Annual Conference of the African Bar Association

Nairobi, Kenya

JULY 22nd – 27th, 2018

"Africa's Socio Economic and Political Future: African Union's Agenda 2063 in Perspective"

Company Law's Function in Corporate Governance: Nigeria's Governance Experience

By

Anthonia Omosefe Ugowe*

Abstract

This paper assesses the legal framework for building strong democratic institutions in Nigeria. It adds to the literature by highlighting, Nigeria's governance experience in the ongoing global debate, on the function of nations' primary company law, in steering its corporate governance regulation as an ancillary to the primary law. The paper study companies in Nigeria's acceptability rate; adherence, and the consequences of non-adherence to *Nigeria's Companies and Allied Matters Act 1990,* together with its *Code of Corporate Governance for Public Companies 2011,* in the pursuit of companies' long-term success, which relates to companies' contribution towards Nigeria's economic growth and sustainable development.

In this paper, studying the provisions of the *Companies and Allied Matters Act 1990* and the *Code of Corporate Governance for Public Companies 2011*, exclude other sectoral corporate governance regulations implemented in Nigeria. However, there are references to other sectoral governance regulations where necessary. The paper distinguishes the 2011 regulation from the now suspended *National Code of Corporate Governance for the Private Sector in Nigeria 2016*. Nigeria's regulations acceptability rate; adherence, and the consequences of non-adherence, are compared with the acceptability rate; adherence, and the consequences of non-adherence applied

* Anthonia Omosefe Ugowe, LL.B (Hons.) (Ilorin); BL (Nigeria); LL.M (Manchester), Ph.D Candidate at the School of Law, University of Dundee, United Kingdom; Lecturer at the Faculty of Law, University of Ilorin. Her email addresses are a.o.o.ugowe@dundee.ac.uk and ugowe.ao@unilorin.edu.ng.

in the United Kingdom's *Companies Act 2006*, and the *United Kingdom Corporate Governance Code 2016.* The comparison is because, the United Kingdom (UK) is a developed nation from which lessons can be learned in building strong democratic institutions; *Companies and Allied Matters Act 1990* is largely modelled after UK's *Companies Act 1948*, and the UK is also one of the pioneering nations that started producing corporate governance regulations. Furthermore, both countries use the unitary board structure and implement, comply or explain approach in the adherence to corporate governance codes.

For the paper to be comprehensive, it studies corporate theories; policies; reports of government institutions; submissions of scholars, the judgments of courts (as a salient democratic institution) in administering justice and Nigeria's culture in incorporating and managing companies.

The paper finds no case arising from a dispute in the governance approach in Nigeria's companies, yet in a bid to avoid such dispute, it recommends that, companies' memorandum and articles of association, contain provisions that clearly state and describe companies' governance approach.

Another recommendation is for Nigeria policy makers, to produce a regulation that in clear terms, supports and protects company directors in the governance of companies so long as, directors pay attention to regulatory prescribed care and skill, and same can be proved using the "reasonable man" standard or; produce parallel regulations for different governance approaches.

KEY WORDS: Nigeria, United Kingdom, Companies Act, Corporate Governance, Corporate Governance Regulation, Public Companies and Theories.

1.1. Introduction

Companies are possibly the world's dominant institution, as some large companies have more income; logistical competences, and global presence than some national governments.[1] Walmart for instance is the largest retailer in the world, and has its presence in 28 countries. Walmart has over 11,700 stores in the countries it operates and eCommerce websites. The company employs

[1] David Ciepley, "Beyond Public and Private: Toward a Political Theory of the Corporation," *American Political Science Review* 107, no. 1 (2013): 139; Jin Jing, "Constructing the corporate governance system within the regime of corporate law from the perspective of a revised mechanism design theory: the shareholder primacy model versus the stakeholder theory model" (PhD thesis, University of Hong Kong, China, 2014) 1.

about 2.3 million associates worldwide, with fiscal year 2018 revenue of $500.3 United States Billion Dollars.[2]

Using Nigeria as its case study, the paper determines if the function of company laws should be to provide no more than a framework for the efficient functioning of a capitalist system, with the aim of maximising returns for financial investors mainly, or a wider spectrum of company's investors. For many years, there has been the debate regarding what the corporate governance of companies should be. Should a company be understood as purely private, or as a social institution in which there is a legitimate public interest? The growth of this debate can be attributed to the scandals and sometimes, collapses of "successful" indubitable companies and the 2007 - 09 global financial crisis. The scandals, collapses and crisis had crippling effects on economies and the whole business world. Hence, the demand for better legal framework through strong democratic institutions to sustain businesses and any economy in the wake of such events.

Some scholars argue that for a company to function optimally, maximising its shareholders' wealth, should be the principal goal of company directors. Some other scholars argue that for a company to function optimally, the interest of its various stakeholders, and not only the shareholders, are to be taken into consideration by the directors in making decisions on behalf of the company. These competing claims for preference in the allocation of company's overall interest, while rendering social services has given rise to different points of view of what a company's governing overall interest should be. Regulatory institutions in every economy play a vital role in mapping out and co-ordinating the legal framework that guides the governance of every aspect within an economy.

Nigeria's company law largely modelled after the UK's *Companies Act of 1948*,[3] provides for a fiduciary relationship between directors and companies' shareholders with respect to shareholders receipt of adequate and timely information about the company. It also provides for directors' discretion in managing a company. Shareholders, being the financial investors in a company expect returns on their investment, so also do other people who invest, albeit, non-

[2] "Home: About us," Walmart Inc., Last modified 2018,
https://corporate.walmart.com/our-story

[3] Emmanuel Adegbite, Kenneth Amaeshi and Chizu Nakajima, "Multiple Influences on Corporate Governance Practice in Nigeria: Agents, Strategies and Implications," *International Business Review* 22, no. 3 (2013): 527; Chris Ogbechie and Dimitrios Koufopoulos, "Corporate Governance Practices in Nigeria*,"* in Corporate Governance in Emerging Markets, ed. Sabri Boubaker and Duc Khuong Nguyen (Heidelberg: Springer, 2014) 377.

financially, to the sustainability of a company expect returns on their contribution to the company. The latter set of people's relationships with a company, are typically regulated by contracts and existing regulation(s), while shareholders' relationship with a company are usually regulated by the company's articles of association and existing regulation(s).

In analysing the function of Nigeria's company law and her corporate governance regulation, in building strong democratic institutions, this paper seeks to specifically assess both regulations as they guide public companies in Nigeria and the outcome so far. The paper does this by assessing the two main theories of corporate governance, which give credence to the two diverse opinions, on what the legal framework should be in regulating companies; national and international reports, including decisions from the judiciary and the expectations of society. The two theories of corporate governance discussed in this paper are the shareholders' and the stakeholders' theories.

The suspended *National Code of Corporate Governance for the Private Sector in Nigeria 2016* came into effect on the 17th of October 2016.[4] It was produced by the Financial Reporting Council of Nigeria (FRC). The FRC was established by the *Financial Reporting Council of Nigeria Act 2011*. The FRC got its mandate to produce the Code from its objects provided in s 11, and its powers contained in ss 7 and 8 of the Act 2011. S 23 provides for different Directorates, including the Directorate of Corporate Governance, hence the duties of the Directorate as seen in ss 50 and 51.

The *National Code of Corporate Governance for the Private Sector in Nigeria 2016,* is silent on the intendment of the Code to be applied as a flexible set of rules, built on the foundation of *Companies and Allied Matters Act 1990,* as provided in s 7 and s 541 of the Act. The *Code of Corporate Governance for Public Companies 2011* and the *United Kingdom Corporate Governance Code 2016,* in clear terms, apply flexibly (comply or explain basis).[5] The *National Code of Corporate Governance for the Private Sector in Nigeria 2016,* clearly provides in s 2.1 that the Code is applicable to all public companies be they listed or not; all private companies that are subsidiaries of public companies, and companies that fall under the definition of regulated private companies as defined in s 40.1.14. The Code further in s 37.1 states that the

[4] s 38 (1).
[5] See the first paragraph of the preface to the UK's Code on page 1 and the second paragraph of the Comply or Explain section on page 4; *Code of Corporate Governance for Public Companies in Nigeria 2011,* s 1.3. (a).

Code is mandatory, therefore, non-compliance with its provisions will occasion sanctions against the firms or companies involved and personal sanctions against the individuals directly involved in the non-compliance. S 37.2 of the *National Code of Corporate Governance for the Private Sector in Nigeria 2016* behoves the FRC and sectoral regulator, enforcement of the Code. In interpreting this regulation, the procedure in Nigeria is that, where the National Assembly delegates its legislative authority to a regulatory body,[6] the regulation produced by such body is to be applied strictly, if its provisions are not in conflict with the provisions in the main legislation, or where the regulation states that its provisions are not rigid. Where the provisions of the regulation conflict with the provisions in the main legislation, the extent of its inconsistencies with the main legislation, will be considered void.[7]

The suspension of the *National Code of Corporate Governance for the Private Sector in Nigeria 2016*, is the outcome of the criticisms by shareholders and stakeholders under the Code's umbrella.[8] Further to the Code's suspension, the Federal Government issued queries to the FRC

[6] *Constitution of the Federal Republic of Nigeria 1999*, Part III of the Second Schedule; *Financial Reporting Council of Nigeria Act 2001*, s. 1 provides for the establishment of the Financial Reporting Council of Nigeria by an Act of the National Assembly. The Act in its long title charges the Financial Reporting Council of Nigeria among other things, with the authority for developing and publishing accounting and financial reporting standards, in the preparation of financial statement of public entities in Nigeria; and for related matters.

[7] *Constitution of the Federal Republic of Nigeria 1999*, s 1 (1) provides for the supremacy of the Constitution on all persons and authorities throughout the country. S 1 (3) provides that where any other law is inconsistent with the Constitution, the Constitution shall prevail over such law and the provisions of the other law, shall to the extent of its inconsistency, be void. S 4 (2) states that some matters are exclusively reserved for the National Assembly to legislate upon. A further read of the list of matters reserved for the National Assembly found in Part 1 of the Second Schedule to the Constitution has incorporation, regulation and winding up of bodies corporate, other than co-operative societies, local government councils and bodies corporate established directly by any Law enacted by a House of Assembly of a State listed in Item 32; in Buhari v. INEC (2008) 19 NWLR (Pt. 1120) 246, 341-43 the Supreme Court held that Practice Directions carries the same force of law like Rules of Court. However, where Practice Directions conflicts with the Constitution or the Statute which enables it, the Constitution or the enabling Statute will prevail; in Dr Olubukola Abubakar Saraki v Federal Republic of Nigeria (2016) LPELR-40013 (SC) the Supreme Court held that where the words of the Constitution or any other Statute are unambiguous, plain and precise, they must be given literal and natural meaning unless such interpretation would lead to absurdity or the context of the words used requires a particular meaning or special meaning.

