

LEGAL AND INSTITUTIONAL FRAMEWORK ON BOARD OF DIRECTORS IN CORPORATE GOVERNANCE

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ABSTRACT

The company is a legal entity upon incorporation, and duly vested with the powers of a natural person to carry out its objects. Since the company is not a natural person, even though vested with the powers of a natural person by the enabling statutes as the Companies and Allied Matters Act 2020 (CAMA 2020), it needs the requisite natural being with limbs and mind to properly discharge its functions and objects. Several authors have discussed the various organs of the company, others have even gone ahead to promote a Company Secretary from being an ordinary clerk or typist to being one of the principal officers of the company. This promotion does not however make the company Secretary one of the deciders or managers of the company, as the various statutes on corporate governance clearly place responsibility on the BOD and the members in general meeting. The Board of Directors (BOD) are the deciding organs of the company, aside the members in general meeting. Arguments as to which is more superior between the BOD and the members in general meeting is rather neither here nor there as the day to day running of the company is shouldered by the BOD. Corporate Governance Codes in Nigeria and the world at large have placed liability on the BOD, and at several times placed them as burden bearers in instances of company's dwindling and subsequent winding up. This article in adopting the doctrinal methodology, brought to light the various legal and institutional framework on the roles of the board of directors in corporate governance in Nigeria, and referred to regional and international frameworks on the topic too. In conclusion, it was discovered that the Code of Corporate Governance applies only to public companies, and as such it is recommended that to curtail further malfeasance in private companies, the provisions of the Nigeria Code of Corporate Governance be extended to apply mandatorily on private companies too for the protection of investments and global economy.

Keywords: Board of Directors, Code of Corporate Governance, Corporate Governance

Introduction

The Board of Directors (BOD) of companies are tasked with very vital roles and duties in ensuring the continuity and profiting of companies. To ensure the BOD acts in the interest of the company and its members, various states have consistently reviewed legislations on corporate governance to further strengthen the demands from the BOD and also protect more carefully, the continuity of the company, and by extension, the interest of shareholders which also affects global economy. This article discusses the various legislations on the board of directors and corporate governance,

and in doing so, national framework relating to Nigeria was used, with reference too to regional and international frameworks.

1.0 National Legal Framework

The national framework providing for compliance to the codes of corporate governance are; the Constitution of the Federal Republic of Nigeria 1999, as amended (CFRN 1999), the Companies and Allied Matters Act 2020 (CAMA 2020), the Nigeria Code of Corporate Governance 2018, Investment and Securities Act, 2007 (ISA 2007), Financial Reporting Council of Nigeria Act 2011 (FRCN 2011), the Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCC Establishment Act 2004), Banks and other Financial Institutions Act 2020 (BOFIA 2020), SEC Corporate Governance Guidelines. These are the major legislations on the roles of the BOD in corporate governance.

1.1 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of the Federal Republic of Nigeria 1999, as amended, is the supreme law of the land from which all other laws draw virtue and legitimacy from.¹ Its supremacy cuts across individuals and corporations for it to attain the purpose of promoting good government and welfare of the people for which it was enacted.²

The CFRN 1999,³ makes series of provisions on the welfare of the people though it has been said to be non-justiciable. Its non-justiciability does not however derogate from its provisions, and the

¹ CFRN 1999, s 1(1).

² CFRN 1999, preamble.

³ *Ibid*, chap 2.

provisions therein are instructive on the primary purpose of promoting the welfare of the people.⁴

To this end, it is the duty of all organs of government and authorities in whatever office or position, to conform to, observe and apply the provisions of the chapter 2 of the Constitution.⁵

The right of every person to participate in areas of the economy has to be protected by an enactment to ensure a transparent process that would in turn be favorable in the overall interest of the nation's economy. It is intended that orderliness be maintained at all times in the operations of businesses to ensure acts that would be inimical to the nation and investors are protected against. It is therefore the provision of the CFRN, 1999 that a body shall be set up by the National Assembly which shall from time to time make laws to regulate and monitor the formation and activities of businesses in Nigeria.⁶

The legislative powers to make laws for the peace, order and good government of the Federation or any part thereof, is vested on the National Assembly to the exclusion of the Houses of Assembly of the states with regards to matters listed on the Exclusive Legislative List.⁷ These exclusions are without prejudice to the provisions of *section 4(4)* of the CFRN 1999. To this extent, where laws made by a State Assembly under the proviso and powers enabling it to so enact, are inconsistent to the provisions of a similar Act of the National Assembly, such laws shall be null and void to the extent of its inconsistency.⁸ To this end, the superiority of the Constitution is reemphasized and protected to avoid conflict of laws within the nation.

⁴ *Ibid*, s 16 (1).

⁵ *Ibid*, s 13.

⁶ *Ibid*, s 16(3).

⁷ *Ibid*, s 4(2).

⁸ CFRN 1999, s 4(5).

The CFRN 1999, went further to provide for the appropriate court to adjudicate on matters bothering on the Companies and Allied Matters Act. It categorically gave the Federal High Court (FHC) exclusive jurisdiction to hear all matters on CAMA 2020.⁹ In line with the provision of the CFRN 1999 on exclusive jurisdiction of the FHC on matters bothering on the CAMA 2020, the FHC has monopolized its stand by providing that the FHC shall have exclusive jurisdiction on civil matters bothering on the CAMA.¹⁰ The FHC has also given credence to this position in plethora of cases preceding CAMA 2020, particularly in the case of *Nashtex International Ltd. v Habib (Nig) Bank Ltd*¹¹ where the court held inter alia that matters on the provisions of CAMA fall under the exclusive jurisdiction of the FHC. The FHC in reemphasizing this with the provisions of the CFRN 1999, also made reference to the provisions of the FHC Act 1990 and then CAMA 2004. The court also reaffirmed this position in the case of *Oceanic Bank v Sigma Apartments Ltd*.¹² These judicial pronouncements have further emboldened the exclusive adjudicatory rights of the FHC on matters bothering on the CAMA 2020, and further expresses the legislative powers and force of the National Assembly.

1.2 Companies and Allied Matters Act, 2020

The CAMA 2020 is the principal legislation providing for the operations and regulations of companies in Nigeria. The CAMA 2020 repealed the Companies and Allied Matter Act.¹³ The CAMA 2020 has made several provisions on registration of companies, officers of the companies, and the roles of these officers. Any person or group of persons are allowed to form and register a

⁹ *Ibid*, s 251(1)(e).

¹⁰ Federal High Court Act 1990, s 7(c).

¹¹ (2007) LPELR-8605 (CA).

¹² (2018) LPELR-44448 (CA).

