	100	0	2	1	667	6.74
Land Transport	27	1	0	24	0	0	0	52	0.53
Other Transport	36	7	16	60	0	5	4	128	1.29
Private Professional Services	1055	371	271	723	5	9	9	2443	24.68
Other Services	1953	150	43	540	3	5	15	2709	27.37
Total Number	5826	696	599	2688	15	36	39	9899	100.0
%	58.85	7.03	6.05	27.15	0.15	0.36	0.39	100.00	34.84

Source: Federal Office of Statistics: Directory of Establishment Lagos State 1997.

### 2.3 Ownership Characteristics of Quoted Companies

On average, between 1995 and 1998, government owned 8.1% of companies quoted on the NSE(Table 2). Government dominance of ownership of quoted companies is highly visible in sectors like Agriculture(32%), Automobile and Tyre(30%), Banking and Finance(21%), Petroleum Marketing(17%), Insurance(15%) and Building Materials(15%). These companies are some of those slated for privatization. Ownership by domestic individuals appears to be gaining currency in many sectors like Insurance(61%), Footwear(57.3%), Breweries(53%), Engineering Technology(53%) Petroleum Marketing(53%), Banking(36%) and Food Beverages and Tobacco(36%). In fact, on average, domestic individuals own nearly 35% of the shares of quoted companies in Nigeria. Institutional ownership of firms quoted on the NSE, is quite significant. Overall, both foreign and domestic institutional ownership constitute nearly 48% of quoted companies, 9% more than both domestic and foreign individual ownership. This has wide implications for effective corporate governance in that, ownership by institutions, being usually in block, can exercise voting rights that ensures the protection of shareholders from poor and unwholesome management performance.

However, domestic institutional ownership is slightly less than foreign institutional ownership. In contrast, there is a wide gap of more than 30% between domestic and foreign individual ownership. This suggests that while the Nigerian economy seems more relatively attractive to foreign institutional portfolio investors, there may be certain factors present in the economy that inhibit individual foreign portfolio investors. This may need to be investigated, study and ameliorated.

Ownership by management and staff, on average, is slightly less than 6% and is highest in Packaging(14%) Textiles(12%), Industrial and Domestic Products(9%), Conglomerate(6%) and Engineering Technology(6%). This also has implications for corporate governance.

Table 2: Ownership Characteristics of Nigerian Quoted Companies, 1995-1998 (Average %)

Sectors	Domestic Institutions	Foreign Institutions	Domestic Individuals	Foreign Individuals	Government	Management and Staff
Agriculture	30.08	15.0	22.02	0	32.02	
Food, beverage and Tobacco	19.95	39.16	36.5	2.5	1.42	0.47
Footwear	20	20	57.3	0	0	
Industrial/Domestic products	24.17	28.14	32.63	0.01	6.35	8.7
Breweries	8.3	27.72	53.2	2.5	5.48	2.8
Building materials	23.73	26.06	35.09	0	15.04	0.08
Computer/Office equipment	57.6	8.8	10.1	13.2	0	0.16
Conglomerate	30	20	30.09	19.75	0	6.22
Construction	37.45	40.0	22.05	0	0	0.5
Engineering	10.8	29.65	53.33	0	0	6.22

Technology						
Petroleum Marketing	0	40	42.86	0	17.14	0
Packaging	21.2	28	33.84	2.56	3.34	14.4
Banking	20	3.9	36.3	3.0	21.4	3.4
Insurance	11.3	24.1	60.5	0	15.4	0.53
Automobile and Tyre	3.4	44.3	22.3	4.0	30.0	0
Textiles	13	36.06	25.0	8.74	5.3	11.9
Healthcare	34.9	33.3	23.9	0	0	7.9
Average	20.60	26.68	34.90	3.96	8.05	5.78

Source: Computed using data obtained from *NSE Fact Book*, 1998.

### 2.3 Implementation of the Privatization Programme

Given the foregoing, a pertinent issue in the Nigerian context is whether ownership has any impact on corporate performance. The renewed interest of the present administration in the privatization programme and the reports of studies on performance of privatized firms in Nigeria are clear testimonies to the fact that ownership structure matters for firms' performance. In July 1988, the Nigerian government promulgated the privatization and commercialization Decree 25. To this end, the Nigerian government clearly announced a four-pronged policy of full privatization, partial privatization, full commercialization and partial commercialization. The institutional framework for the implementation of the privatization and the commercialization programme was vested in the Technical Committee on Privatization and Commercialization (TCPC). The decree identified a total of 111 enterprises to be privatized fully or partially and another 35 enterprises to be wholly or partially commercialized. The Decree aimed at

- Lessening the dominance of unproductive investments in the SOEs sector;
- Reorientating SOEs towards performance improvement, viability and overall efficiency;

- Checking SOEs absolute dependence on the treasury for funding; and
- Disposing of SOEs providing goods and services that the private sector can best provide.

The decree provided for the necessary legal and institutional framework for the planning, organization and implementation of the commercialization and privatization programme. It also contained portions, which allowed for widespread ownership with the issue of distributional equity coming to the fore. Thus by 1995, privatization exercise on a total of eighty-seven enterprises were successfully completed out of the one hundred and eleven enterprises that were slated for full or partial privatization.