8 Victor Ahiuma-Young, "NECA lauds FG's suspension of FRCN's code of corporate governance." Vanguard, November 9, 2016, accessed April 15, 2018, http://www.vanguardngr.com/2016/11/neca-lauds-fgs-suspension-frcns-code-corporate-governance/; Olaniwun Ajayi, "The Financial Reporting Council of Nigeria's National Code of Corporate Governance 2016 For the Private Sector: Key Highlights," November 2016, https://olaniwunajayi.net/wp-content/uploads/2016/03/FRCN-Newsletter-001.pdf; Clara Nwachukwu, "Capital market investors reject new FRCN corporate governance code." The Guardian, November 3, 2016, accessed April 15, 2018, http://guardian.ng/business-services/capital-market-investors-reject-new-frcn-corporate-governance-code/.

to provide among other information, the regulatory approach that supports the Code.[9] As at the time of writing this paper, the outcome of the response to the queries is yet to be known.

The remainder of this paper is structured as follows, part two analyses shareholders' theory. This theory argues that the corporate governance aim of a company, should mainly be to maximise profits for its financial investors. In this part, the shareholder theory is analysed through the provisions of Nigeria and the UK's Codes of Corporate Governance, alongside *Companies and Allied Matters Act 1999* and *Companies Act 2006* that give authority for the advancement of the shareholders' theory recommendations. Courts' judgments in corporate governance disputes are also examined.

Part three of this paper looks at the stakeholders' theory in the light of its values. Here too, the paper analyses the provisions of the UK's *Companies Act 2006* and Nigeria's *Companies and Allied Matters Act 1999* that argue for the corporate governance of a company to be broader in its approach. The provisions of both jurisdictions' Codes of Corporate Governance are also studied. In a bid to give effect to the reality of these provisions, some companies' statements are discussed.

Part 4 underscore lessons from part 2 and 3 literature, and make suggestions that are helpful to regulatory institutions in Nigeria; in building strong democratic institutions, and maintaining such regulations through the courts, in the pursuit of fairness and administration of justice. This part also concludes the paper.

2.1. The Shareholders Theory

The argument for the better governance approach of companies began in the United States of America in the debate between Professors Adolf Berle and E Merrick Dodd in the 1930's.[10] Berle argued that a company should be run in the interest of its shareholders, because, the shareholders advance the funds used in managing the company. Accordingly, directors of a company should create value on behalf of shareholders, by maximising the capital of

9 Naija247News, "FRC Boss Obazee in Trouble as FG Suspends Code of Corporate Governance." Naija247 News, November 7, 2016, accessed April 12, 2018,
http://naija247news.com/2016/11/frc-boss-obazee-in-trouble-as-fg-suspends-his-code-of-corporate-governance/.

10 Jennifer G Hill, "Then and Now: Professor Berle and the Unpredictable Shareholder," *Seattle University Law Review* 33, no. 4 (2010): 1005 - 006; Kevin V Tu, "Socially Conscious Corporations and Shareholder Profit," *The George Washington Law Review* 84, no. 1 (2016): 128.

shareholders ahead of any other interested party's interest in the company. To further buttress the theory, its supporters argue that there is empirical evidence to show that increasing shareholder value does not conflict with the long-term interest of other stakeholders in a company. Instead, it is only in increasing shareholders value that the needs of other stakeholders and even the need of the company to remain a going concern can be met.[11]

The primary argument put forward in support of the shareholder theory is that, the shareholders own the company because they provide the capital needed to start and manage it. Thus, the responsibility of company managers, is to increase shareholders' wealth.[12] In *eBay Domestic Holdings Inc. v Newmark*,[13] eBay Domestic Holdings Inc., a minority shareholder, kicked against the desire of the founding and majority shareholders in Craigslist to continue operating their online classified site as a free service to the community. The board of directors of Craigslist, in a bid to protect the desires of its founding and majority shareholders', adopted structures within the company which were detrimental to eBay. The board reduced eBay's ownership percentage; clogged eBay's right to sell its shares freely, and hindered eBay from unilaterally electing a director to the board. eBay sued the board of directors for breach of fiduciary duties. The Delaware Court of Chancery held that, a company incorporated for profit pursuit for non-shareholders' interest, must at some point align with the interest of its shareholders. The board of directors' duty under such incorporated company, was to increase the value of its shareholders. Company shareholders are identified in, *Companies and Allied Matters Act 1990*, s 27 and *Companies Act 2006*, s 8; 16 (5)(6).

Another argument in favour of managing a company principally for shareholders is that, the shareholders have the greatest stake in the outcome of the company. Shareholders benefit if company's wealth increase, and bear a greater risk than fixed claimants such as, creditors and employees when a company is liquidated. This is so because, shareholders are the sole residual claimants in a company.[14] The framework of this argument is found in *Companies and Allied*

[11] Steven Wallman, "The Proper Interpretation of Corporate Constituency Statues and Formulation of Director Duties," *Stetson Law Review* 21, (1991): 177 - 78; Sajid Gul et al., "The Relationship between Dividend Policy and Shareholder's Wealth," *Economics and Finance Review* 552, no. 2 (2012): 55.
[12] Sajid Gul et al., *Footnote*, 9; Jeehye You, *Legal Perspectives on Corporate Social Responsibility: Lessons from the United States and Korea* (India: Springer, 2015), 37.
[13] 16 A.3d 1 (2010).
[14] Jonathan Macey, "Corporate Social Responsibility: A Law & Economics Perspective," *Chapman Law Review* 17, no.2 (2014): 333; Tu *Footnote*, 10, 130.

Matters Act 1990, s 92; 402-04; 425; 446; 494; the UK's *Insolvency Act 1986*, s 74; 143 (1); schedule 4; schedule 6.

Also, supporters of the shareholders theory emphasise shareholders' return by company directors because, shareholders appoint the directors. The agency relationship between directors and shareholders is a fiduciary type. The directors also known as agents, are appointed by shareholders also known as principals, to manage the company on behalf of shareholders'. Furthermore, by virtue of shareholders appointing directors, the shareholders are in the best position to monitor and discipline directors in the carrying out of their powers and duties.[15] The appointment argument is found in the provisions of both Nigeria and the United Kingdom Companies' Act that states that at the time of incorporation, the subscribers to the company's Memorandum and Articles of Association should name the first directors and thereafter have a say in the appointment or rejection of subsequent directors in the company.[16] The monitoring role is contained in *Companies and Allied Matters Act 1990, s 81; 218-9; 224; 228; 256; Companies Act 2006*, s 282-3; 303; 314; 336; shareholders' agreement, and articles of association.

If shareholders are not active in their investee companies, the directors' may engage in opportunistic behaviour which will incur costs that may cause a scandal and or the company's liquidation. Kim's empirical study on whether protection from excessive directors' and officers' liability insurance, contributes to company's financial reporting choices, submitted that opportunism in financial reporting is usually because of directors' and officers' high liability insurance.[17] The study spotted deceitful financial reports choices by using company's earnings restatements and regulatory enforcement releases. By monitoring, the shareholders will be better

[15] Francois Brochet and Suraj Srinivasan, "Accountability of Independent Directors: Evidence from Firms Subject to Securities Litigation," *Journal of Financial Economics* 111, no.2 (2014): 433; Pattarin Adithipyangkul and Tak Yan Leung, "Large Shareholders and Independent Director Equity Compensation," *Australian Accounting Review* 26, no. 2 (2016): 209.

[16] *Companies and Allied Matters Act 1990*, ss 35 (c) and 248; *Companies Act 2006* 16(6) provides for the company's first directors. Subsequent directors are to be appointed in accordance with the provisions in the company's Articles of Association.

[17] Irene Kim, "Directors' and Officers' Insurance and Opportunism in Accounting Choice," *Accounting and Taxation* 7, no. 1 (2015): 51 – 65. This United States of America's study over a period of 1997-2002, excluded non-profits, partnerships, international firms and government organisations in the survey data on directors' and officers' insurance, gotten from Tillinghast-Towers Perrin. The study also used financial statement variables from CRSP/Compustat; regulatory enforcement releases by the Securities and Exchange Commission and the Department of Justice, including earnings restatements from the General Accounting Office to test its question; see also, Danny Miller et al., "When do Non-Family CEOs Outperform in Family Firms? Agency and Behavioural Agency Perspectives," *Journal of Management Studies* 51, no. 4 (2014): 547 - 572.

informed in making decisions on their investments. The Times newspaper in 1866 blamed shareholders for their investment loss, when the companies in which they had invested in, collapsed. The shareholders were blamed for being ignorant and knowingly paying no attention to their investments.[18]

Opportunism is the reason shareholders' value apologists recommend that, shareholders monitor directors, to ensure, directors are fully accountable in running the company invested in, by shareholders. *The UK Stewardship Code 2012* assists institutional shareholders in monitoring directors. The accountability principle of corporate governance is developed from the recommendations of agency theory. The theory submits that ownership concentration/activism is one of the means through which shareholders and directors' interests can be aligned, thereby, solving the challenges of the agency relationship between shareholders and directors.[19] *Companies and Allied Matters Act 1990*, s 344 (1) (a) provides that every member of a company regardless of whether he is entitled to receive notice of general meetings shall not less than twenty-one days before the date of the meeting be sent a copy of the company's financial statements for the year. S 349 (1) further provides that any member who demands a copy of the company's financial statements shall be provided with the company's last financial statements at no charge even if he is not entitled to be sent the company's financial statements.[20]

It is argued also that where maximising shareholders' wealth, is the main focus of directors, the least cost is expended, and the directors are more purposeful, as opposed to having other additional interests which may makes it tiresome or impossible for directors to balance all the

---

[18] Alice Belcher, *Directors' Decisions and the Law* (Abingdon and New York: Routledge, 2014), 6.