¹³ Cap C20, Laws of the Federation of Nigeria, 2004.

company in line with the provisions of the CAMA 2020.¹⁴ However this concession is not available for companies floated in furtherance of illegal transactions or purposes. *Section 20 (1)* of the CAMA, 2020 provides for capacity to form or join in the formation of companies. Thus, a person under the age of 18 is not permitted to form or be part of the formation of a company; same applies to persons of unsound mind, undischarged bankrupt, a corporate body in liquidation, and those disqualified under *sections 281 and 283* of the CAMA, 2020. It is worthy of note that disqualification of a person below the age of 18 is with a proviso when there are two other subscribers to the memorandum who are not disqualified.¹⁵

Upon incorporation, the company becomes a legal entity different and separate from its members and subscribers to its shares. The essence of this incorporation as mentioned above is that it becomes vested with all powers of a natural person.¹⁶ As well settled and mentioned earlier, the company's legal personality is a mere fiction as it acts through its directors and officers since it does not have neither mind nor body.¹⁷ A director of the company has been defined as one duly appointed by the company to direct and manage the business of the company.¹⁸ However, where a person not duly appointed by the company as a director, presents himself and acts as one, he shall be personally liable for such action as the company shall not be binded by his acts save instances where the company presents him as a director.¹⁹ Every company not being a small company must have a minimum of two (2) directors.²⁰ The implication of this is that small companies are now allowed to be registered and operate with one director. This is one of the inventions of the CAMA

¹⁴CAMA 2020, s 18.

¹⁵ *Ibid*, s 20(2).

¹⁶ *Ibid*, s 43.

¹⁷ OVC Okene & GG Otuturu, *Nigerian Company Law and Practice* (Zubic Infinity Concept 2021) 66.

¹⁸ CAMA 2020, s 269.

¹⁹ CAMA 2020, s 276.

²⁰ *Ibid*, s 271.

2020 geared towards promoting ease of business in the nation. This provision will enable sole proprietorships to register as companies and benefit from the limited liability protection that companies enjoy.²¹

A company as legal personality can conduct its business through its members in general meeting or its board of directors or through officers or agents appointed by, or under authority derived from, the members in general meeting or the board of directors.²² Moving further, it is provided that the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by the CAMA 2020 or the articles required to be exercised by the members in general meeting.²³ The provisions of CAMA 2020 are well worded on the position of the BOD and the powers it wields. Such that, the BOD when acting within the powers provided by the CAMA 2020, is not bound to obey the directions or instructions of the members in general meeting provided that the directors acted in good faith and with due diligence.²⁴

The definition of a director of the company covers for the BOD as the BOD is simply the platform from which all directors of the company integrate and function in unity in furtherance of their powers and position in the company. CAMA 2020 though inadequately provides for the meaning of a director when it defined a director as any one duly appointed by the company to manage the affairs of the company, has however held the director to be a trustee of the company when it provided that:

Directors are trustees of the company's money, properties and their powers and as such shall account for all the money over which they exercise control, refund any money improperly paid away, and shall exercise their powers honestly in the

²¹ N C Uzorka, 'An Overview of the Companies and Allied Matters Act 2020: Prospects and Challenges' [2020] (7)2, *Nnamdi Azikiwe University Journal of Commercial and Property Law*, 74.

²² CAMA 2020, s 87(1).

²³ *Ibid*, s 87(3).

²⁴ CAMA 2020, s 87(4).

interest of the company and all the shareholders, and not in their own or sectional interests.²⁵

On the other breath, a director could also be regarded as an agent within the ambit of the provisions of the CAMA 2020.²⁶ The duties of the director are as provided for in section 305 of the CAMA 2020, and a further provision is made to protect against conflict between the personal interest of the director and his duties.²⁷

1.3 Financial Reporting Council of Nigeria Act 2011

The Financial Reporting Council of Nigeria Act 2011 (FRC 2011) was enacted to repeal the Nigerian Accounting Standards Board Act 2003, and to establish the Financial Reporting Council of Nigeria, charged with the responsibility of developing and publishing accounting and financial reporting standards amongst other things, to be observed in the preparation of financial statement of public entities in Nigeria. The FRC 2011 also made provision for a BOD to be charged with the discharge of all functions of the Financial Reporting Council (FRC). This board is headed by a professional accountant, with membership cutting across various sectors of the economy primarily having relationship with accounting and finance.²⁸

The board as set up, is primarily tasked to determine best strategies to adopt, and at all times, set priorities that are feasible. The board is also tasked with the responsibility of drawing up budgets and securing funds to execute such budgets. To the extent that the board draws up budgets, it is consequential that it monitors expenditures to wade of sharp practices and encourage probity. It is also the duty of the board to appoint directors and senior management staff of the FRC. These

²⁵ CAMA 2020, s 309(1).

²⁶ *Ibid*, s 309(2).

²⁷ *Ibid*, s 306(1).

²⁸ FRC Act 2011, s 2.

appointments must be in the best of interest of the FRC and in line with best practices and standards void of compromise.²⁹

The FRC in expressing its readiness to ensure compliance with the Code of Corporate Governance (CCG), further makes provision for the establishment of the Directorate of Corporate Governance,³⁰ with objectives to develop principles and practices of corporate governance; promote the highest standards of corporate governance; promote public awareness about corporate governance principles and practices; act as the national coordinating body responsible for all matters pertaining to corporate governance; promote sound financial reporting and accountability based on true and fair financial statements duly audited by competent independent Auditors; encourage sound systems of internal control to safeguard stakeholders' investment and assets of public interest entities; and ensure that audit committees of public interest entities keep under review the scope of the audit and its cost effectiveness, the independence and objectivity of the auditors.³¹ The functions of the directorate of corporate governance include to analyse the need for CG in both public and private sectors, ensure and organise trainings on CG issues, issue CCG and guidelines, and periodically assess its viability, provide assistance in adoption of the CCG, and to establish a synergy with all institutions engaged in promoting CG, both regional and international.³²

1.4 Nigerian Code of Corporate Governance, 2018

²⁹ *Ibid*, s 10.

³⁰ *Ibid*, s 49.

³¹ (n 28), s 50.

³² (n 28), s 51.