In order to allow for the effectiveness of the privatization exercise, the committee on privatization and commercialization recommended that the exercise should be carried out sectorally and in phases. In this respect, all exercises done from 1988 to 1997 fell under the first phase of the programme. The phase three, (2001-2005) of the privatization programme was to witness the privatization of spillovers from phase two and enterprises from the strategic industries like NNPC upstream, Cement and fertilizer companies.

Apparently on the ground of the myriad of problems that characterized privatization policies and implementation in the country, there was a break in the implementation of the programme especially between 1994 and 1997. These problems range from ideological opposition, opposition from the managers and staff of public enterprises, and absence of competition and other regulatory framework to unanticipated delays and inaccessibility to credit facilities on the part of potential buyers. Consequently, the government had to abandon the exercise until 1995 when government in its budget presentation affirmed its commitment to disengage itself from activities that could be more efficiently and effectively carried out by the private sector.

In view of the above, government in 1995 introduced a new policy of contract leasing to replace the sale of shares in public enterprises. The arrangement was to involve leasing the enterprises to both local and foreign entrepreneurs on as-it-were basis. Incidentally nothing has been achieved on the leasing arrangement since 1995 because the decree to back this arrangement was to be promulgated in 1996. Consequently, even as at 1997 government

could not achieve much in terms of implementing the arrangements over the years (1995-1997). However, by 1998, government announced its decision to commence the privatization programme as a means of ensuring wider business ownership and stimulate the competition necessary to ensure efficiency in the system. In this respect, government decided to embark on the policy of **guided privatization**. This is an approach where an enterprise will be privatized at a time so that the lessons of experience would be used to improve upon subsequent exercise. The key elements of the guided privatization programme include the following:

- Limiting share ownership to some core strategic investors with the relevant expertise to participate in the ownership of the enterprise under a specified share holding;
- government retention of at most 40 per cent of the equity in the enterprise to be privatized while 20 per cent of the shares would be sold to Nigerians, thus suggesting 40:40:20 per cent equity structure for government, foreign entrepreneurs and Nigerian investors;
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- Government would ensure widespread share ownership among Nigerians who were to be given financial assistance to acquire shares in the privatized enterprises;
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- the setting up of a team of experts on privatization in order to ensure that the privatization exercise achieved its desired objectives of job creation, acquisition of new knowledge, skills and technology and exposing the country to international competition. The team would be expected to examine and advise on all aspects of the programme;
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- In the first phase of the guided privatization programme, enterprises in telecommunications, electricity, petroleum refining, petrochemicals, coal and bitumen production and tourism development would be affected. Specifically, in 1998, NITEL was to be privatized while NEPA was to be reorganized for privatization. This was to

entail breaking up NEPA into its three main activities of power generation , transmission, and distribution to facilitate privatization;

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— the setting up of a high-powered National Committee on privatization. This committee would approve and concertize the sale of any venture; and

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— the setting up of Nigeria Trust Fund to manage the proceeds of privatization. Such proceeds would be used for investment abroad, and for improvements of education, health, agriculture, settlement of Nigeria’s debts and financing of share ownership of Nigerians in the enterprises to be privatized.

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Various forms of approaches have been employed to relinquish wholly or partially government equity holdings in the privatized enterprises, and they have clear implications for corporate governance. Specifically, the following privatization methods have been applied in Nigeria:

Public offer of equity for sale. This was carried out through the NSE **for** enterprises that qualified for listing on the stock exchange. Thirty five SOEs were privatized through this method and more than 1.5 billion shares were sold to private individuals and associations throughout the then 593 local government areas in the country;

- Private placement of equity shares to institutional investors, core groups with demonstrated management and/or technical skills and workers of specific enterprises, organized as a co-operative or limited liability company. This method was used mainly where the share holdings of government were very small and the TCPC could not persuade shareholders to make a public offer of shares. Seven enterprises were privatized using the private placement method;
- Sale of assets. This approach was adopted after rigorous examination has shown that the affected SOEs had unimpressive track records and their future outlook seemed hopeless. Consequently, they could not feature under the public offer or private placement method because they did not possess the listing requirement.

These enterprises were liquidated, and their assets sold piecemeal to the public through public tender. Twenty six enterprises were sold through the sale of assets approach. The Ministry of Agriculture and Transport had sold 18 of these enterprises before the establishment of TCPC in 1988.

- Management buy-outs. Under this method, the entire affected enterprises or a substantial part of its equity capital was sold to the workers. Just one enterprise was privatized through this method and this is the National Cargo Handling Company Limited; and
- Deferred public offer This approach was adopted where it is felt that if some viable SOEs were sold by shares, the expected revenue would be lower than the real values of their underlying assets. This method was used in order to revalue assets and sell the enterprise on a willing buyer/willing seller basis, at a price that was more reflective of the current value of affected SOEs. The new owners were required to sell not less than 40% of the equity to the Nigerian public within five years of take-over. Four hotel enterprises were privatized through the deferred offer method.