[19] Chinyere Uche, Emmanuel Adegbite, and Michael John Jones, "Institutional shareholder activism in Nigeria," *Corporate Governance* 16, no. 4 (2016): 681; Amira Hawas and Chin-Bun Tse, "How Corporate Governance Affects Investment Decisions of Major Shareholders in UK Listed Companies: Has the Recent Credit Crunch Changed the Game?," *Journal of Accounting, Auditing & Finance* 31, no. 1 (2016): 100; Siala Bouaziz Souha and Jarboui Anis, "Corporate governance and firm characteristics as explanatory factors of shareholder activism: Validation through the French context," *Cogent Economics & Finance* 4, no. 1 (2016): 2.

[20] *Code of Corporate Governance for Public Companies 2011*, ss 21-22; *Companies Act 2006*, s. 423 (1) (a), s 426 (1), ss 431-432; *The UK Corporate Governance Code 2016*, s C.1; s E.1, s E.2.

divergent interests which may be conflicting.[21] Besides, non-financial stakeholders are protected by regulation(s) and by the terms of the contracts entered into with the company.[22]

In concluding the arguments promoted by shareholders' theory proponents, the supporters of the theory argue that, investors' profit maximisation interest, should be considered above other company's stakeholders interest, because, shareholders are the only stakeholders in a company who are not able to exit companies without a significant sacrifice on their part.[23] Even when shareholders sell their shares, the price paid for the shares take into consideration any shareholders' exploitation. In 2014, Essar Energy (a London registered company) scandal led to the delisting of the company from the London Stock Exchange. In the face of the company's imminent delisting, its minority shareholders accepted a buyout offer almost 75 per cent less of the shares' initial public offering valuation.[24] Also in the United Kingdom case of *Prudential Assurance Co. Ltd v Newman Industries Ltd,*[25] Newman, the first defendant shareholders' in an extraordinary general meeting, approved the purchase of assets and certain liabilities in another company, relying on an issued company explanatory circular signed by its chairman (second defendant), who also sat as chairman in the company of interest. The plaintiff, a minority shareholder in Newman Industries commenced an action against Newman's directors claiming that the circular was misleading and tricky. The plaintiff action was at first brought as a derivative action wherein he also claimed for personal damages against the second and third defendants (chairman and vice-chairman for conspiracy). Afterwards, the plaintiff's claim for conspiracy against the second and third defendants were converted to a representative action seeking relief for all Newman's shareholders who had suffered loss like the plaintiff. The court held, a plaintiff shareholder cannot recover personal loss against his invested company where the

---

[21] See generally the conclusion in the empirical study of Martin Gelter, "The Pension System and the Rise of Shareholder Primacy," *Seton Hall Law Review* 43, (2013): 968-70; N Craig Smith and David Rönnegard, "Shareholder Primacy, Corporate Social Responsibility, and the Role of Business Schools," *Journal of Business Ethics* 134, no. 3 (2016): 464.

[22] Lynn A Stout, "The Toxic Side Effects of Shareholder Primacy," *University of Pennsylvania Law Review* 161, no.7 (2013): 2013; Diane Denis, "Corporate Governance and the Goal of the Firm: In Defense of Shareholder Wealth Maximization," *The Financial Review* 51, no. 4 (2016): 470.

[23] Denis and Rönnegard *Footnote, 2*2, 472-73; Tu *Footnote*, 10, 179.

[24] Ashley Armstrong, "Essar committee 'reluctantly' backs hostile takeover." *The Telegraph*, May 13, 2014, accessed April 28, 2018, https://www.telegraph.co.uk/finance/newsbysector/energy/10828459/Essar-committee-reluctantly-backs-hostile-takeover.html; Zach Boren, "Essar Group: Indian energy giant caught in £280m tax evasion scandal." *Unearthed*, April 7, 2015, accessed April 28, 2018, https://unearthed.greenpeace.org/2015/04/07/essar-group-indian-energy-giant-caught-in-280m-tax-evasion-scandal/.

[25] [1982] 1 Ch 204. The principle in Prudential's case was used in the Australian case of David Ballard v Multiplex Limited [2008] NSWSC 1019 wherein the court rejected and dismissed the plaintiff's claim.

company has suffered damage, for his loss is through the company. A shareholder cannot receive relief on a sum equal to the diminution in the market value of his shares, or equivalent to the probable diminution in dividend. The acceptable procedure is to commence a derivative action on the company's behalf. Any recovery to the shareholders will be through the company. Accordingly, shareholders bear the costs of wrongs or self-dealing by other stakeholders' even if they exit. An exception will be where the shareholder loss is personal and separate from the loss suffered by the company.

It is instructive that even though Nigeria public listed companies, (like their counterparts in the United Kingdom) use the unitary board structure and implement, comply or explain approach in the adherence of their corporate governance codes, they differ in share ownership structure. In Nigeria, ownership is usually substantially concentrated in a few shareholders. The controlling shareholder is usually the company's founder and its Chief Executive Officer (CEO) but if the regulatory body of the company stipulates how long he is to occupy the post of CEO, he leaves at the expiration of the stipulated term to become the company's Chairman. An example is Central Bank of Nigeria's directive, instructing CEOs of banks to serve a maximum tenure of ten years, notwithstanding the provisions of the memorandum and articles of association or any terms of any contract of engagement.[26] The subsequent CEOs are usually members of his family or protégé. This structure is different from the UK and other developed Anglo-Saxon environments where ownership is usually dispersed and the shareholders are not usually involved in the management of the company.[27] This largely is the reason why the typical agency problems found in Anglo-Saxon environments because of the separation in ownership of company shares and its management are not faced in Nigeria. Indeed, this paper finds no case in Nigeria where the shareholders have taken directors to court for losses caused by the separation of shareholders and directors. Even when discussions on the principle of reflective losses are discussed in Nigeria, no Nigerian case is cited.[28] This is not to posit that there are no disputes

---

[26] "Brief on Guidelines for Tenure of Managing Directors of Deposit Money Banks and related matters," Central Bank of Nigeria, Last modified 2018, https://www.cbn.gov.ng/out/2010/publications/pressrelease/gov/tenure_guideline19012010.pdf

[27] Janet Dine and Marios Koutsias, *The Nature of Corporate Governance: The Significance of National Cultural Identity* (Edward Elgar Publishing Ltd 2013) 189; Emmanuel Adegbite, 'Good corporate governance in Nigeria: Antecedents, propositions and peculiarities' (2015) 24 International Business Review 319, 320.

[28] Wunmi Bewaji, *In*sider Trading in Developing Jurisdictions: *Achieving an effective Regulatory regime* (Abingdon and New York: Routledge, 2012), 223-24; "Analysing the 'No-Reflective Loss' Principle in the context of an SSPA," Olaniwun Ajayi, Last modified February 9, 2018,

when share ownership and management are substantially fused. What is usually found in such structure are disputes between controlling shareholders and minority shareholders as found in the case of *Agip (Nigeria) Limited v Agip Petroli International and others,*[29] where Agip Petroleum International, an Amsterdam registered company in a sale and purchase agreement sold off all its 60 percent shares in Agip Nigeria Ltd to Unipetrol Nigeria Plc. The remaining 40 percent were held by Nigerian shareholders. Some minority shareholders on the allegation that their right of first refusal of shares was not sought before the sale to a third party, by a Writ of Summons, filed a suit against the respondents seeking a declaration that the said sale of shares is a fraud on the shareholders, and other persons having an interest thereon, hence unlawful and illegal. The minority shareholders also filed 2 Ex-parte motions seeking an injunction against the sale between Agip Petroleum International and Unipetrol Nigeria Plc, and a derivative action further to section 303 of the Companies and Allied Matters Act 1990. The learned trial judge granted the two Ex-parte applications. On appeal to the Court of Appeal against the orders of the trial judge by some of the respondents, the Court of Appeal declared the issuance and service of the Writ of Summons null and void. The shareholders dissatisfied, appealed to the Supreme Court. The Supreme Court held that by the community reading of section 303 of the *Companies and Allied Matters Act 1990* and Rules 2(1) and (2) of the *Companies Proceedings Rules 1992*, an application for leave to prosecute a derivative action is to be commenced by an Originating Summons with notice to the company.

Some examples of ownership fused with management structure in Nigeria include, Dangote Cement Plc founded by Aliko Dangote. Dangote is the president, CEO and chairman of the company, Dangote Cement is Africa's largest cement producing company. Aliko Dangote directly and through a holding company, owns about 80 percent of publicly traded Dangote Cement.[30]

Another example is Tony Elumelu who led a small group of investors to take over a struggling small sized commercial bank in Lagos, Nigeria and turned it into a success within a few years,

---

http://www.olaniwunajayi.net/blog/analysing-no-reflective-loss-principle-context-sspa/

[29] (2010) LPELR-SC 351/2002.

[30] "About us: Board of Directors," Dangote Cement, Last modified 2016, http://www.dangotecement.com/about-us/board-of-directors/aliko-dangote/; Kerry A Dolan, "African Billionaire Fortunes Rise on Forbes 2018 List of Continent's Richest." *Forbes*, January 10, 2018, accessed April 25, 2018, https://www.forbes.com/sites/kerryadolan/2018/01/10/african-billionaire-fortunes-rise-on-forbes-2018-list-of-continents-richest/#578ffe7e2777; "Aliko Dangote: Overview," *Bloomberg Billionaires Index*, Last modified 2018, https://www.bloomberg.com/billionaires/profiles/aliko-dangote/.

thereafter, merging it with another bank. United Bank for Africa now has subsidiaries in 19 African counties, as well as in the United Kingdom, United States of America and Paris. Tony Elumelu previously served as the bank's CEO, but now serves as the bank's Chairman.[31] Tony Elumelu also owns a controlling stake in Transcorp, a listed Nigerian conglomerate with businesses in sectors such as power generation, oil production, hospitality and agriculture.[32]

A distinction to note between Nigeria's *Code of Corporate Governance for Public Companies 2011* and the *Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014*, from the *United Kingdom Corporate Governance Code 2016*, is that, Nigeria's regulations are silent on what conditions should be met before a CEO can take up the position of Chairmanship in the same company. The UK regulation in s A.3.1 advises against the CEO taking up the role of Chairman in the same company, but recommends that where the board decides that the CEO becomes the company's chairman, the board should meet with major shareholders in advance and at the time of appointment, justify such appointment to shareholders and report the appointment and justifications for same in the company's next annual report.