The FRC has as a duty to ensure operation of good corporate governance practices within the public and private sector of the economy.³³ The Nigerian Code of Corporate Governance 2018 (NCCG 2018) is a product of the powers of the FRC, and in line with its duties to ensure good corporate practice in Nigeria, and ensure compliance to the codes of corporate governance. As provided, the NCCG 2018 seeks to institutionalise corporate governance best practices, promote public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment in Nigeria by institutionalising high corporate governance standards. This is because, it has been shown that companies with effective boards and competent management who act with integrity and engaged with shareholders and other stakeholders are better placed to achieve their business goals and contribute positively to society.³⁴

The NCCG 2018 is basically structured in a flexible manner to be able to apply to companies of various sizes irrespective of the circumstances, as it affects implementation.³⁵ As provided for by the NCCG 2018, the BOD is responsible for providing entrepreneurial and strategic leadership as well as promoting ethical culture and responsible corporate citizenship. The BOD also serves as a link between the stakeholders and the company, and as such should ensure the best interest of the stakeholders and interested parties are protected while also securing the prosperity of the company.³⁶

Principle 2 provides for the effective discharge of the responsibilities of the Board and its committees to be assured by an appropriate balance of skills and diversity (including experience and gender) without compromising competence, independence and integrity.³⁷ The BOD is

³³ *Ibid*, ss. 11c & 51c.

³⁴ NCCG 2018, pt. B.

³⁵ *Ibid*, pt C.

³⁶ NCCG 2018, pt A, Principle 1.

³⁷ *Ibid*, pt. A principle 1.

recommended to promote diversity in its membership across a variety of attributes relevant for promoting better decision-making and effective governance. These attributes include field of knowledge, skills and experience as well as age, culture and gender. The Board should have a policy to govern this process and establish measurable objectives for achieving diversity in gender and other areas.³⁸ The BOD in her task to promote the achievement of the strategic objectives of the Company, ensures that the Company remunerates fairly, responsibly and transparently.³⁹ The BOD is encouraged to regularly appoint new members that would bring in innovations, whilst retaining the experience, skills, and diversity, as well as ensuring continuity.⁴⁰ The offices of the Managing Director/Chief Executive Officer and Chairman of the BOD are strongly recommended to be separate at all times.⁴¹ The Code as enacted seeks to ensure transparency and protect the interest of all investors.

1.5 Investment and Securities Act 2007

The Investment and Securities Act 2007 (ISA 2007) established the Securities and Exchange Commission as the apex regulatory authority for the Nigerian capital market as well as regulation of the market to ensure the protection of investors, maintain fair, efficient and transparent market and reduction of systemic risk; and for related matters. This is in line with the beliefs and primary aim of the codes of corporate governance to ensure transparency and protect the interests of shareholders and investors. The securities market, being a busy one with high traffic of investors, it is needful to protect the interests of the investors by providing for a commission known as the Securities and Exchange Commission (SEC),⁴² to monitor compliance to the provisions of the ISA

³⁸ *Ibid*, para 2.4.

³⁹ *Ibid*, principle 16.

⁴⁰ *Ibid*, principle 2.6.

⁴¹ *Ibid*, principle 2.8.

⁴² ISA 2007, s 1.

and ensure the protection of shareholders' interests and proper management of securities market. The SEC is primarily managed by the Board, which has as part of its primary duty, to formulate general policies for the regulation and development of the capital market and the achievement and exercise of the functions of the SEC.⁴³

The SEC shall be the apex regulatory body for the capital market, and shall amongst other functions, regulate investments and securities business in Nigeria as defined in this Act; regulate investments and securities business in Nigeria as defined in this Act; in furtherance of its role of protecting the integrity of the securities market, seek judicial order to freeze the assets (including bank accounts) of any person whose assets were derived from the violation of this Act, or any securities law or regulation in Nigeria or other jurisdictions.⁴⁴

1.6 Economic and Financial Crimes Commission (Establishment) Act 2004

The Economic and Financial Crimes Commission (Establishment) Act 2004 established the Economic and Finance Crimes Commission (EFCC) in 2004 as the Financial Intelligence Unit (FIU) in Nigeria, charged with the responsibility of co-ordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria⁴⁵.

The EFCC is established as a commission headed by a Chairman and other members of the commission drawn up from the security and other professional bodies in the country, to be appointed by the President and approved by the Senate. The EFCC shall amongst other things, ensure the enforcement and due administration of the provisions of this Act; investigate all

⁴³ *Ibid*, s 4(1)(a).

⁴⁴ *Ibid*, s 13.

⁴⁵ EFCC (Establishment) Act 2004, s 1(2)(c).

financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.⁴⁶ The EFCC, in discharging its duties, has the power to cause investigations to be conducted as to whether or not any person, corporate body or organization has committed any offence under this Act or other law relating to economic and financial crimes.⁴⁷ The investigation also connects to properties, to see if they were acquired with proceeds of financial crime.⁴⁸

1.7 Banks and Other Financial Institutions Act 2020

The Banks and Other Financial Institutions Act 2020 (BOFIA 2020) was enacted to repeal the Banks and Other Financial Institutions Act, Cap. B3, Laws of the Federation of Nigeria 2004, and to amongst other things, regulate and supervise banking and business of Other Financial Institutions in Nigeria.⁴⁹ The BOFIA 2020 empowers the Central Bank of Nigeria (CBN) to be in charge of implementing all provisions therein, and having all powers to perform its functions and duties.⁵⁰

1.8 SEC Corporate Governance Guidelines 2020

The Securities and Exchange Commission developed the SEC Corporate Governance Guidelines 2020 (SCGG 2020), to promote standards of transparency, accountability and good corporate governance of companies, without inhibiting enterprise and innovation.

⁴⁶ *Ibid*, s 6.

⁴⁷ *Ibid*, s 7(1).

⁴⁸ *Ibid*, s 7(2).

⁴⁹ Banking and Other Financial Institution Act 2020, preamble.

⁵⁰ (n 49), s 1(1).

The SCGG provides that membership of the BOD shall not be less than five (5),⁵¹ and for public companies, not more than two (2) members of same family shall sit on the board at the same time.⁵²

The SCGG also provides for independent directors, and directs that cross membership in the board of a conflicting company be disallowed, while cross membership in the board of more than two companies be discouraged.⁵³ There is penalty for any corporate entity in breach of the provisions of the SCGG.

2.0 Regional Legal Framework

As it concerns the West Africa region, there are laws governing the operations of companies, and these laws operate as persuasive forces, and have over time, proved efficient in modelling the structure and operations of these companies. The Agenda 2063 of the African Union, and the New Partnership for Africa's Development 2001 are regional laws on the dissertation topic discussed herein.

2.1 Agenda 2063 of the African Union

The Agenda 2063 is basically Africa's own development Agenda, having a proposed schedule for the development of Africa. The Agenda 2063 ensures close alignment with regional priorities, on one hand, and the global development framework on the other.⁵⁴ Agenda 2063 captures both systemic and structural barriers to – and the drivers of – change, emphasizing inclusive growth,

⁵¹ SCGG 2020, guideline 1.