### **III. CORPORATE GOVERNANCE LEGISLATION IN NIGERIA: A REVIEW**

#### **3.1 Disclosure and Transparency Issues**

##### **3.1.1 *Financial Performance***

The basic company law is the Companies and Allied Matters Decree (CAMD) of 1990. It provides that the directors of every company shall prepare financial statements reflecting a true and fair view of the operations of the company during the financial year. The financial statements must include, among others, the balance sheet and profit and loss accounts; the sources and application of funds, giving information about the generation and utilization of fund; the value added statement reporting the wealth created by the company during the year; and the five year summary which provides comparative inter-temporal performance information. The financial statement must be laid before the share holders at the annual general meeting (AGM). These statements must reach the shareholders, who must

decide whether to approve or reject the financial statements, at least 21 days before the AGM.

The CAMD also provides for the annual preparation of the Directors' Report which should give shareholders a fair view of the developments of the business of the company, its principal activities during the year and any significant change in those activities. The Directors' Report must also contain information about the amount, if any, recommended as dividend and the amount, if any, recommended as reserves.

The company law also provides that directors must give information about emoluments of directors, including emoluments waived, pensions and compensation for loss of office to directors and past directors. Information must also be supplied about employees remunerated at higher rates. Also to be provided are disclosures transactions and agreements on loans, quasi loans and other dealings in favour of directors and "connected persons".

The CAMD also specifies additional disclosures required in notes to financial statements. Such information includes disclosure of particulars of the subsidiaries of the company and its shareholders; disclosure of financial information relating to its subsidiaries; arrangements and agreements made by the company or a subsidiary of it who during the year were officers of the company.

### ***3.1.2 Auditing Matters/Required Accounting and Auditing Standards***

The Company Law specifies that all companies must appoint at its AGM, auditor or auditors to audit the financial statements of the company and hold office until the next AGM. In cases where no auditors are appointed or re-appointed, the law empowers the directors to appoint a person to fill the vacancy. It also provides for the procedure for reappointing any retiring auditor without a resolution being passed at the AGM. To ensure the independence of the auditor, CAMD prohibits any officer or servant of the company from being an auditor, neither can who is a partner or is in the employment of any officer of the company,, nor is any person or firm that offers consultancy services to it. Additionally, for a bank<sup>5</sup>, no person who is has any interest in the bank other than as a

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<sup>5</sup>In addition to the CAMD, a bank is subject to both the provisions of the Central Bank



depositor; which is a firm in which a director of the bank has interest as director or a partner; who is indebted to the bank; shall be an auditor. The BOFID also require that any auditor appointed by any bank must be approved by the Central Bank of Nigeria(CBN).

The auditor is expected to form an opinion as to whether the company kept proper accounting records and proper returns adequate for their audit, in the case of branchies not visited. The auditor will also tell whether the company's balance sheet and profit and loss account are in agreement with the accounting records and returns.

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Decree 26 of 1991 as amended and the Banking and other Financial Institutions Decree(BOFID) 26 of 1991.

He or she is also required to make a report to the shareholders on the accounts examined by them, on the balance sheet and profit and loss account, and all group financial statements to be laid before the AGM. The law requires that the auditors report be countersigned by a lawyer. Besides, in the case of a public limited company(Plc), apart from the auditors report, an audit committee comprising of equal number of directors and representatives of shareholders (subject to a maximum of six) shall examine the auditors report and make recommendations to the AGM, as it deems fit.<sup>6</sup> Among the functions of the audit committee are to: ascertain whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices; review the scope and planning requirements; review the findings on management matters in conjunction with the external auditor and departmental responses thereto; keep under review the effectiveness of the company's system of accounting and internal control; make recommendations to the Board in regard to the appointment, removal and remuneration of the external auditor; and authorize the internal auditor to carry out investigations which may be of interest or concern to the committee.

CAMD requires that the financial statement prepared by each company should conform with the accounting standards laid down by the Statements of Accounting Standards issued from time to time by the Nigerian Accounting Standards Board, provided such accounting standards do not conflict with provisions of the decree. Where information provided in the balance sheet or the profit and loss account in the specified format would not provide sufficient information to give a true and fair view of the operations of the company, the law requires that necessary additional information be provided in the balance sheet or profit and loss account or a note to the accounts. The law also specifies specific standards for reporting consolidated accounts dealing with all or any of the subsidiaries of the company. Only persons who belong to a body of accountants in Nigeria established by an Act of the National Assembly can be auditors.

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<sup>6</sup>However, the law also specifies that the members of the audit committee be not entitled to any remuneration and are subject to annual re-election.

### ***3.1.3 Requirements for Equity Ownership Disclosure***

The law requires that each company must keep a register of members/shareholders where the shares held by each holder is recorded as well as the amount paid or agreed to be paid. Whenever shares are sold they must also be recorded in the register. For a Plc, in addition to the register, the law also requires that unless the register is in such a form that it constitutes in itself an index, the company shall keep an index of the names of the members of the company. In the case where any alteration is made in the register of members, the company, must within 14 days make any necessary alteration in the index. The index is expected to have sufficient information to enable the account of any member to be easily located. The register or index shall be open for inspection during office hours except when the register of members is closed, subject to such restriction that the company in general meeting may impose and such that not less than 2 hours in each day shall be allowed for inspection.