The now suspended *National Code of Corporate Governance for the Private Sector in Nigeria 2016* provides in its section 6.1.4 states that the CEO shall not go on to be the chairman of the same company, but if in exceptional situations, the board decides so, the cool off period shall be 7 years and the board shall seek counsel from both its minority and majority shareholders in advance. It further states that the regulator is to be informed of such appointment with justifications for the appointment which shall also be stated in the company's next annual report. The Code identifies the Financial Reporting Council of Nigeria and other sectoral regulators as maybe appropriate, as the regulator.[33] This provision though suspended seems to intend like the *United Kingdom Corporate Governance Code 2016*, to put a stop to a CEO having unbridled authority in a company if he becomes chairman immediately after functioning as company CEO.

Nevertheless, in the business world, the same individual sometimes holds the post of both CEO and Chairman if the company decides it is the best business strategy for the company. An

---

[31] "Media Centre: Executive Biographies," United Bank for Africa, 2018, https://www.ubagroup.com/mc/bio?id=20120904032954zfcxyky482; Forbes, "The World's Billionaires," *Forbes*, 2018,
https://www.forbes.com/profile/tony-elumelu/.

[32] "Our team: Board of Directors," Transnational corporation of Nigeria Plc, 2018, http://www.transcorpnigeria.com/our-team/.

[33] National Code of Corporate Governance for the Private Sector in Nigeria 2016, s 40.1.15.

example is United Kingdom's Stuart Rose who held the position of Chief Executive Officer at Marks and Spencer from 2004 then, combined the role with chairman from 2008, exiting both posts in 2010 and 2011 respectively.[34] In the USA, Jamie Dimon occupies the position of chairman, CEO and president of JPMorgan Chase & Co, one of the four leading banks in the USA.[35]

Currently, it is rare to find the same individual combining the roles of CEO and chairman in the United Kingdom.[36] Amongst the Financial Times Stock Exchange (FTSE) 150 companies, only Hikma Pharmaceuticals has the same person combining the roles of CEO and Chairman.[37] Be that as it may, extant studies are not in agreement on if combining the roles of CEO and chairman aids the company's performance or act as a clog to the prosperity of the company.[38] However, it is not news that depending on several factors, some best practice of corporate governance may be harmful in certain circumstances but relevant to a company's survival in other circumstances, thus companies and policy makers should consider the culture of the people; circumstances of the company, and other contexts before applying best practices of corporate governance. JPMorgan Chase & Co for instance, out performs banks like Citigroup and Bank of America where the office of CEO and chairman are separate.[39]

Nonetheless, the arguments presented above is not a conclusion that companies incorporated for profit, do not consider the interest of its non-shareholders. For instance, Be Onsite, a London

---

[34] Independent, "He saved M&S. but Sir Stuart Rose will be a tough act to follow." *Independent*, May 18, 2008, accessed June 2, 2018, https://www.independent.co.uk/news/business/analysis-and-features/he-saved-ms-but-sir-stuart-rose-will-be-a-tough-act-to-follow-830139.html; Julia Finch, "Stuart Rose to leave M&S slowly after Bolland joins." *The Guardian*, March 3, 2010, accessed June 2, 2018, https://www.theguardian.com/business/2010/mar/03/marks-spencer-executives-rose-bolland; Evening Standard, "Sir Stuart Rose bows out at Marks & Spencer." *Evening Standard*, January 4, 2011, accessed June 2, 2018, https://www.standard.co.uk/business/sir-stuart-rose-bows-out-at-marks-spencer-6551490.html.

[35] "About Us: Board of Directors," JPMorgan Chase & Co, Last modified 2018, https://www.jpmorganchase.com/corporate/About-JPMC/ab-board-bio-jamesdimon.htm

[36] Daljit Dhesi, "Where the CEO and chairman are one." *The Star Online*, July 5, 2014, accessed April 21, 2018, https://www.thestar.com.my/business/business-news/2014/07/05/where-the-ceo-and-chairman-are-one/.

[37] "2017 UK Board Index," Spencer Stuart, Last modified 2018, https://www.spencerstuart.com/-/media/pdf%20files/research%20and%20insight%20pdfs/ukbi2017_b.pdf

[38] Anthony Goodman, "Should banks keep combined the role of CEO and chairman?" *Financial Times*, Mayy 1, 2013, accessed April 21, 2018, https://www.ft.com/content/fb849930-b251-11e2-8540-00144feabdc0; Elisabeth Dedman, "CEO succession in the UK: An analysis of the effect of censuring the CEO-to-chair move in the Combined Code on Corporate Governance 2003," *The British Accounting Review* 48, no. 3 (2016): 376; Krista B Lewellyn and Stav Fainshmidt, "Effectiveness of CEO Power Bundles and Discretion Context: Unpacking the 'Fuzziness' of the CEO Duality Puzzle," *Organization Studies* 38, no. 11 (2017): 1604.

[39] Goodman *Footnote*, 38.

based, registered not-for-profit company, founded by Lend Lease, a multinational construction company provides trainings, on-site experience and job opportunities to disadvantaged individuals seeking to earn a living decently in the property sector.[40] Disadvantaged persons include individuals with criminal records or not having academic qualifications or experience or a disability.[41] The job skill trainings provided by Be Onsite is combined with practical and emotional support until employees build sustainable careers.[42] Another example is TOMS shoes which gives shoe, water, safer births and sight to improve the lives of people and communities in need.[43] Beyond this, Toms funds start-up companies with a social mission and it coffee is completely resourced sustainably.[44]

In Nigeria, United Bank for Africa Foundation is charged with the corporate social responsibility of the United Bank for Africa group. It contributes to the socio-economic improvement of the communities in which it operates.[45] For example, the Foundation sustains 5 leisure gardens across Nigeria, it sponsors empowerment and skills acquisition conferences, including entrepreneurship programmes. Across Africa, the Foundation provides recommended English literature to secondary schools to minimise the declining reading culture among secondary school students, distracted by electronic social media and other vices.[46] Indeed, all public listed companies in Nigeria demonstrate its commitment to it stakeholders as *Companies and Allied Matters Act 1990*[47] and the *Code of Corporate Governance for Public Companies 2011*[48] recommend that they do.

Despite the arguments; regulations, and judgments in favour of directors managing a company with the aim of maximising shareholder's interest and companies paying attention to its non-

---

[40] "Who we are," Be Onsite, Last modified 2012, https://www.beonsite.org.uk/who-we-are

[41] "What we do," Be Onsite, Last modified 2012, https://www.beonsite.org.uk/what-we-do

[42] "What we do: how we do it," Be Onsite, Last modified 2012, https://www.beonsite.org.uk/how-we-do-it

[43] "How we give: Improving lives," Toms, Last modified 2018, http://www.toms.co.uk/improving-lives

[44] "Beyond One for One," Toms, Last modified 2018, https://www.toms.co.uk/beyond-one-for-one.

[45] "Shared Values: UBA Foundation," United Bank for Africa, Last modified 2018, https://ubagroup.com/uba-foundation

[46] ibid.

[47] S 279(4).

[48] S 28.

financial stakeholders, shareholders value governance system is not without its gaps. In fact, these gaps undergird the theory's criticism and outright rejection in some spheres.

Scholars like Bebchuk[49] and Mansell[50] argue that shareholder profit maximisation produces a short-term focus and that short-term earnings performance overshadows all else to the detriment of long-term earnings, and this fails to maximise social wealth. Some scholars have submitted that short-term earnings contributed to the global financial crisis of 2008-2009.[51] This is because by focusing on shareholders' profit maximisation mainly, directors tend to invest in businesses with short term profit, without taking into consideration, the effect of such decisions in the long run on the company and the economy. Still, it is good to note that a single objective can have many interrelated variables that should be considered, for instance the role of government, creditors, employees, time frame and the climate. Also, depending on the circumstances of the company, the company may need to be sustained through the pressure of short term ventures/price competition.[52] Take Huawei for instance, in its early years of operation in Shenzhen, it operated as a private company in major competition with state owned enterprise dominated market. The company founder, Ren Zhengfei aware that the company's products were substandard than its competitors, attracted customers by providing outstanding services. Huawei products regularly broke down but every time this problem was reported, its engineers went to its customers to fix the broken-down product at a time convenient for the customers. Also, in rural and desert regions of China, rats affected telecom connections. This challenge was considered a problem of the customers by other multinational companies. Huawei on the other hand, treated the rats plague as a company's responsibility to solve. Its customer services were available all day and night. The unlimited customer services practice was different from other companies even though Huawei's competitions had standard products, these companies ignored the services aspect of business. Huawei's all day and night services delivery made the brand popular and reputable as its customers were confident that the company cared about their needs.

[49] Lucian A Bebchuk, "The Myth that Insulating Boards Serves Long-term Value," *Columbia Law Review* 113, no. 6 (2013): 1638.

[50] Samuel Mansell, "Shareholder Theory and Kant's 'Duty of Beneficence," *Journal of Business Ethics* 117, no. 3 (2013): 584.

[51] Jeffrey L Callen and Xiaohua Fang, "Institutional investor stability and crash risk: Monitoring versus short-termism?" *Journal of Banking & Finance* 37, no. 8 (2013): 3047.

[52] Communication with Alice Belcher, Professor of Law, University of Dundee (Dundee 2 February 2018); the article has already in Footnote 37 recommended that in governing a company, the company's circumstantial, specific happenings and its regulatory environment should be considered.

Consequently, Huawei gained competitive advantage.[53] Presently, Huawei is a notable international, infrastructure provider of information and communications technology, including smart devices. It operates in over 170 countries and has over 180,000 employees. The company remains a private company but it is fully owned by its China based employees.[54] According to Huawei, the ownership structure excludes foreign employees because domestic law specifies that its employee shareholders must be both Chinese nationals and employees to own shares in the company.[55]

The proponents against the shareholder theory argue that, the emphasis on shareholders being the only residual claimants in a company is misplaced.[56] Shareholders are not the only individuals to make company's specific investment, employees also, may embark on certain skill trainings that can only be used in the company in which they are employed. In the event of long service in this company, the employee's employment prospects maybe limited, as they may be uninspired to move to another employer, and when they do, they may not find useful the trainings undertaken in the previous employment in the new company. This may result to a stunted career progression or redundancy whereas, shareholders are able to diversify their risk more easily than other stakeholders.