⁵² *Ibid*, guideline 2.1.

⁵³ *Ibid*, guideline 2.2.

⁵⁴ UNDP Africa, 'Strengthening Strategic Alignment for Africa's Development Lessons from the UN 2030 Agenda for Sustainable Development, the African Union Agenda 2063 and the African Development Bank High Fives' available

at<file:///C:/Users/User/Downloads/UNDP%20Africa%20Policy%20Brief%20on%20Strengthening%20Strategic%20Alignment%20for%20Africa%20(24%20January%202017)%20-%20ENGLISH_v3.pdf> accessed on March 4, 2022.

infrastructure development, technological advancement, environmental sustainability, peace and security, and a politically united Africa. Its first 10-year implementation plan consists of 20 goals and at least 171 targets.⁵⁵

It is hoped that Africa would be a continent of shared prosperity which manages its growth and transformation.⁵⁶ Understanding the impact of good governance in every economy and society, Agenda 2063 further aspires for an Africa of good governance, democracy, respect for human rights, justice and the rule of law.⁵⁷ These are part of the seven (7) aspirations set out by Agenda 2063 for the growth and development of the African continent.

2.2 The New Partnership for Africa's Development 2001

The New Partnership for Africa's Development 2001 (NEPAD 2001) was adopted by Africa leaders in 2001 as a pledge to eliminate poverty by adopting measures that would ensure sustainable growth and development in the continent. NEPAD recognises that good governance is pivotal to sustainable growth and the fight against poverty.⁵⁸

NEPAD recognizes state capacity-building as a critical aspect of in creating enablers for development, as the state has a major role to play in promoting economic growth and development, and in implementing programs or resolutions aimed at poverty reduction. Though many nations lack the ability to create enablers for development, whether or not the finance needed is available.⁵⁹

NEPAD has resolved to give high priority to capacity building.⁶⁰ In achieving the drive to give

⁵⁵ (n.39).

⁵⁶ Agenda 2063, aspiration 1.

⁵⁷ *Ibid*, aspiration 3.

⁵⁸ N Funke and S M Nsouli, 'The New Partnership for Africa's Development (NEPAD): Opportunities and Challenges' [2003] *IMF Working Paper*, 3.

⁵⁹ NEPAD 2001, para 86.

⁶⁰ *Ibid*, para 87.

high priority to capacity building, NEPAD encourages the promoting of a set of concrete and time-bound programs aimed at enhancing the quality of economic and public financial management as well as corporate governance, in all the participating countries.⁶¹

In expressing its readiness to ensure development and economic growth, NEPAD enjoins that a task force from Ministries of Finance and Central Banks will be commissioned to review economic and corporate governance practices in the various countries and regions, and make recommendations on appropriate standards and codes of good practice for consideration by the Heads of State Implementation Committee within six months.⁶² Public financial management is given high priority, and for that reason, it is proposed that assessment mechanisms be put in place to check progress in the programs for improving public financial management and targets. Finally, all resource readily available should be deployed to ensure compliance to the minimum agreed standards and codes of conduct.⁶³

3.0 International Legal Framework

Foreign laws as the Companies Act 2006 of the United Kingdom, Companies Act 2019 of the Republic of Ghana, and Corporate Governance Code for Listed Companies 2020 are examined as they relate to the dissertation.

3.1 Companies Act 2006

The Companies Act 2006 (CA 2006) was enacted by the UK Parliament to reform company law and restate the greater part of the enactments relating to companies; to make other provision

⁶¹ *Ibid*, para 88.

⁶² NEPAD 2001, para 89.

⁶³ (n 62), paras 91 - 92.

relating to companies and other forms of business organisation; to make provision about directors' disqualification, business names, auditors and actuaries; to amend Part 9 of the Enterprise Act 2002; and for connected purposes.⁶⁴

The CA 2006 defines a company as one formed and registered under the CA 2006.⁶⁵ Such companies could either be private or public, and limited or unlimited.⁶⁶ Sections 5 and 6 of the CA 2006 makes provision for companies limited by guarantee but having a share capital, and community interest companies. A company is formed by one or more persons who subscribe their names on the memorandum of the company, and comply with the requirements of the CA 2006.⁶⁷

Upon incorporation, all subscribers and future members of the company become a body corporate to be known and identified with the name registered as the company, having the powers to function as a legal entity.⁶⁸ Such powers are exercised by the directors of the company, and anyone who deals with the directors of the company are dealing directly with the company itself.⁶⁹ Thus, a private company must have one director, while a public company is mandatorily required to have a minimum of two directors.⁷⁰

The duties of a director are as provided for in sections 171 to 177 of the CA 2006 to the effect that the director must exercise its powers within the limits provided by the constitution of the company, and in the best of interest of the company. A director is also to promote the success of the company by employing all reasonable steps before reaching a decision. Such independent decisions of the

⁶⁴ CA 2006, preamble.

⁶⁵ *Ibid*, s 1.

⁶⁶ *Ibid*, ss 3 and 4.

⁶⁷ *Ibid*, s 7.

⁶⁸ (n 64), s 16(2) & (3).

⁶⁹ *Ibid*, s 40(1).

⁷⁰ *Ibid*, s 154.

director must be exercised with reasonable care, skill and diligence. Duties to avoid conflict of interest and accepting benefits from third parties subsists even after the director ceases to function as a director in the company.⁷¹

3.2 Companies Act 2019

The Companies Act 2019 (CA 2019) of Ghana is the 992nd Act of Parliament of the Republic of Ghana. The CA 2019, is to amend and consolidate the law relating to companies; to establish the Office of the Registrar of Companies; and to provide for related matters.⁷² It contains several provisions on formation and management of companies, quite if not almost similar to those contained in the CAMA 2020. It is trite that the Ghana Company Law and that of Nigeria are similarly tailored after the Companies Act 2006 (CA 2006) of UK primarily because both countries were colonized by the UK.

The CA 2019⁷³ provides that one or more persons may form an incorporated company. This provision is not qualified as seen in the CAMA, 2020 where small private companies alone are allowed to be registered by one person. For whatever it is worth, upon incorporation, the company is robed with powers incidental to incorporation, and can engage in all activities within the ambit of the Act and the company's constitution.⁷⁴

A company shall act through the members of the company in general meeting or the board of directors or through officers or agents, appointed by, or under authority derived from the members in general meeting or the board of directors.⁷⁵ It is also provided that the business of the company,

⁷¹ *Ibid*, s 170(2).

⁷² Companies Act of Ghana, 2019, preamble

⁷³ CA 2019, s 6.

⁷⁴ *Ibid*, s 18.