CAMD also requires that members having at least 10% of the unrestricted voting rights in the company, shall be listed in alphabetical order in a register of interest in shares in the case of a Plc. Such a person is expected to give notice in writing to the company within 14 days of becoming a substantial shareholder. When the company ceases to be a Plc, it shall keep the register for 6 years.

For a quoted Plc, the Securities and Investments Decree, 1999, provides that all securities must be registered by the Securities and Exchange Commission (SEC). Capital market operators, dealers or other persons specified in section 31 of this decree, are empowered by the decree to keep a register in the prescribed form of the securities in which they have an interest. Particulars of the securities in which capital market operators or other qualified persons have interest in and particulars of their interest in those securities shall be entered within 7 days of acquisition or disposal of the interest.

### ***3.1.4 Disclosure on Sundry Issues and Items***

An important issue in corporate governance relates to the requirements of the company law in relation to disclosure on identity, compensation, background of directors and senior managers and of the relationship between directors and senior managers, as well as disclosure of related party transactions. As stated earlier any change in ownership interest and values must also be updated and be made known to all shareholders who have a right to ask for a copy of the register, or any part thereof, albeit, at a fee. The company law requires that the identity of directors, the size of their shareholding and their remuneration be in the public domain and thus be known to all available to all shareholders. Accordingly, the law requires that a register of all members of the company including its index, where appropriate be maintained in its registered office. In addition, Parts V and VI of Schedule 3 of CAMD specifies that the compensation of directors and number of employees remunerated at higher rates be made public. Besides, as mentioned earlier, disclosures on transactions and agreements on loans, quasi loans and other dealings in favour of directors and “connected persons” is mandatory under the law.

## **3.2 Minority Shareholder Rights**

### ***3.2.1 Guarantee of Minority Shareholders’ Right in Meeting Participation***

The provisions of CAMD specify the minimum length of notice to be given to all those entitled <sup>7</sup> to receive notice of a general meeting of any company as 21 days <sup>8</sup> from the

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<sup>7</sup>This defines all those qualified to receive notice of meetings as every member, every person upon whom the ownership of a share evolves by reason of being a legal representative, receiver or trustee in a bankruptcy of a member; every director, every auditor appointed from time to time by the company, and the secretary.

<sup>8</sup>However, under some specific situation, a general meeting of the company can be called

date on which the notice was sent out. However, a notice is deemed to have been properly effected, if it is sent to the member by post to him or his registered address and it is properly addressed and prepaid. The law provides that failure to give notice of meeting to any person entitled to receive it may invalidate the meeting unless such failure is an accidental omission on the part of those responsible for sending the notice.

For a Plc, the directors must prepare the statutory report for the company's first meeting (called the statutory meeting) which must be held within six months from the company's first date of incorporation. The statutory report must be sent to all shareholders at least 21 days before the holding of the statutory meeting. At this meeting all members of the company present shall be free to discuss any matter relating to the formation of the company and its commencement of business or arising from the report. Besides, law establishes that any member who wishes a resolution to be passed or any matter arising out of the report shall give further 21 day notice from the date of receipt of the statutory report.

Some provisions of CAMD serve as protection of minority shareholders against the "tyranny of the majority." For example, the law requires that if a poll of members is taken, a member, entitled to more than one vote, need not use all his votes in the same way. The provision that does not allow objections to the qualifications of any voter except at the meeting or adjourned meeting at which the vote is objected to, and the provision regarding the use of proxy at meetings, are such examples.

While the company is granted powers to close its register by giving a notice in a daily newspaper circulating in the district where the company has its registered office, any member, may redress in the law courts, if his name is, without sufficient cause, entered in or

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at shorter notice, if it is so agreed, as in the case of an AGM and any other general meeting by a majority in number of the members entitled to attend and vote, being a majority together holding not less than 95% of the nominal value of the shares of the company.

omitted from the company register. CAMD also states the company register shall be prima facie evidence in all matters directed and authorized by it.

### ***3.2.2 Shareholder Voting and Proxy Rights***

Section 116(1a) of CAMD establishes and underscores the one-share-one-vote system for Nigerian companies. Accordingly, a shareholder's vote is proportional to the number of shares owned in the company. However, this does not affect the issuance of preference shares as defined by section 143 of the decree and in particular, section 119 of CAMD prescribed a company may issue any shares with such preference, deferred or special rights. But subsection 1(b) of the section 116 outlaws the issuance of non-voting shares in Nigeria.