Finally, the idea that the shareholders own the company does not sit well with the concept of the company being a separate legal entity. Upon incorporation, companies operate as legal entities separate from their share owners who are also known as its shareholders. Shares are clearly the shareholders' property, but the company is not.[57] Shareholders are unable to lay claim over any

---

[53] David De Cremer and Tian Tao, "Leading Huawei: Seven Leadership Lessons of Ren Zhengfei." *The European Business Review*, September 17, 2015, accessed May 15, 2018, http://www.europeanbusinessreview.com/leading-huawei-seven-leadership-lessons-of-ren-zhengfei/

[54] "Home: About Huawei–Corporate Information," Huawei, Last modified 2018, http://www.huawei.com/uk/about-huawei/corporate-information; "Analysis: Who really owns Huawei," iTnews, Last modified May 28, 2010, https://www.itnews.com.au/news/analysis-who-really-owns-huawei-175946; "How to Invest in Huawei," Investopedia, Last modified 2018, https://www.investopedia.com/articles/investing/051215/how-invest-huawei.asp

[55] Demetri Sevastopulo, "Huawei pulls back the curtain on ownership details," *Financial Times*, February 27, 2014, accessed May 15, 2018, https://www.ft.com/content/469bde20-9eaf-11e3-8663-00144feab7de.

[56] Martin Gelter, 'The Pension System and the Rise of Shareholder Primacy' (2013) 43 (3) Seton Hall Law Review 909, 919.

[57] *Salomon v Salomon* [1896] UKHL 1, [1897] AC 22; *Companies and Allied Matters Act 1990*, s 37 and s 38; *Companies Act 2006*, s 16.

property held by the company and assert ownership rights over it, except in cases of insolvency where property can be distributed to shareholders.[58]

Because of the shortcomings of the shareholder theory, some scholars advocate for an alternative purpose in governing a company. They argue that the role of any system of company law should principally be to provide a framework for the efficient functioning of a capitalist system with the aim of protecting or balancing the interest of various stakeholders, including shareholders. The supporters propose the arguments inherent of the stakeholder's theory. They believe this governance approach is a better means to building strong democratic institutions.

The next section therefore discusses the stakeholders' theory arguments as an alternative means for governing a company.

3.1. Stakeholders Theory: Understanding its value

The early advocate for the stakeholder theory is Professor E Merrick Dodd in the 1930's.[59] The theory gained more prominence in the wake of corporate scandals in the business world.[60] The stakeholder theory asserts that the managers of a company owe a duty to shareholders, as well as, other parties that contribute either voluntarily or not, to the creation of a company's wealth.[61] For instance, employees of a company commit time and other resources in exchange for salaries and other benefits that come with performing excellently. Employees are beneficiaries and or risk bearers in the company,[62] therefore, managers should consider employees' interests as well as that of the shareholders when making decisions on behalf of the company. The stakeholders of a company have been identified to include creditors, employees, suppliers, customers and the communities in which the company operates.[63] The arguments for the stakeholder theory can be found in primary sources of company law. For instance, *Companies and Allied Matters Act 1990*, s 279 (4) directs directors to consider the interests of its members and employees in general in the performance of their duties. The provisions of *Companies Act 2006* is broader, its s 172 directs company's directors to promote the success of the company for the benefit of its

[58] Jean-Philippe Robé, "The Legal Structure of the Firm," *Accounting, Economics and Law* 1, no.1 (2011): 3.
[59] Hill *Footnote,* 10, 1005 – 006; Tu *Footnote,* 10, 128.
[60] Jill Solomon, *Corporate Governance and Accountability* (Chichester: John Wiley & Sons Ltd, 2010) 21; Callen and Fang *Footnote* 51, 3047.
[61] Leo E Strine, "The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law," *Wake Forest Law Review* 50, (2015): 763.
[62] ibid.
[63] Solomon *Footnote,* 60, 15.

members, yet consider amongst other matters, the interests of its employees; suppliers; customers; the consequences of the company's operations in its host community; the environment, and others.

The supporters of the stakeholder's regime argue that, balancing various stakeholders' interests will provide the company, the long-term ability to remain a going concern. Thus, sustaining an institution beneficial to the wellbeing of individuals, the society and a nation. Deng, Kang and Low's studies focused on the years, 1992 to 2007 to determine whether managers participate in corporate social responsibility (CSR) to meet non-shareholder stakeholders' interest, to the disadvantage of shareholders' interest. The research examined 1,556 USA completed mergers, by 801 companies to measure such companies' rating, by their social performance in CSR. It made use of KLD Research & Analytics, Inc. (KLD) database in scoring the companies. In testing the robustness of its result, an out-of-sample analysis of USA companies in the FTSE4Good index, for the period 2001 to 2011 were analysed. Companies that had undergone mergers were chosen for this study because the process and outcome of mergers is unsure. Mergers not only threaten shareholders' wealth, it endangers the continued relationship between the company and its stakeholders. The result of the study reveals that mergers by acquirers' companies with high CSR are unlikely to fail; the mergers take a shorter time to complete in comparison with acquirer's companies with low CSR and after the mergers, high CSR participation companies announce higher stock returns for acquirers and for value-weighted portfolios of the acquirer and the target companies.[64]

Furthermore, Deng et al. research finds that during merger announcements, acquirers' social performance highly influences the wealth of other stakeholders, for example, acquirer's bondholders and targets' suppliers and customers. Also, the job of employees after the merger by high CSR acquirers, are less likely to be terminated, than employees after a merger by low CSR acquirers[65] Again, the result of the research finds that the companies that take into consideration the interest of its non-shareholder stakeholders enhance the company's efficiency and its long-

[64] Xin Deng, Jun-koo Kang and Buen Sin Low, "Corporate Social Responsibility and Stakeholder Value Maximization: Evidence from Mergers," *Journal of Financial Economics* 110, no. 1 (2013): 88-91 and 108 – KLD database is used because it is a renowned authority on companies CSR activities and performance ratings.
[65] ibid 89.

term profitability which eventually maximises shareholders' wealth and company's value.[66] On the whole, a better approach in governing a company is to seek to balance various stakeholders' interests in the pursuit of the company's objectives.

Stakeholders theory seeks to focus on the fact that those involved in, and dealing with, companies are humans thus, corporate law should not be de-personalised.[67] With the stakeholders theory, the usefulness of a company is measured by evaluating how it assists society gain a richer understanding of community by respecting human dignity and overall welfare.[68] Cases in point will be, Paul Polman, CEO of Unilever and shoe company TOMS (already explained in earlier paragraphs) commitments to its non-financial stakeholders. Unilever in carrying out its business, is committed to decoupling its environmental footprints and improving on its positive social impact through the Unilever Sustainable Living Plan.[69] Unilever is one of the founding members of the UK Plastics Pact. The Pact is a stakeholder initiative aiming to keep plastic in the economy and out of the ocean by transforming the plastic packaging system.[70]

Other examples include, 9mobile (previously trading as Etisalat Nigeria, a telecoms company that started trading in Nigeria in 2008). 9mobile gives merit awards scheme to undergraduate students of computer science, electrical electronics engineering and business management since 2009; the company also has in place a teacher training programme in English Language for teachers in primary and secondary schools in Rivers, Oyo and Kaduna States. It runs this programme in collaboration with the British Council.[71] Total Nigeria also, is involved in various community schemes, such as, Malaria initiative, HIV/AIDS initiative.[72] The company from

[66] ibid 108; see also Thomas M Jones and Will Felps, "Shareholder Wealth Maximization and Social Welfare: A Utilitarian Critique," *Business Ethics Quarterly* 23, no. 2 (2013): 207, 218.
[67] Andrew Keay, "Tackling the Issue of the Corporate Objective: An analysis of the United Kingdom's Enlightened Shareholder Value Approach," *Sydney Law Review* 29, no. 4 (2007): 586.
[68] ibid.
[69] "Sustainable Living: About or Strategy," Unilever, Last modified 2018, https://www.unilever.co.uk/sustainable-living/our-strategy/about-our-strategy/
[70] "Press releases: Unilever joins as a founding member of the UK Plastics Pact," Unilever, Last modified April 26, 2018, https://www.unilever.co.uk/news/press-releases/2018/unilever-joins-as-a-founding-member-of-the-uk-plastics-pact.html
[71] "Corporate Social Responsibility," 9mobile, Last modified 2017, http://9mobile.com.ng/corporate-social-responsibility/
[72] "Press releases: Sustainable Development," Total Nigeria, Last modified 2018, http://www.total.com.ng/pro/about-us/sustainable-development-amo.html

2016, has been incorporating the United Nations Sustainable Development Goals in its strategy to fulfilling socio-economic and environmental development in Nigeria.[73]

The stakeholder theory, embraces a normative world view, that gives emphasis to the fact that, people are part of a shared community who inherit the benefits, values and goals of the community.[74] Thus, the cultural environment in which people find themselves cannot be ignored, and the company is regarded as 'a community of interdependence, mutual trust and reciprocal benefit.'[75] A consequence of this approach is that, shareholders maximisation is not necessarily the main business driving force in carrying out company activities. Instead, company directors in managing a company, are to consciously consider other important interests for the benefit of the company in the long run. Invoking a purely shareholder value approach in the governance of a company, according to stakeholders' apologists will possibly damage the interest of non-shareholders in a company, as these group of stakeholders will be aware that their interests is subordinate to shareholders' maximisation always.[76]

Another argument in support of the stakeholders' theory is that the theory is managerial in nature.[77] It does not simply describe circumstances; it teaches managers how to direct the company rather than dwelling on theories. Indeed, companies need stakeholders' groups to evaluate their performance. For example, companies need customers and suppliers to test new products and or services offered.[78]

Further, even though investors are now more aware of their expectations, rights, powers and options, it does not seem wise for anyone in today's business world to invest in a company where a group of stakeholders' interest triumph over other stakeholders' interests, especially as the business world is embracing different interests to ascertain sustainability of businesses, economies and the climate. Furthermore, the scandals and sometimes, collapses of companies have highlighted the dangers of companies having an individual or a group of

[73] "Commit with us: Toward responsible Energy," Total Nigeria, Last modified 2018, http://nigeria.total.com/en/commit-us/toward-responsible-energy
[74] Solomon *Footnote,* 60, 15.
[75] ibid.
[76] Keay *Footnote,* 67, 586.
[77] Tu *Footnote,* 10, 128.
[78] Thomas Donaldson and Lee E Preston, "The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications," *Academy of Management Review* 20, no. 1 (1995): 67; Robert Freeman, Andrew Wicks and Bidhan Parmar, "Stakeholder Theory and The Corporate Objective Revisited," *Organization Science* 15, no.3 (2004): 366.

individuals wielding too much power within a company,[79] some of which failure were because of the company being directed for the benefit of its shareholders only.[80] Of popular knowledge are the scandals and collapses in Enron, Worldcom and Royal Bank of Scotland. Additionally, the problem with focusing on one objective in achieving the purpose of the company is that, the business world is complex, hence complexity and uncertainty may lead managers, and directors, to invest in short term ventures which may not sustain the company in the long run. Still, it is good to note that a single objective can have many interrelated variables that must be considered, for instance the role of government, creditors, employees and the climate. Also, depending on the circumstances of the company, the company may need to survive through the pressure of short term ventures/price competition.