⁷⁵ *Ibid*, s 144(1).

except expressly provided for otherwise by the Constitution of the company, shall be managed by the board of directors who may exercise the powers of the company that are not by this Act or the constitution required to be exercised by the members in general meeting.⁷⁶ The BOD when acting within their powers as provided by the Constitution of the company and the Act are not bound to comply with the directions of the members in general meeting.⁷⁷ These provisions again are *mutatis mutandi* with the provisions of CAMA 2020. *Section* 147 of the CA 2019 provides *inter alia* that the acts of the BOD carried out in the course of the ordinary business of the company shall be binding on the company to the extent that the company shall be held liable either criminally or in civilly.

The CA 2019 is also found wanting on the definition of a director. It only provides that directors are those persons by whatever name called who are appointed to direct and administer the business of the company.⁷⁸ The CA 2019 still provides for a minimum of 2 directors in every company.⁷⁹ *Section* 173 (1) of the CA 2019 made provision for persons not qualified to be appointed or to act as directors of a company, to include an infant; a person adjudged to be of unsound mind; a body corporate; a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of a company as a result of an order made under section 177 so long as the order remains in force unless leave to act as director has been granted by the Court in accordance with that section; and an undischarged bankrupt.

⁷⁶ *Ibid*, (3).

⁷⁷ *Ibid*, (4).

⁷⁸ CA 2019, s 170.

⁷⁹ *Ibid*, s 171.

At all times necessary, at least one director of the company must reside within the Republic.⁸⁰ There is a penalty for breach of this provision. *Section* 190 of the CA 2019 provides for the duties of the directors, and states *inter alia* that the directors owe a fiduciary duty to the shareholders of the company, and must exercise due diligence and skills in the discharge of their duties. Directors are allowed to use their discretion in the best interest of the company, and in defining what qualifies as best interest, the CA 2019 has provided that in considering whether a particular transaction or course of action is in the best interests of the company as a whole, a director may consider the interests of the employees, as well as the members, of the company, and, where appointed by, or as representative of, a special class of members, employees, or creditors may give special, but not exclusive, consideration to the interests of that class.⁸¹

3.3 Corporate Governance Code for Listed Companies 2020

The worldwide acceptance of the Code of Corporate Governance (CCG) has necessitated the formalization of rules and norms. These rules and norms have undoubtedly reshaped the operations of companies, by introducing and ensuring conducts and structures of companies are in line with the present CCG across the globe. The 2010 Code of Best Practices for Corporate Governance issued by the Ghana Securities and Exchange Commission is considered to be one of the most comprehensive codes as its provisions are considered to be apt for effective corporate governance in Ghana.⁸²

The code of best practices as issued by the Securities and Exchange Commission of Ghana made clear provisions on corporate governance with regards to BOD and its functions, while also

⁸⁰ *Ibid*, s 181.

⁸¹ CA 2019, s 190(4).

⁸² O S Agyemang & M Castellini, 'The Guidelines of Corporate Governance of Ghana: Issues, Deficiencies and Suggestions' [2013] (6)10, *International Business Research*, 163.

encouraging for a separation of office between the Chairman and the Managing Director/Chief Executive Officer of the company. This code has been reviewed and the Corporate Governance Code for Listed Companies was issued by the Securities and Exchange Commission on October 8, 2020. The code applies to all companies whose securities are admitted to trading on the Ghana stock exchange.⁸³ It is provided that a listed company shall be headed by an effective Board providing strategic guidance to lead and control the company and which shall be accountable to its shareholders.⁸⁴

The primary responsibilities of the BOD are as provided for in *section 2(2)* of the Code, to the effect that the BOD shall foster the long term, sustainable business of the company consistent with: The laws; this Code; the Board's fiduciary responsibility to the shareholders; their responsibility to ensure the company operates in an effective, fair, ethical and prudent manner; and their duty to have regard to the interests of employees and others as appropriate.

The Corporate Governance Code for Listed Companies 2020, also made provisions for the responsibilities of the BOD with regards to the operations of the company.⁸⁵ These responsibilities as provided by the code are all geared towards ensuring compliance to the provisions of the code by putting in place the necessary machineries for the implementation of the code. The BOD shall be made up of directors with skill, integrity and experience to protect the interest of the shareholders of the company.⁸⁶ The code provides that the BOD should reflect the shareholding structure of the company, and not to contain solely majority shareholder interests or nominations.⁸⁷

⁸³ Corporate Governance Code for Listed Companies in Ghana, 2020, s 1(1).

⁸⁴ *Ibid*, s 2(1).

⁸⁵ (n 83), s 2(3).

⁸⁶ (n 64), s 3(1).

⁸⁷ *Ibid*, s 3(3).

The BOD is free to adopt such procedures necessary for the discharge of its functions.⁸⁸ It can also decide to employ the services of third parties or agents, but this later act does not absolve the BOD from any liability that would arise from such engagements of agents as at all times, the BOD owes the company and its shareholders the responsibility of running the affairs of the company in all competence, skill, and integrity.⁸⁹

3.4 G20/OECD Principles of Corporate Governance 2015

The Organization for Economic Cooperation and Development is an international organization of 36 countries committed to democracy and the market economy. The organization in pursuit of its commitment to ensure friendly and transparent market economy provided for principles to guide and control the market economy. It is the principles that is referred to as the OECD Principles of Corporate Governance. The Principles are geared towards helping policymakers evaluate and improve the legal, regulatory, and institutional framework for corporate governance, with a view to support economic efficiency, sustainable growth and financial stability. This is primarily achieved by providing shareholders, board members and executives as well as financial intermediaries and service providers with the right incentives to perform their roles within a framework of checks and balances.⁹⁰

As provided in the preamble⁹¹

The principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional, and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate

⁸⁸ *Ibid*, s 5(1).

⁸⁹ *Ibid*, s 5(2).

⁹⁰ OECD Principles of Corporate Governance 2015, 9.

⁹¹ *Ibid*.

governance...The principles are non-binding and do not aim at detailed prescriptions for national legislation. Rather, they seek to identify objectives and suggest various means for achieving them.

The principles focus on public traded companies both financial and non-financial, but they may also be useful to private companies in improving good corporate governance. The Principles cover six key areas of corporate governance – ensuring the basis for an effective corporate governance framework; the rights of shareholders; the equitable treatment of shareholders; the role of stakeholders in corporate governance; disclosure and transparency; and the responsibilities of the board.⁹² It is provided that the corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.⁹³ On the responsibilities of the BOD, it is provided that the corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board's accountability to the company and the shareholders⁹⁴

The board is not only accountable to the company and its shareholders but also has a duty to act in their best interests. In addition, boards are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities. Observance of environmental and social standards is relevant in this context.⁹⁵ The BOD are to exercise objective independent judgment on corporate affairs, and should have access to accurate, relevant and timely information to be able to fulfil their responsibilities.⁹⁶

⁹² F Jesover and G Kirkpatrick, *The Revised OECD Principles of Corporate Governance and their Relevance to Non- OECD Countries* (Blackwell Publishing Ltd, 2005) 2.