The company law establishes that any member entitled to attend a meeting shall be entitled to appoint another person (whether a member or not) as a proxy to attend and vote instead of him, and a proxy appointment to attend and vote instead of the member shall also have the same right to speak at the meeting. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or if the appointer is a corporation, either under seal, or under the hand of an officer or an attorney duly authorized. The law also stipulates that in every notice of meetings of a company having a share capital, a prominent statement indicating that a member entitled to attend and vote is also entitled to appoint a proxy (and it is allowed two or more proxies) to attend and vote instead of him, and stating that the appointed proxy needs not be a member of the company. Besides the law stipulates that a vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or the revocation of the proxy or the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given.

### ***3.2.3 Measures for Secure Shareholder Share-Registration***

Both CAMD and the Investment and Securities Decree (ISD) provides that only public companies satisfying some provisions of both decrees<sup>9</sup> or listed banks can lawfully

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<sup>9</sup>These provisions are Sections 548 to 560 of CAMD and Sections 50 to 63 of ISD.

make an invitation to the public to (a) acquire or dispose of securities of a company; or to deposit money with company for a period, whether it is interest-bearing or not. The law requires that all securities offered for sale to or for subscription by the public or to be offered privately shall be registered with the Securities and Exchange Commission (SEC). A public company can only invite to acquire its share by publishing a prospectus containing the following vital information:

- company's proprietorship,
- management and capital requirements;
- details relating to the offer;
- property acquired or to be acquired by the company;
- commissions, preliminary expenses etc.;
- contracts;
- auditors;
- interest of directors; and
- other matters.

### ***3.2.4 Ability to Transfer Ownership and Enforcement of Rights***

Only shares of a quoted Plc can be transferred or by shareholders as section 32 of ISD states that only securities or investment registered by SEC can be transferred electronically or by other approved means/system, or sold. Thus shareholders of quoted Plc have the easier access of share transfer. However, such transfer has to be effected through a qualified person. Section 33(2 & 3) of the ISD requires that such a qualified person<sup>10</sup> should keep a register of securities acquired or disposed by them. Information relating to the date of acquisition or disposal, and the reason for the change shall be entered in the register within 7 days of acquisition or disposal. Besides, that person shall give to SEC notice, in the prescribed form, such particulars relating to the register as may be prescribed, including the location of the register.

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<sup>10</sup>A qualified person as specified in the Decree is any of a capital market operator as defined in section 30 of the Decree, a dealer, a dealer's representative, an investment adviser, an investment journalist, a financial journalist, an insurer, a custodian or a depository.

To enforce rights, shareholders have to seek redress in the law courts. For example, any member feels aggrieved, may ask the law court to restrain the company from the following:

- entering into any transaction which is illegal or ultra vires;
- purporting to do by ordinary resolution any act which by its constitution or the law requires to be done by special resolution;
- any act or omission affecting the applicant's individual rights as a member;
- committing fraud affecting the company or the minority shareholders where the directors fail to take appropriate action or redress the wrong done;
- where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or minority shareholders;
- where the directors are likely to derive a profit or benefit from or have profited or benefited from their negligence or their breach of duty.

Shareholders can also seek redress in the law courts.

Sections 310 - 312 of CAMD contain provisions of relief that can be sought by any shareholders on the grounds of unfairly prejudicial and oppressive conduct. If the court is satisfied that the petition so made is founded, it may make such orders as it thinks fit for giving relief to the petitioner. Such order can include winding up the company; regulating the affairs of the company in the future; the purchase of shares of any member by other members of the company; the purchase of the shares of any member by the company and reducing the capital of the company accordingly; among other orders.

### **3.3 Oversight Management**

#### ***3.3.1 Mechanism and Structures for Prudent Management of Shareholders' Asset***

There are many rules and regulations for ensuring that management of companies act in the interest of investors and of the firms. Among these are the shareholders' meetings which have supervisory functions over the companies; the requirements that financial accounts of companies be certified by external auditors; the different returns the companies are expected to send to regulatory agencies like the Corporate Affairs Commission(CAC) which registers all incorporated companies; the SEC which registers all shares of quoted Plcs;



the Central Bank of Nigeria(CBN) and the Nigerian Deposit Insurance Corporation(NDIC), which have regulatory and supervisory mandate for licenced banks and other financial institutions like finance houses and community banks; the National Insurance Commission of Nigeria(NAICOM), which regulatory mandate over insurance companies.

Shareholders can use their meetings to express and exercise their collective will as a corporate body. It is in these meetings that all shareholders get to express their opinions about the way the company is run and make suggestions about how the company operations can be improved. In these meetings shareholders have the right to speak and vote on resolutions concerning the affairs of the company. In Nigeria, the CAMD provides for two main types of meetings: Statutory and General Meetings.

Statutory Meetings are held within six months of the incorporation of the company and the directors must, 21 days before the meeting holds, forward a copy of the statutory report to be presented to all members. This report, which must be certified by not less than two directors, about the formation and commencement of business by the company. CAMD provides that any member present at this meeting shall have the liberty to speak on any issue concerning the formation and commencement of business by the company.