Scholars like Alberto and Mirella[81] argue that stakeholder's engagement in a company could contribute to put a check on directors' opportunistic behaviour, improve the quality of transparency in accounting documents and curb shareholders control in a company. Rhee posited that employees can also be made monitors and not just targets of company's evaluation and monitoring in the corporate hierarchy. Employees being insiders, can monitor senior executives' performance better than shareholders.[82] Such structure in place in a company, is recommended to go a long way in setting the right atmosphere for industrial relation in a company. Inclusiveness rather than targets, is a better motivation for employees.

Having analysed the reasons proffered by the shareholders and stakeholders theories governance approach; both theories' recommendations contained in regulations; some empirical studies on regulation provisions, and case laws, it is good to evaluate Nigeria and the United Kingdom acceptability rate, adherence and the consequences of non-adherence of both countries' companies' regulations from the reports of the institutions in place to produce and maintain the regulations.

---

[79] See generally, Roger Barker and Iris H-Y Chiu, "Protecting minority shareholders in block holder controlled companies: evaluating the UK's enhanced listing regime in comparison with investor protection regimes in New York and Hong Kong," *Capital Markets Law Journal* 10, no. 1 (2014): 98 – 132.
[80] ibid.
[81] Chilosi Alberto and Damiani Mirella. "Stakeholders vs. Shareholders in Corporate Governance," *SSRN* Paper no. 2334 (2007), accessed May,27 2018,
url: http://ssrn.com/abstract=975293.
[82] Robert J Rhee, "Intrafirm Monitoring of Executive Compensation," *Vanderbilt Law Review* 69, no. 3 (2016): 695 -759.

Nigeria's Corporate Affairs Commission is charged with monitoring the compliance of *Companies and Allied Matters Act 1990.*[83] The website has no report on compliance or otherwise of companies carrying on business in Nigeria.[84] The public however can search for company names and date of registration on the website.[85] The Department of Legal Division (Investment Management) under the office of the Operations Directorate of Nigeria's Securities and Exchange Commission, is responsible for the compliance of the Code of Corporate Governance.[86] The Commission has no information or record on the rate of acceptance and compliance of this Code in Nigeria. The website however has information of companies that are facing disciplinary actions, including the names of companies that have faced disciplinary actions and have had the enforcement action taken against the companies lifted.[87] The website also has a list of the litigations in which the Commission is a party.[88]

In 2010, Nigeria invited the World Bank to assess and review, the implementation of Nigeria 2004 auditing and accounting country action plan, and to provide the future direction, Nigeria needed to realise a better institutional framework. World Bank task generally was to strengthen Nigeria's accounting and auditing practices, and improve financial reporting in Nigeria, that is focal to contributing to the country's economic growth. The assessment was carried out through a participatory process led by Nigeria's authorities and key stakeholders. The assessment found that out of 14 action plans listed in the 2004 review report, only 6 had been implemented leaving out important issues yet to be addressed. It found that some banks defied regulations because regulatory bodies were ineffective in enforcing regulations; some banks took the advantage caused by the gaps in the standards of accounting and auditing in Nigeria, and made use of creative accounting to improve balance sheets.[89]

---

[83] *Companies and Allied Matters Act 1990*, s 7.
[84] "Home," Corporate Affairs Commission, Last modified 2018,
http://new.cac.gov.ng/home/
[85] "Public search," Corporate Affairs Commission, Last modified 2018,
http://publicsearch.cac.gov.ng/comsearch/
[86] "Operations," Securities and Exchange Commission Nigeria, Last modified 2018,
http://sec.gov.ng/directorates/operations/
[87] "Suspensions and Penalties: Companies facing enforcement action, 2016," Securities and Exchange Commission Nigeria, Last modified 2018,
http://sec.gov.ng/suspensions-and-penalties/
[88] "Litigation," Securities and Exchange Commission Nigeria, Last modified 2018,
http://sec.gov.ng/litigation/
[89] "Report on the Observance of Standards and Codes (Rosc) Nigeria: Accounting and Auditing," The World Bank, Last modified June 6, 2011,

Accordingly, the World Bank Report on the Observance of Standards and Codes 2011 recommended changes Nigeria had to make. The main changes include, to promote the Financial Reporting Council bill; adopt International Financial Reporting Standards (IFRS) and capacity building of professional accountancy bodies to function at the level internationally recognised.[90] Nigeria has in place the *Financial Reporting Council of Nigeria Act 2011*. Its section 1 (1) establishes the Financial Reporting Council of Nigeria. Nigeria has also adopted the IFRS for significant public interest entities and listed companies effective from 1st January 2012.[91]

Other recommendations include, amending the Companies and Allied Matters Act 1990; implementing International Standard on Auditing (ISA) and International Standards on Quality Control (ISQC) as mandatory requirements; the 2 accountancy professional bodies in Nigeria, Association of National Accounts of Nigeria (ANAN) and Institute of Chartered Accountants of Nigeria (ICAN) should enter into twinning arrangements with leading International Federation of Accountants (IFAC) member bodies and serve the private as well as the public sectors of the economy.[92]

The Department for Business, Energy and Industrial Strategy is responsible for companies in the United Kingdom. The department is supported by 37 agencies and public bodies[93], among which is, Companies House, which duties include to incorporate and dissolve companies, and inspect and store company's information. The detailed information displayed on the register of companies, are accessible by everyone online free of charge, thus the public can access comprehensive information of every company registered in the UK.[94] The United Kingdom Financial Reporting Council monitors the implementation and maintains the United Kingdom Corporate Governance Code.[95] In its recent reports on the Developments in Corporate Governance and Stewardship, it noted 90% of FTSE 350 companies complied with all or all but

---

http://documents.worldbank.org/curated/en/440581468099577387/Nigeria-Report-on-the-observance-of-standards-and-codes-ROSC

[90] ibid 19 - 20.

[91] "Regulatory Filter," Financial Reporting Council of Nigeria, Last modified 2018, https://docs.google.com/file/d/0BxB1-bqcIt35b25GcnoxenBBTDQ/edit

[92] The World Bank *Footnote*, 87, 20 – 7.

[93] "What we do," Department for Business, Energy and Industrial Strategy, Last modified 2018, https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy

[94] "About us," Companies House, Last modified 2018, https://www.gov.uk/government/organisations/companies-house/about#our-responsibilities

[95] Financial Reporting Council, *FRC Roles and Responsibilities: Schedule of Functions and Powers 2017* (London: Financial Reporting Council, 2017), 5 and Financial Reporting Council, *The FRC and its Regulatory Approach 2014* (London: Financial Reporting Council, 2014).

one or two of the provisions of the Corporate Governance Code 2016.[96] The report noted improvements in the areas of, meeting the minimum provisions for remuneration, audit and nomination committees composition; meeting the minimum provisions for the number of independent Non-Executive Directors and separating the offices of company's chairman and CEO.[97] The report noted the need for companies to improve in areas like, diversity – ethnic board members and the representation of women on company boards;[98] better reporting on collective engagement and conflicts of interest in stewardship and engagement[99] Indeed, accountability and transparency are at the heart of building strong democratic institution and corporate governance. Where institutions and companies are not accountable and transparent, the result of regulations cannot adequately be evaluated.

In the pursuit of companies' long-term success through viable institutions, the paper, makes recommendations in the next section.

4.1. Recommendations and Conclusion: Governance Framework for Building Strong Democratic Institutions

The question that arises is, which of the two models of governance should company law and the corporate governance of a company protect? Professor Berle after about twenty years of the debate between himself and Professor Dodd, admitted that the debate has been settled in favour of Professor Dodd following the arguments that endured after their debate.[100]

Law makers and companies must acknowledge and do right by non-financial stakeholders and, define the objectives of regulations, by embracing standards wider than investors profit maximisation. As evidenced in preceding paragraphs in this paper, Nigeria and the UK's primary and ancillary company laws, have already made provisions for this broader governance, by directing the directors of a company to consider the interest of shareholders, as well as, the company's stakeholders.

---

[96] Financial Reporting Council, *Developments in Corporate Governance and Stewardship 2016* (London: Financial Reporting Council, 2017), 9 and 10.
[97] ibid 10.
[98] ibid 22 – 3.
[99] ibid 25 - 6.
[100] Tu *Footnote,* 10, 129.

Yet, because the law has not certainly settled the debate in favour of any of the debating camps on the best governance approach of a company, the directors of companies are left to decide which sometimes put them in a risky situation, that the shareholders may challenge their decisions as failing to maximise shareholders' profit. Company directors may be sued for violating the "fiduciary duties" owed shareholders, should their decisions seem to take into consideration other aims, other than shareholders' profit maximisation. Hence, the argument sometimes that, the law does not protect directors who are sensitive to other stakeholders in the company other than shareholders. Be that as it may, directors are usually insured to cover claims or compensation.

Even though the paper finds no case and literature where shareholders have taken directors to court, for losses caused by the separation of shareholders and directors in corporate governance, it is recommended that, African countries such as Nigeria, where all incorporated companies are required to have a Memorandum and Articles of Association before incorporation,[101] the prospective companies' Memorandum of Association should clearly state that the company will create benefits for the public, while the Articles of Association contain a detailed description of this provision.[102] The Memorandum and Articles of Association are the rules by which companies are governed. These documents can be altered subject to the provisions of the Act as contained in ss 44-9. This means that already incorporated companies can make necessary changes in accordance with the Act.