⁹³ (n 90), principle I.

⁹⁴ *Ibid*, principle VI.

⁹⁵ *Ibid*.

⁹⁶ *Ibid*.

3.5 OECD Guidelines for Multinational Enterprises 2011

Understanding that international investment is of great importance to the world, and that the multinational enterprises play a major role in it, the OECD Guidelines for Multinational Enterprises 2011 (OECD GME, 2011) was drawn up to regulate the activities of multinational enterprises the world over. The Guidelines aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.⁹⁷

The Guidelines are not a substitute for nor should they be considered to override domestic law and regulation. While the Guidelines extend beyond the law in many cases, they should not and are not intended to place an enterprise in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law.⁹⁸ It is further recommended that multinational enterprises support and uphold good corporate governance principles and develop and apply good corporate governance practices, drawn from the OECD Principles of Corporate Governance 2015.⁹⁹ This is to buttress the point that good corporate governance practices promote friendly business relations which in turn guarantees growth and development.

On the commentary on general policies¹⁰⁰ of the OECD Guidelines for Multinational Enterprises, it is recommended strongly that the board of the parent entity ensures the strategic guidance of the

⁹⁷ OECD GME 2011, preface.

⁹⁸ *Ibid*, pt I, para 2.

⁹⁹ *Ibid*, pt II para 6.

¹⁰⁰ Funke and Nsouli (n 58) para 8.

enterprise, the effective monitoring of management and to be accountable to the enterprise and to the shareholders, while taking into account the interests of stakeholders. In undertaking these responsibilities, the board needs to ensure the integrity of the enterprise's accounting and financial reporting systems, including independent audit, appropriate control systems, in particular, risk management, and financial and operational control, and compliance with the law and relevant standards. In all, it is the duty of the BOD to ensure compliance with the provisions and principles of this Guidelines.

3.6 IMF Guidance Note 1997

The unmistakable significance attached to the promotion of good governance by member countries led series of discussions amongst member states of the IMF, which culminated into the adoption of what is now referred to as the IMF Guidance Note in July 1997.¹⁰¹ The climax of the discussions was the mutual agreement of all Executive Directors on the importance of good governance for economic efficiency and growth. Consequently, roles of the IMF in ensuring transparency for economic development and growth were approved by the Executive Board of the IMF in July 1997.¹⁰²

As part of its interests and activities, the IMF has recognized several governance issues as integral to the IMF's normal activities. This is in line with the IMF's primary concern with macroeconomic stability, external viability, and orderly economic growth in member countries. The IMF has accordingly programmed two areas of intervention in advancement of its goal to promote transparency in corporate governance. To this end, it is expected that reforms be made in the public

¹⁰¹ M Camdessus, 'Good Governance: The IMF's Role,' [1997] *International Monetary Fund*, 1. Available at <<https://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>> accessed 5th March 2022.

¹⁰² *Ibid.*

sector to improve the management of public resources; and the development and maintenance of a transparent and stable economic and regulatory environment conducive to efficient private sector activities is supported.¹⁰³

3.7 Basel Committee for Banking Supervision on Corporate Governance Principles 2015

The role of corporate governance in ensuring economic viability and business growth is second to none. However, the banks play a major role in this business growth as it stands as an intermediary between the depositors and investors, and provides the funds with which enterprises and corporations do business to promote the economy. It is this sensitive placement of the banks that brought about the adoption of the OECD Principles on corporate governance.¹⁰⁴

The Basel Committee for Banking Supervision on Corporate Governance Principles 2015 applies to BODs, senior managers, control function heads and supervisors of a diverse range of banks in a number of countries with varying legal and regulatory systems, including both Committee member and non-member jurisdictions. This application is without prejudice to already existing national laws, and the knowledge of differences in legislative and legal frameworks operational in member countries. Thus, each bank is to apply the principles in line with extant national laws.¹⁰⁵

The board's primary duty is to the bank, and such duty includes approving and overseeing management's implementation of the bank's strategic objectives, governance framework and corporate culture.¹⁰⁶ It is therefore needful that the board personally monitors the activities of the

¹⁰³ IMF Guidance Note 1997, para 5.

¹⁰⁴ Basel Committee on Banking Supervision Guidelines Corporate Governance Principles for Banks 2015, para 4.

¹⁰⁵ *Ibid*, para 15.

¹⁰⁶ *Ibid*, principle 1.

bank to ensure compliance to principles and policies of the bank, as well as ensuring good corporate governance principles, risk management, setting up of proper structures for the maximum performance of the bank. The duty of care and loyalty owed the bank by the board must also be enforced in line with extant national laws.¹⁰⁷

Consequently, the board should among other things, actively engage in the affairs of the bank and keep up with material changes in the bank's business and the external environment as well as act in a timely manner to protect the long term interests of the bank; oversee the development of and approve the bank's business objectives and strategy and monitor their implementation; play a lead role in establishing the bank's corporate culture and values; oversee implementation of the bank's governance framework and periodically review to keep it in line with current realities; approve the selection and oversee the performance of the CEO, key members of senior management and heads of the control functions.¹⁰⁸

3.8 International Corporate Governance Network (ICGN) Global Governance Principles 2014

The International Corporate Governance Network (ICGN) Global Governance Principles 2014 describe the responsibilities of boards and shareholders respectively and aim to enhance dialogue between the two parties. The principles reaffirm the drive to instill a viable CG model to guide and direct various companies and organisations around the globe.¹⁰⁹ First initiated in the year 1995, the ICGN principles has undergone four (4) reviews and updates. Its principles are applicable and relevant to all board structure, whether a one-tier board or a two-tier board.¹¹⁰

¹⁰⁷ (n 104), principles 23, 24, and 26.

¹⁰⁸ *Ibid*, principle 26.

¹⁰⁹ ICGN Global Governance Principles 2014, preamble.

¹¹⁰ *Ibid*.