General Meetings are also of two types, annual and extraordinary. Each company is expected to hold an AGM each year, in addition to its other meetings in the year. The AGM receives and approves the Annual Report of the Company containing the balance sheet, profit and loss account, the directors' report and the auditor's report. It also appoints the auditor, the directors as well as their remuneration, the dividend proposed, among others. The AGM provides a forum for shareholders to give their opinion about the performance of the company, particularly in relation to their competitors and whether they are receiving returns commensurate with their investment in the company in form of dividend. An extraordinary meeting may be convened by the Board of Directors whenever they deem fit and may be convened by any director, if it is impossible for the directors to form a quorum. Also an extraordinary meeting may be requisitioned by any member or members holding not less than one-tenth of the shares of the company at the date of the requisition. All businesses transacted

in any extraordinary general meeting are deemed special<sup>11</sup>. CAMD provides that all general and statutory meetings of companies incorporated in Nigeria are to be held in Nigeria.

By law, companies incorporated in Nigeria are required to file certain returns to the CAC. In particular, for licenced banks, the statutory returns they file to the CBN and the on-site and off-site inspection conducted by bothe the CBN and the NDIC are wys of exercising oversight management of financial institutions.

The use of external auditors to examine the books of companies is a way of exercising oversight mangement. Section 357 of CAMD frowides that all companies must appoint a qualified person as external auditors who must make a report to the all members of the company on all accounts they examined, and on every balnce sheet and profit and loss account and on all group financial statement copies, which are to be laid before the company aits AGM during the tenure of the auditor. Besides, section 29 of BOFID precibes that auditors of lincensed banks must be approved by CBN. This is another way of exercising oversight management on management of banks. In particular, subsection 5 of the same section provides that every auditor shall have a right of access at all times to the books, accounts and vouchers of the bank and shall be entitled to require from directors, managers, and officers of the bank such information and explanation that he thinks necessary for the performance of his duty. Additionally, subsection 6 requires that two copies of the auditor's report and that of the directors together with the auditor's analysis of bad and dobtful advances in a precibed form be forwarded to the CBN.

### ***3.3.2 Mechanism for Effective Oversight of the Audit Function***

The use of the Audit Committee for Plcs, elected annually at the AGM, provides some measure of oversight for the audit function. However, its effectiveness is an empirical question. The membership is equally distributed between the Board of Directors and other

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<sup>11</sup>In the case of an AGM, all businesses transacted are deemed special except declaring a dividend, the presentation of the financial statements and the reports of the directors and auditors, the election of directors in place of those retiring, the appointment and the fixing of remuneration of auditors and the apointment of the members of the Audit Committee, which shall be ordinary business(CAMD, section 214).

shareholders subject to a maximum of six. Among the functions of the committee which are germane to oversight of the audit function are:

- review of the scope and planning of the audit requirements;
- review of the findings on management matters in conjunction with the external auditor and the internal responses thereon;
- keeping under review the effectiveness of the company's system of accounting and internal control;
- making recommendations to the Board regarding the removal and remuneration of external auditors; and
- authorizing the internal auditor to carry out investigation into any activities of the company which may be of interest or concern to it.

For licensed banks, the fact the external auditors appointed by banks have to be approved by the CBN, and the fact that reports of the auditor and his analysis of the bad and doubtful accounts have to be submitted to it, exercise some type of oversight on the audit function. The supervision and regulatory functions of the CBN and NDIC for licensed banks can, to some extent, play a type of oversight role of the audit functions because auditors should know other views may be taken into account to determine performance of banks.

### ***3.3.3 Liabilities and Sanctions for Directors who Fail to Perform***

The AGM with its power to appoint and remove directors as well as approve their remuneration, is expected to act as a check on the performance of directors. Accordingly, directors will endeavour to bring to the AGM results that will win the approval and commendation of shareholders. Besides, certain sections of the company law prescribe penalties for erring directors and officers of the company. For example, section 348 of CAMD prescribes the penalty for each director of any company that lays a faulty financial statement before any meeting of shareholders. If the company is in liquidation, for example, section 502, prescribes the offences that can be committed by officers of the company antecedent to or in the course of winding up. Section 503 prescribes penalty for falsification of company books; section 504, for frauds while section 505 prescribes the

liability for not keeping proper accounts. Section 507 prescribes the power of law courts to assess damages against delinquent directors while the prosecution of delinquent officers and members of the company is provided for in section 508 of CAMD.

#### **IV. STANDARD OF CORPORATE GOVERNANCE IN NIGERIA**

To evaluate the standard of corporate governance in Nigeria, we surveyed regulatory agencies in Nigeria like the CBN, SEC, NDIC, the Bureau for Public Enterprises which is in charge of the privatization programme of government and other stakeholders in corporate governance like the Chambers of Commerce and major firms by sectors, shareholder organizations in major commercial centres like Lagos and Ibadan, fund managers, issuing houses, stockbrokers, major auditing firms and corporate lawyers. The survey instrument used was the OECD Corporate Governance Assessment Instrument. A total of 31 questionnaires were distributed. For this draft, 20 were retrieved and used. The OECD scoring guide was used to score the responses of the questionnaires which were then analyzed.