Another recommendation is that, countries' policy makers should produce a regulation that in clear terms, support company directors making profits for its shareholders yet, direct that non-financial stakeholders' resources are not depleted. This will protect directors from frivolous litigations for putting into consideration, the interests of non-financial stakeholders. The regulation to be produced should protect directors, so long as, the directors believe that their actions or inactions are in the best interest of the company and same can be proved using a reasonable man standard of care and skill.

[101] *Companies and Allied Matters Act 1990*, s 27, 35 (1) (2) (a).
[102] *Companies and Allied Matters Act 1990*, ss 33-4.

Furthermore, countries' policymakers should consider producing parallel regulations that support the different governance regimes. In this way all stakeholders have a fair knowledge of the governance approach adopted in any company.

In the United Kingdom, some companies are classified as B corporations. These companies are incorporated for profit, yet the companies' mission incorporate standards in environmental and social outcome, accountability and transparency.[103] The United States of America has the Benefit Corporations Legislation. Companies passed under this state to state legislation, must have the following features, the company must consider non-shareholders' interests; have a corporate objective of creating benefits for the public; its annual report which must be made public, must contain, information on the company's efforts to pursue a public benefit, and the company's must make public, the evaluation of the company's overall environmental and social performance as judged by a third-party standard.[104] The legislation is operational in states that have passed the legislation.[105]

In response to the question of the governance approach that ensures a company flourishes, develops and support any economy to grow and develop, this paper is not taking a position with any of the competing camps. Instead, it sought to provide information and recommendations, which may aid all stakeholders and prospective stakeholders' decisions in relating with a company. For institutions, the tools needed to build a strong democratic government. Furthermore, the paper brings to the fore, Nigeria's court inexperience in no-reflective loss aspect of company law.

All the same, the reality is whatever type of governance approach a company leans towards, without functional institutions to uphold regulations, be they hard or soft law, the objective of the company, the development of a nation and the sustenance of the environment may be unattainable. Hence the call for Nigeria's institutions to effectively carry out institutions purpose and be accountable and transparent to the public on its responsibilities. This is one of the ways to build strong democratic nations.

---

[103] "Home: What are B Corps?," B lab, Last modified 2018, http://bcorporation.uk/what-are-b-corps-uk

[104] Felicia R Resor, "Benefit Corporation Legislation," *Wyoming Law Review* 12 (2012): 91 – 2 and 101; Tu *Footnote*, 8, 142.

[105] "How to become a Benefit Corporation," Benefit Corporation, Last modified 2018, http://benefitcorp.net/businesses/how-become-benefit-corporation

Reference List

Legislations

Nigeria. *Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014*.

Nigeria. *Code of Corporate Governance for Public Companies 2011*.

Nigeria. *Companies and Allied Matters Act 1990* CAP C20 Laws of the Federation of Nigeria 2004.

Nigeria. *National Code of Corporate Governance for the Private Sector in Nigeria 2016*.

United Kingdom. *Companies Act 2006.*

United Kingdom. *The UK Corporate Governance Code 2016.*

United Kingdom. *The UK Stewardship Code 2012*.

Cases

Agip (Nigeria) Limited v Agip Petroli International and others (2010) LPELR-SC 351/2002.

eBay Domestic Holdings Inc. v Newmark 16 A.3d 1 (2010).

Prudential Assurance Co. Ltd v Newman Industries Ltd [1982] 1 Ch 204.

Salomon v Salomon [1896] UKHL 1, [1897] AC 22.

Government Agency Publications

Financial Reporting Council. *Developments in Corporate Governance and Stewardship 2016* by the United Kingdom Financial Reporting Council. London, 2017.

Financial Reporting Council. *FRC Roles and Responsibilities: Schedule of Functions and Powers 2017* by the United Kingdom Financial Reporting Council. London, 2017.

Financial Reporting Council. *The FRC and its Regulatory Approach 2014* by the United Kingdom Financial Reporting Council. London, 2014.

Books

Belcher, Alice. *Directors' Decisions and the Law.* Abingdon and New York: Routledge, 2014.

Bewaji, Wunmi. *In*sider Trading in Developing Jurisdictions: *Achieving an effective Regulatory regime*. Abingdon and New York: Routledge, 2012.

Ogbechie, Chris and Dimitrios Koufopoulos. "Corporate Governance Practices in Nigeria." in Corporate Governance in Emerging Markets, edited by Sabri Boubaker and Duc Khuong Nguyen, 373 – 394. Heidelberg: Springer, 2014.

Solomon, Jill. *Corporate Governance and Accountability* Chichester: John Wiley & Sons Ltd, 2010.

You, Jeehye. *Legal Perspectives on Corporate Social Responsibility: Lessons from the United States and Korea.* India: Springer, 2015.

Print Journal article

Adegbite, Emmanuel, Kenneth Amaeshi and Chizu Nakajima. "Multiple Influences on Corporate Governance Practice in Nigeria: Agents, Strategies and Implications." *International Business Review* 22, no. 3 (2013): 524 – 538.

Adithipyangkul, Pattarin and Tak Yan Leung. "Large Shareholders and Independent Director Equity Compensation." *Australian Accounting Review* 26, no. 2 (2016): 208 - 221.

Barker, Roger and Iris H-Y Chiu. "Protecting minority shareholders in block holder controlled companies: evaluating the UK's enhanced listing regime in comparison with investor protection regimes in New York and Hong Kong." *Capital Markets Law Journal* 10, no. 1 (2014): 98 – 132.

Bebchuk, Lucian A. "The Myth that Insulating Boards Serves Long-term Value." *Columbia Law Review* 113, no. 6 (2013): 1637 – 1694.

Brochet, Francois and Suraj Srinivasan. "Accountability of Independent Directors: Evidence from Firms Subject to Securities Litigation." *Journal of Financial Economics* 111, no. 2 (2014): 430-449.

Callen, Jeffrey L and Xiaohua Fang. "Institutional investor stability and crash risk: Monitoring versus short-termism?" *Journal of Banking & Finance* 37, no. 8 (2013): 3047 - 3063.

Ciepley, David. "Beyond Public and Private: Toward a Political Theory of the Corporation." *American Political Science Review* 107, no. 1 (2013): 139 – 158.

Dedman, Elisabeth. "CEO succession in the UK: An analysis of the effect of censuring the CEO-to-chair move in the Combined Code on Corporate Governance 2003." *The British Accounting Review* 48, no. 3 (2016): 359 – 378.

Deng, Xin, Jun-koo Kang, and Buen Sin Low. “Corporate Social Responsibility and Stakeholder Value Maximization: Evidence from Mergers.” *Journal of Financial Economics* 110, no. 1 (2013): 87 109.

Denis, Diane. “Corporate Governance and the Goal of the Firm: In Defense of Shareholder Wealth Maximization.” *The Financial Review* 51, no. 4 (2016): 467 - 480.

Donaldson, Thomas and Lee E Preston. “The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications.” *Academy of Management Review* 20, no. 1 (1995): 65 – 91.

Freeman, Robert, Andrew Wicks, and Bidhan Parmar. “Stakeholder Theory and The Corporate Objective Revisited.” *Organization Science* 15, no. 3 (2004): 364 - 369.

Gelter, Martin. “The Pension System and the Rise of Shareholder Primacy.” *Seton Hall Law Review* 43, (2013): 909 - 970.

Gul, Sajid, Muhammad Sajid, Nasir Razzaq, Muhammad Farrukh Iqbal, Muhammad and Bilal Khan. “The Relationship between Dividend Policy and Shareholder’s Wealth.” *Economics and Finance Review* 552, no. 2 (2012): 55-59.

Hawas, Amira and Chin-Bun Tse. “How Corporate Governance Affects Investment Decisions of Major Shareholders in UK Listed Companies: Has the Recent Credit Crunch Changed the Game?.” *Journal of Accounting, Auditing & Finance* 31, no. 1 (2016): 100 – 133.

Hill, Jennifer G. “Then and Now: Professor Berle and the Unpredictable Shareholder.” *Seattle University Law Review* 33, no. 4 (2010): 1005-1023.

Jones, Thomas M and Will Felps. “Shareholder Wealth Maximization and Social Welfare: A Utilitarian Critique.” *Business Ethics Quarterly* 23, no. 2 (2013): 207 - 238.

Keay, Andrew. “Tackling the Issue of the Corporate Objective: An analysis of the United Kingdom’s Enlightened Shareholder Value Approach.” *Sydney Law Review* 29, no. 4 (2007): 577 – 612.

Kim, Irene. "Directors’ and Officers’ Insurance and Opportunism in Accounting Choice.” *Accounting and Taxation* 7, no. 1 (2015): 51 – 65.

Lewellyn, Krista B and Stav Fainshmidt. “Effectiveness of CEO Power Bundles and Discretion Context: Unpacking the ‘Fuzziness’ of the CEO Duality Puzzle.” *Organization Studies* 38, no. 11 (2017): 1603 – 1624.

Macey, Jonathan. “Corporate Social Responsibility: A Law & Economics Perspective.” *Chapman Law Review* 17, no. 2 (2014): 331-354.

Mansell, Samuel "Shareholder Theory and Kant's 'Duty of Beneficence." *Journal of Business Ethics* 117, no. 3 (2013): 583 – 599.

Miller, Danny, Isabelle Le Breton-Miller, Alessandro Minichilli, Guido Corbetta, and Daniel Pittino. "When do Non-Family CEOs Outperform in Family Firms? Agency and Behavioural Agency Perspectives." *Journal of Management Studies* 51, no. 4 (2014): 547 - 572.

Resor, Felicia R. "Benefit Corporation Legislation." *Wyoming Law Review* 12 (2012): 91 – 113.

Rhee, Robert J. "Intrafirm Monitoring of Executive Compensation." *Vanderbilt Law Review* 69, no. 3 (2016): 695 -759.

Robé, Jean-Philippe. "The Legal Structure of the Firm." *Accounting, Economics and Law* 1, no.1 (2011): 1-86.

Smith, N Craig and David Rönnegard. "Shareholder Primacy, Corporate Social Responsibility, and the Role of Business Schools." *Journal of Business Ethics* 134, no. 3 (2016): 463-478.

Souha, Siala Bouaziz, and Jarboui Anis. "Corporate governance and firm characteristics as explanatory factors of shareholder activism: Validation through the French context." *Cogent Economics & Finance* 4, no. 1 (2016): 1 - 19.

Stout, Lynn A. "The Toxic Side Effects of Shareholder Primacy." *University of Pennsylvania Law Review* 161, no. 7 (2013): 2003-2023.