As provided by the ICGN Global Governance Principles 2014, the board should at all times be well informed to be able to act in the best interest of the company, in good faith, care, and diligence, for the benefit of the shareholders and relevant stakeholders.¹¹¹ The board is accountable to the shareholders as well as the relevant stakeholders, and is responsible for protecting and generating interests on investments over a long term.¹¹² To this end, BOD should make necessary modalities available to ensure the continuous functioning of the company.¹¹³

The board should for the settlement of disputes, make available communication channels for periodic dialogue on governance matters with shareholders and stakeholders as appropriate.¹¹⁴ Such channels are aimed towards ensuring full disclosures and promoting transparency to assure the trust of shareholders and the relevant stakeholders.¹¹⁵ For effective functioning, the size and nature of appointment an individual director holds (particularly the chair and executive directors) should be carefully considered and reviewed on a regular basis, and the degree to which each individual director has the capacity to undertake multiple directorships should be clearly disclosed.¹¹⁶ The board should have independent leadership with a clear separation of duties between the chairmanship of the board and the executive management of the company.¹¹⁷

The ICGN Governance Principles 2014 further makes provision for composition of the board, tenure, diversity, appointment process, election, and nominations by shareholders of persons into the BOD. These are to promote a good and effective corporate governance structure in the company.

¹¹¹ (n 109), para 1.1.

¹¹² *Ibid*, para 1.2.

¹¹³ *Ibid*.

¹¹⁴ *Ibid*, para 1.3.

¹¹⁶ (n 94) para 1.5.

¹¹⁷ *Ibid*, para 2.1.

4.0 Institutional Framework

Having discussed the national and international legal framework on the dissertation topic, it is only expedient we also discuss the institutions responsible for the enforcement of the legal framework. In view of this, we shall delve into the functions and powers of institutions as the Corporate Affairs Commission, Securities and Exchange Commission, the Judiciary, Financial Reporting Council of Nigeria, Central Bank of Nigeria, the Economic and Financial Crimes Commission, Office of the Registrar General.

4.1 Corporate Affairs Commission

The CAMA 2020 established the Corporate Affairs Commission (CAC) as a commission with perpetual succession having the powers to sue and be sued, as well as having properties and other benefits that are ordinarily consequent to incorporation of a company.¹¹⁸ The CAC is constituted of a Board with the duty of ensuring that the functions of the CAC are duly carried out. It is the duty of the board to review the strategic plans of the commission for effective discharge of the functions of the commission. As well laid down in Section 4 of the CAMA 2020, the board shall amongst other functions, review and provide general policy guidelines for performing of the functions of the Commission in accordance with international commercial best practice; have general oversight on the administration of the Commission; and review and approve the strategic plans of the Commission.

As can be seen from the above, it is the duty of the board of the CAC to ensure compliance with the provisions of the CAMA, 2020. Such compliance applies to other regulations made pursuant to the CAMA, 2020, and inclusive of the Nigerian Code of Corporate Governance, 2018. There

¹¹⁸ CAMA 2020, s 1.

are specific functions of the CAC as encapsulated in the CAMA, 2020. These functions include amongst other things, the supervision of companies; arrange or conduct an investigation into the affairs of any company, where the interest of shareholders, members, partners or public so demands; ensure compliance by companies, with the provisions of CAMA, 2020 and such other regulations as may be made by the Commission.¹¹⁹ In furtherance of its assignment, the CAC has the powers to undertake any activity it considers expedient for the full performance of its functions.¹²⁰

4.2 Securities and Exchange Commission

The SEC is the apex regulatory body of the capital market, and was established by the Investment and Securities Act, 2007 (ISA 2007).¹²¹ The SEC is a body corporate as the CAC with perpetual succession and a common seal, having the powers to sue and be sued, as well as having properties in furtherance of its functions and powers. The functions of SEC are as contained in section 13 of the ISA, 2007, bordering on regulation of the capital market, and ensuring the credibility of the market is preserved, amongst other things. On particular interest is the provision of section 13(k) of the ISA, 2007 to the effect that the SEC shall act in the public interest having regard to the protection of investors and the maintenance of fair and orderly markets and to this end establish a nationwide trust scheme to compensate investors whose losses are not covered under the investors protection funds administered by securities exchanges and capital trade points. It is also the duty of SEC to protect the integrity of the securities market against all forms of abuses including insider dealing; intervene in the management and control of capital market operators which it considers

¹¹⁹ CAMA 2020, s 8(1)(a), (c)&(d)

¹²⁰ (n 104), para 15 (f).

¹²¹ ISA 2007, s 1.

has failed, is failing or in crisis including entering into the premises and doing whatsoever the Commission deems necessary for the protection of investors.¹²²

4.3 The Judiciary

In Nigeria, it is the CFRN 1999 that gives powers and defines the rights and liabilities of every man and corporation. As clearly contained in its preamble, the constitution is supreme, and every law inconsistent to its provision shall be declared null and void to the extent of its inconsistency. The Federal High Court is the court with exclusive jurisdiction on all matters relating to the operations of the CAMA 2020. Section 251(1)(e) of the CFRN 1999, clearly provides that the Federal High Court shall have exclusive jurisdiction to hear and decide all matters relating to the operations of the Companies and Allied Matters Act, inclusive of the operations of companies incorporated under the CAMA 2020.

Thus, with regards to enforcement of the CCG by the BOD, where investors or shareholders seek redress as provided by the CAMA 2020, and the NCCG 2018, it is the Federal High Court that has exclusive jurisdiction to entertain such suit. The Court of Appeal Per Owoade, JCA¹²³ had reiterated the exclusive jurisdiction of the Federal High Court on matters bothering on the provisions of the CAMA 2020, when it held that in an action involving regulating, running or management or control of companies, the Federal High Court would be vested with the jurisdiction.

¹²² (n 121), s 13(n) & (v).

¹²³ *Rev. Monday Micheal Idiong & Ors v. The Incorporated Trustees of the Divine Assemblies of Christ Church of Nigeria* (2021) LPELR-54311(CA) pp. 16-18, paras. C-D.

The Supreme Court, in a case premised on the internal squabbles of members of a body, per Onnoghen CJN¹²⁴ distinguished matters that fall under the exclusive jurisdiction of the Federal High Court, and those that do not, notwithstanding the fact that they involve incorporated bodies.

Thus, while the Federal High Court has exclusive jurisdiction to hear and determine matters founded on the provisions of the CAMA 2020, the state high court does have jurisdiction to hear and determine matters emanating from the internal issues of companies, as long as such matters have no bearing on the provisions of the CAMA 2020.