## 4.1 Share Holder Rights

### 4.1.1 Fair Conduct of Shareholders' Meetings

The average score for the assessment of respondents on fair conduct of shareholders' meetings is 1.9 out of a maximum score of 3 (Table 3). This score contrasts poorly with the average score recorded in three countries of Middle East and North Africa(MENA) subregion studied in SG(2000). Turkey, Greece and Israel recorded maximum average score of 3 while Egypt and Morocco which recorded average scores of 2 are comparable to Nigeria. In fact, 55% of our respondents felt that as regards fair conduct of shareholders' meetings, there is compliance in critical areas by Nigerian companies while 30% felt that there is non-compliance in critical areas. The balance of 15% indicated that Nigerian companies exhibit complete compliance.

**Table 3:Nigeria: Scores of Measures of Corporate Governance**

<b>1. Shareholders' Rights</b>	<b>Mean Score</b>
a. Fair conduct of shareholders' meetings	1.9
b. Insider trading effectively prohibited	2.1
c. Directors' dealing published	1.0
d. All capital changes announced with due warning and opportunity to participate	2.2
e. Extra-ordinary transactions carried out at transparent prices	1.8
<b>Average Score</b>	<b>1.8</b>
<b>2. Disclosure and Transparency</b>	
a. Publication of results-regular and consistent quality	2.0
b. Independent audits	2.3
c. Equal access to information to all shareholders	1.6
d. Information on share holding structure freely available	2.6
<b>Average Score</b>	<b>2.1</b>
<b>3. Role of the Board of Directors</b>	1.4
<b>4. Effective enforcement of Shareholders' Rights in Courts</b>	0
<b>5. Quality of access on visits</b>	1.2
<b>National Average Score</b>	1.6
<b>Total Score(Maximum 36)</b>	20.1

Source: Compute from Survey Data

#### ***4.1.2 Effective Prohibition of Insider Trading***

With regards to whether insider trading is effectively prohibited Nigeria's score compares favourable with MENA countries. Its average score is 2.1 which is similar to the score of Turkey, Greece, Israel and Egypt each of which had an average score of 2. It is better than Morocco's average score of 1. However, 85% of our respondents felt that while country's regulations require that this be the case, compliance/enforcement is inconsistent in the country.

#### ***4.1.3 Regular Publication of Directors' Dealings***

Nigeria score a regards compliance with the requirements of regular publications of directors' dealings is rather low: an average score of 1 out of 3. The country is only better than Morocco out of the five MENA countries studied by SG(2000). It is on the same footing with Egypt with an average score of 1. As many as 25% of our respondents hold the opinion that there is consistent evidence of abuse in this case by Nigerian companies while 30% felt that while regulations in the country require this, there is no meaningful compliance. The balance of 45%, held the view that there is no consistent compliance and enforcement of the existing regulations.

#### ***4.1.4 Capital Changes Announcement with Due Warnings and Participatory Opportunity***

Our respondents scored Nigeria rather low with regards to announcement of changes in capital with due warnings and giving potential shareholders opportunities to participate, when compared with MENA countries. The average country score for Nigeria is 2.2, lower than even Morocco, but about the same score as Egypt. While as many as 50% of our respondents felt that local regulations in this regard are complied with, 30% held the opinion that compliance/enforcement is inconsistent. Furthermore, as many as 15% of respondents that there is no meaningful compliance while 5% believed there is consistent evidence of abuse of this regulation.

#### ***4.1.5 Transparent Implementation of Extraordinary Transactions***

Nigeria's average score as regards carrying out extraordinary transactions at transparent prices is 1.8 out of a maximum of 3. This performance compares with that of Egypt and better than that of Morocco but worse than those of Turkey, Greece and Israel. While 70% of our respondents felt that compliance/enforcement of existing regulations is inconsistent, as many as 25% held the view that there is no meaningful compliance to the existing regulations by Nigerian companies.

## **4.2 Disclosure and Transparency**

### ***4.2.1 Regular and Consistent Publications of Results***

Nigeria's performance compares favourably with MENA countries in this regard. Its average score of 2.0 is only lower than Israel's average score of 3 but better than Morocco's average score of 1. Generally, respondents held the view of some positive action in as regards this regulation as only 5% indicated that there is consistent evidence that this is an area of abuse. As many as 35% of our respondents held the view that audited annual and interim accounts of companies are promptly published in a consistent and reliable manner. The same proportion of respondents felt that audited annual and interim accounts are published promptly according to International Accounting Standard(IAS).

### ***4.2.2 Annual Independent Audits***

The average score of Nigeria of 2.3 compares only with that of Morocco. It is lower than the average score of other four MENA countries studied by SG(2000). Most respondents (75%) felt that the condition of **independent** audit is not required in Nigeria but audit is done by most organization. However, 25% of our respondents believed that this is required in Nigeria and is consistently published.

### ***4.2.3 Equal Access to Information of all Shareholders***

Respondents generally believed that all shareholders do not have equal access to information. Nigeria's average score of 1.6 is equal the regional average of MENA countries and is higher than the average score of Egypt and Morocco which is 1. As many as 95% of our respondents felt that there is no meaningful compliance to this regulation or that compliance/enforcement is inconsistent.