Strine, Leo E. "The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law." *Wake Forest Law Review* 50, (2015): 761 – 793.

Tu, Kevin V. "Socially Conscious Corporations and Shareholder Profit." *The George Washington Law Review* 84, no. 1 (2016): 121-181.

Uche, Chinyere, Emmanuel Adegbite, and Michael John Jones. "Institutional shareholder activism in Nigeria." *Corporate Governance* 16, no. 4 (2016): 680 – 692.

Wallman, S. "The Proper Interpretation of Corporate Constituency Statues and Formulation of Director Duties." *Stetson Law Review* 21, (1991): 163-196.

E – Journal article

Alberto, Chilosi and Damiani Mirella. "Stakeholders vs. Shareholders in Corporate Governance." *SSRN* Paper no. 2334 (2007). Accessed May 27, 2018.

url: http://ssrn.com/abstract=975293.

Online Newspaper/Magazine articles

Ahiuma-Young, Victor. "NECA lauds FG's suspension of FRCN's code of corporate governance." *Vanguard,* November 9, 2016. Accessed April 15, 2018. http://www.vanguardngr.com/2016/11/neca-lauds-fgs-suspension-frcns-code-corporate-governance/.

Armstrong, Ashley. "Essar committee 'reluctantly' backs hostile takeover." *The Telegraph*, May 13, 2014. Accessed April 28, 2018. https://www.telegraph.co.uk/finance/newsbysector/energy/10828459/Essar-committee-reluctantly-backs-hostile-takeover.html.

Boren, Zach. "Essar Group: Indian energy giant caught in £280m tax evasion scandal." *Unearthed,* April 7, 2015. Accessed April 28, 2018. https://unearthed.greenpeace.org/2015/04/07/essar-group-indian-energy-giant-caught-in-280m-tax-evasion-scandal/.

De Cremer, David and Tian Tao. "Leading Huawei: Seven Leadership Lessons of Ren Zhengfei." *The European Business Review,* September 17, 2015. accessed May 15, 2018. http://www.europeanbusinessreview.com/leading-huawei-seven-leadership-lessons-of-ren-zhengfei/.

Dhesi, Daljit. "Where the CEO and chairman are one." *The Star Online*, July 5, 2014, accessed April 21, 2018, https://www.thestar.com.my/business/business-news/2014/07/05/where-the-ceo-and-chairman-are-one/.

Dolan, Kerry A. "African Billionaire Fortunes Rise on Forbes 2018 List of Continent's Richest." *Forbes*, January 10, 2018. Accessed April 25, 2018. https://www.forbes.com/sites/kerryadolan/2018/01/10/african-billionaire-fortunes-rise-on-forbes-2018-list-of-continents-richest/#578ffe7e2777.

Evening Standard. "Sir Stuart Rose bows out at Marks & Spencer." *Evening Standard*, January 4, 2011. Accessed June 2, 2018. https://www.standard.co.uk/business/sir-stuart-rose-bows-out-at-marks-spencer-6551490.html.

Finch, Julia. "Stuart Rose to leave M&S slowly after Bolland joins." *The Guardian*, March 3, 2010. Accessed June 2, 2018. https://www.theguardian.com/business/2010/mar/03/marks-spencer-executives-rose-bolland.

Goodman, Anthony. "Should banks keep combined the role of CEO and chairman?" *Financial Times*, May 1, 2013. Accessed April 21, 2018. https://www.ft.com/content/fb849930-b251-11e2-8540-00144feabdc0.

Independent. "He saved M&S. but Sir Stuart Rose will be a tough act to follow." *Independent*, May 18, 2008. Accessed June 2, 2018. https://www.independent.co.uk/news/business/analysis-and-features/he-saved-ms-but-sir-stuart-rose-will-be-a-tough-act-to-follow-830139.html.

Naija247News, "FRC Boss Obazee in Trouble as FG Suspends Code of Corporate Governance." *Naija247 News,* November 7, 2016. Accessed April 12, 2018. http://naija247news.com/2016/11/frc-boss-obazee-in-trouble-as-fg-suspends-his-code-of-corporate-governance/.

Nwachukwu, Clara. "Capital market investors reject new FRCN corporate governance code." *The Guardian,* November 3, 2016. Accessed April 15, 2018. http://guardian.ng/business-services/capital-market-investors-reject-new-frcn-corporate-governance-code/.

Sevastopulo, Demetri. "Huawei pulls back the curtain on ownership details." *Financial Times*, February 27, 2014. Accessed May 15, 2018, https://www.ft.com/content/469bde20-9eaf-11e3-8663-00144feab7de.

Website

"2017 UK Board Index," Spencer Stuart. Last modified 2018. https://www.spencerstuart.com/-/media/pdf%20files/research%20and%20insight%20pdfs/ukbi2017_b.pdf

"About us: Board of Directors." Dangote Cement. Last modified 2016. http://www.dangotecement.com/about-us/board-of-directors/aliko-dangote/

"About Us: Board of Directors." JPMorgan Chase & Co. Last modified 2018. https://www.jpmorganchase.com/corporate/About-JPMC/ab-board-bio-jamesdimon.htm

"About us." Companies House. Last modified 2018.

https://www.gov.uk/government/organisations/companies-house/about#our-responsibilities

"Home: About us." Walmart Inc. Last modified 2018. https://corporate.walmart.com/our-story

"Aliko Dangote: Overview." Bloomberg Billionaires Index. Last modified 2018, https://www.bloomberg.com/billionaires/profiles/aliko-dangote/

"Analysing the 'No-Reflective Loss' Principle in the context of an SSPA." Olaniwun Ajayi. Last modified February 9, 2018. http://www.olaniwunajayi.net/blog/analysing-no-reflective-loss-principle-context-sspa/

"Analysis: Who really owns Huawei." iTnews. Last modified May 28, 2010. https://www.itnews.com.au/news/analysis-who-really-owns-huawei-175946

"Beyond One for One." Toms. Last modified 2018. https://www.toms.co.uk/beyond-one-for-one

"Brief on Guidelines for Tenure of Managing Directors of Deposit Money Banks and related matters." Central bank of Nigeria. Last modified 2018. https://www.cbn.gov.ng/out/2010/publications/pressrelease/gov/tenure_guideline19012010.pdf

"Commit with us: Toward responsible Energy." Total Nigeria. Last modified 2018. http://nigeria.total.com/en/commit-us/toward-responsible-energy

"Corporate Social Responsibility." 9mobile. Last modified 2017. http://9mobile.com.ng/corporate-social-responsibility/

"Home: About Huawei–Corporate Information." Huawei. Last modified 2018. http://www.huawei.com/uk/about-huawei/corporate-information

"Home." Corporate Affairs Commission. Last modified 2018. http://new.cac.gov.ng/home/

"Home: What are B Corps?" B lab. Last modified 2018. http://bcorporation.uk/what-are-b-corps-uk

"How to become a Benefit Corporation." Benefit Corporation. Last modified 2018. http://benefitcorp.net/businesses/how-become-benefit-corporation

"How to Invest in Huawei." Investopedia. Last modified 2018. https://www.investopedia.com/articles/investing/051215/how-invest-huawei.asp

"How we give: Improving lives." Toms. Last modified 2018. http://www.toms.co.uk/improving-lives

"Litigation." Securities and Exchange Commission Nigeria. Last modified 2018. http://sec.gov.ng/litigation/

"Media Centre: Executive Biographies." United Bank for Africa. Last modified 2018. https://www.ubagroup.com/mc/bio?id=20120904032954zfcxyky482

"Operations." Securities and Exchange Commission Nigeria. Last modified 2018. http://sec.gov.ng/directorates/operations/

"Our team: Board of Directors." Transnational Corporation of Nigeria Plc. Last modified 2018. http://www.transcorpnigeria.com/our-team/

"Press releases: Sustainable Development." Total Nigeria. Last modified 2018. http://www.total.com.ng/pro/about-us/sustainable-development-amo.html

"Press releases: Unilever joins as a founding member of the UK Plastics Pact." Unilever. Last modified April 26, 2018. https://www.unilever.co.uk/news/press-releases/2018/unilever-joins-as-a-founding-member-of-the-uk-plastics-pact.html

"Public search." Corporate Affairs Commission. Last modified 2018. http://publicsearch.cac.gov.ng/comsearch/

"Regulatory Filter." Financial Reporting Council of Nigeria. Last modified 2018. https://docs.google.com/file/d/0BxB1-bqcIt35b25GcnoxenBBTDQ/edit

"Report on the Observance of Standards and Codes (Rosc) Nigeria: Accounting and Auditing." The World Bank. Last modified June 6, 2011. http://documents.worldbank.org/curated/en/440581468099577387/Nigeria-Report-on-the-observance-of-standards-and-codes-ROSC

"Shared Values: UBA Foundation." United Bank for Africa. Last modified 2018. https://ubagroup.com/uba-foundation

"Suspensions and Penalties: Companies facing enforcement action, 2016." Securities and Exchange Commission Nigeria. Last modified 2018. http://sec.gov.ng/suspensions-and-penalties/

"Sustainable Living: About or Strategy." Unilever. Last modified 2018. https://www.unilever.co.uk/sustainable-living/our-strategy/about-our-strategy/

“The Financial Reporting Council of Nigeria’s National Code of Corporate Governance 2016 For the Private Sector: Key Highlights.” Olaniwun Ajayi. Last modified November 2016. https://olaniwunajayi.net/wp-content/uploads/2016/03/FRCN-Newsletter-001.pdf

“The World’s Billionaires.” Forbes. Last modified 2018. https://www.forbes.com/profile/tony-elumelu/

“What we do.” Be Onsite. Last modified 2012. https://www.beonsite.org.uk/what-we-do

“What we do.” Department for Business, Energy and Industrial Strategy. Last modified 2018. https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy

“What we do: how we do it.” Be Onsite. Last modified 2012. https://www.beonsite.org.uk/how-we-do-it

“Who we are.” Be Onsite. Last modified 2012. https://www.beonsite.org.uk/who-we-are

Thesis

Jing, Jin “Constructing the corporate governance system within the regime of corporate law from the perspective of a revised mechanism design theory: the shareholder primacy model versus the stakeholder theory model.” PhD thesis, University of Hong Kong, China, 2014.

Personal Communication

Communication with Alice Belcher, Professor of Law, University of Dundee (Dundee 2 February 2018).