In Ghana, it is the High Court of Ghana that is robed with jurisdiction to entertain all suits, both civil and criminal. In clear terms, it is provided that the High Court shall, subject to the provisions of this Constitution, have jurisdiction in all matters and in particular, in civil and criminal matters and such original, appellate and other jurisdiction as may be conferred on it by this Constitution or any other law.¹²⁵ However, the High Court is made of divisions for efficient justice delivery. Thus, the Commercial division of the high court is the one vested with powers and authority to entertain all suits bothering on Companies and the provisions of the CA 2019. The court's special jurisdiction is set out in Order 58 of the High Court (Civil Procedure) Rules 2004, C.I 47 to include any claim arising out of trade and commerce and relating to:

- i. The formation or governance of a business or commercial organization.
- ii. The winding up or bankruptcy of a Commercial or business or commercial organization or corporate person.¹²⁶

¹²⁴ *Godwin v. Okwey* (2010) 7 SCNJ 22.

¹²⁵ Constitution of Ghana, 1992 (reviewed 1996), s 140(1)

¹²⁶ High Court (Civil Procedure) Rules 2004, Order 58 (2).

Decisions of the commercial division of the high court of Ghana are appealed as of right to the Court of Appeal.

4.4 The Financial Reporting Council of Nigeria

The Financial Reporting Council of Nigeria (FRC) is a body corporate with perpetual succession, having the powers to sue and be sued, as well owning properties.¹²⁷ The FRCN is made up of a board properly composed with representatives from the private and public sectors covering the major economic sectors.¹²⁸ The duties of the board are as contained in *section 10* of the FRCN Act 2011, to the effect that Board shall decide on strategies and set priorities for the FRC, oversee and monitor the effective functioning of each directorate or department, by ensuring regular reporting from each directorate, and regularly evaluate the performance of each key officer of the board to be able to ascertain the resourcefulness and efficiency of each, and the board in general.

The object of the FRC is to protect investors and other stakeholders' interest, give guidance on issues relating to financial reporting and corporate governance to financial bodies, ensure good corporate governance practices in the public and private sectors of the Nigerian economy, and ensure transparency in financial reports and corporate disclosures.¹²⁹ The FRC has several functions as contained in *section 8 (1)* of the FRCN Act 2011, and includes amongst others, to develop and publish accounting and financial reporting standards to be observed in the preparation of financial statement of public interest entities, review, promote and enforce compliance with the accounting and financial reporting standards adopted by the Council, monitor compliance with the

¹²⁷ FRC Act 2011, s 1.

¹²⁸ *Ibid*, s 2.

¹²⁹ *Ibid*, s 11.

reporting requirements specified in the adopted code of corporate governance, and basically to ensure compliance with all financial reporting standards adopted in corporate governance as it affects financial institutions having public interests. To this end, the FRC has all powers to do all things necessary to the full execution of its functions.¹³⁰

4.5 Economic and Financial Crimes Commission

The Economic and Financial Crimes Commission (EFCC) was established in 2004 by the Economic and Financial Crimes Commission (Establishment) Act 2004. The EFCC is a body corporate with perpetual succession, having the powers as contained in the Act to function as a body.¹³¹ The EFCC is the body charged with the responsibility of co-ordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.¹³² The EFCC operates with a board headed by the chairman, having members drawn from the various sectors and ministries in Nigeria.¹³³ The major function of the EFCC is to guard against all forms of financial and economic crimes in the country, and the enforcement of the full implementation of the provisions of the EFCC Act 2004.¹³⁴ The EFCC is also vested with special powers to be able to properly function in its fight against all forms of financial and economic crimes in Nigeria.¹³⁵

4.6 Central Bank of Nigeria

¹³⁰ (n 127), s 7.

¹³¹ Cap E1, Laws of the Federation of Nigeria 2004, s 1.

¹³² *Ibid*, s 1 (2)(c).

¹³³ *Ibid*, s 2.

¹³⁴ *Ibid*, s 6.

¹³⁵ *Ibid*, s 7.

The Central Bank of Nigeria (CBN) is a body established with perpetual succession, and made independent for the purposes of promoting stability and achieving continuous economic growth.¹³⁶

The principal objects of the bank are to ensure monetary and price stability; issue legal tender currency in Nigeria; maintain external reserves to safeguard the international value of the legal tender currency; promote a sound financial system in Nigeria; and to act as banker and provide economic and financial advice to the Federal Government.¹³⁷ The CBN operates under the monitoring and guidance of a board headed by the Governor of the CBN and such members as statutorily provided for.¹³⁸ The board's duties are to consider and approve annual budget of the Bank; approve the audited and management accounts and the consideration of the management letter from the external auditors; formulate and implement exchange rate policy; make recommendation to the President for the appointment of auditors in accordance with section 49 of this Act, the provision of the necessary facilities and the rates of remuneration; establish and close branches and currency centres; and to carry out such other activities as are necessary and expedient for the purposes of achieving the objectives of the Bank.¹³⁹

4.7 Office of the Registrar of Companies

The CA 2019 established the Office of the Registrar of Companies to ensure compliance to the provisions of the CA 2019. The CA 2019 provides that application for the incorporation of companies shall be made to the office of the registrar general, who shall on satisfaction of all documents submitted to him by the promoters of the company sought to be registered, register

¹³⁶ CBN Act 2007, s 1.

¹³⁷ (n 126) s 2.

¹³⁸ *Ibid*, s 6(1) & (2).

¹³⁹ *Ibid*, s 6(3).

such company and certify that the company is registered under the seal of the registrar.¹⁴⁰ The Office of the Registrar of Companies shall be a body corporate with perpetual succession having the powers to own properties.¹⁴¹ The peculiar feature of the Office of the Registrar of Companies is that it has financial autonomy to discharge its functions.¹⁴²

The object of the Office of the Registrar of Companies is to register and regulate all types of businesses in conformity with the provisions of the Act, and any other relevant enactments related thereto.¹⁴³ To achieve this object, the office shall amongst other things, appoint inspectors, a receiver or manager to ensure the effective compliance with the Act; discharge duties and functions as official liquidator.¹⁴⁴ “The Office of the Registrar has the duty to undertake public education programmes to educate the general public engaged in business activities on the operation of companies, partnerships and business names.”¹⁴⁵

5.0 Conclusion

The various legal and institutional frameworks have revealed the core and mutual interest of states to preserve the integrity and trust of companies in the minds of investors, consequent from the various reviews on their codes of corporate governance to meet up with current realities. Accordingly, it is strongly recommended that mandatory application of the Nigeria Code of Corporate Governance should extend to all private companies with large investors.

¹⁴⁰ CA 2019, s 14(1).

¹⁴¹ (n 127), s 351(1) & (2).

¹⁴² *Ibid*, s 352.

¹⁴³ *Ibid*, s 353(1).

¹⁴⁴ *Ibid*, s 353(2)(b) & (c).

¹⁴⁵ *Ibid*, s 353(4).