#### **4.2.4 Shareholding Structure Information Freely Available**

The average score for Nigeria is highest here for this exercise. Its value of 2.6 is higher than the regional average of 2 for MENA countries studied by SG(2000). It compares favourably with the value 3 in Turkey and Egypt and better than the value 2 in Greece and Israel and the value 0 in Morocco. As many as 95% of our respondent held the view that this is a requirement of the law in Nigeria and is consistently published or that even if not required, it is done by major firms.

#### **4.3 Role of Board of Directors**

The average score of 1.4 regarding the role of the Board of Directors compares favourable with the average score in MENA countries. It is slightly higher than the regional average score of 1.2 for MENA countries. This shows that most respondents in Nigeria and MENA countries believe that the notion for an independent board with responsibilities to shareholders is gaining acceptance, but there is little evidence of this in practice. In fact, 65% of our respondents hold the view that this is the case in Nigeria.

#### **4.4 Effective Shareholder Right Enforcement by the Courts**

Generally, our respondents scored the courts low in enforcing shareholders' right effectively in Nigeria. The average score for Nigeria is 0. This is like the average score of Turkey and Egypt but surprising much lower than the average score of 3 for Morocco. A majority of respondents(70%) felt that there is no evidence of any legal/administrative system with respect to shareholder rights while 25% believed that there is clear evidence that the system does not work.

#### **4.5 Quality of Access on Visits**

Respondents tended to hold the view that while there is inconsistent quality of information during company meetings in Nigeria, the situation is not hopeless. Hence the average score for the measure of quality access during visits is just 1.2 which compares only with the average score of Morocco among the MENA countries studied by SG(2000). A majority of respondents (75%) hold this view, while 15% believe that companies pay regular visits abroad and/or make good people available to meet with investors/analysts when they visit or the company is readily available on telephone.



#### **4.6 Sectoral and Overall Assessment**

Nigeria's performance sectorally is best in disclosure and transparency issues where the sectoral average score is 2.1 out of 3. In contrast, the average score for shareholders' rights is 1.8. Overall country average of the corporate governance is 1.6 slightly better than the average of 1.4 for Morocco and lower than the value of 1.8 for Egypt. However, the total country score of 20.1 out of 36 is better, than 18.4 for Czech Republic and Morocco, and 14.1 for Russia. When it realized that Nigeria has a much longer history of the Anglo-American tradition of corporate governance than the transition economies of Eastern Europe, this overall performance deserves to be improved on.

#### **V CONCLUDING REMARKS**

This paper has reviewed the practice of corporate governance in Nigeria and the challenges posed to corporate governance by the implementation of the privatization programme as well as analyzed the standard of corporate governance in Nigeria. It found that the way the privatization programme was implemented posed a lot of corporate governance challenges which can stretch the relevant institutions for corporate governance. While it is not safe to rush privatization, given the sad experiences of the transition economies of Eastern Europe, delaying it without ensuring transparency can give room for unnecessary advantages which can weaken corporate governance structures. It is therefore suggested that efforts should be geared to ensuring transparency, and that privatization programme should not be unduly delayed or slowed down.

Our review of the legislations relating to corporate governance and the analysis of the standard of corporate governance in Nigeria, show clearly that largely the institutions and the legal framework for effective corporate governance appear to be in existence. However, compliance and/or enforcement appear to be weak or non-existent. It is therefore suggested that for Nigeria to reap the benefits of effective corporate governance, there is need to strengthen the enforcement mechanism of the regulatory institutions. The role of the courts in this regard cannot be over-emphasized. It is important to restore the

confidence of the average shareholder in the capacity of the judicial system to help him enforce his rights. The rule of law is the bastion of democracy.

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On the 15th of January 2019, the Federal Government of Nigeria unveiled the Nigerian Code of Corporate Governance 2018 (Code), which is aimed at institutionalizing best practices in corporate governance in Nigeria in order to restore confidence in the Nigerian economy and create an environment for sustainable business operations. The Code provides a framework to ensure good corporate governance practices in the public and private sectors of the Nigerian economy by articulating a broad set of principles on corporate accountability, transparency and sustainability for both public and private. The Institute of Corporate Governance of Nigeria (ICGNTM) is a leading, multi-industry, multi-disciplinary, non profit and core professional body solely dedicated to developing and promoting Corporate Governance, Risk Management and Compliance in Nigeria and across the globe, through research, education and consensus building. We help individuals, business, organizations and economies translate good risk management, assurance, compliance, ethics, and governance principles into the actual operations of their businesses. The Institute of Corporate Governance Nigeria (ICGNTM) is a globally recognized Code of corporate governance for other financial institutions in Nigeria, 2019 which applies to microfinance banks, finance companies, and bureau de change. Securities and exchange commission rules 2013. Listing rules of the Nigerian Stock Exchange. Code of business ethics and principles on corporate governance for the insurance industry. Financial Reporting Council (FRC) code of corporate governance. There is a need for corporations to adhere to the codes of corporate governance to reflect the company's economic strength while providing assurance to existing shareholders. The recent Nige...