

**AN EXAMINATION OF DIRECTORS' STATUTORY RESPONSIBILITIES OF GOOD
CORPORATE GOVERNANCE:
A STUDY OF FIRST BANK OF NIGERIA HOLDINGS COMPANY PLC**

BY

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NOVEMBER, 2021

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**A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES,
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**DEPARTMENT OF COMMECIAL LAW,
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NOVEMBER, 2021

DECLARATION

I declare that the work in this Dissertation entitled. An “**EXAMINATION OF DIRECTORS’ STATUTORY RESPONSIBILITIES OF GOOD CORPORATE GOVERNANCE: A STUDY OF FIRST BANK OF NIGERIA HOLDINGS COMPANY PLC**” has been carried out by me, in the Department of Commercial Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this Dissertation was previously presented for another degree or diploma in this or any other Institution.

Issa ABUBAKAR
P17LACM8101

Signature

Date

CERTIFICATION

This Dissertation entitled **AN EXAMINATION OF DIRECTORS' STATUTORY RESPONSIBILITIES OF GOOD CORPORATE GOVERNANCE: A STUDY OF FIRST BANK OF NIGERIA HOLDING COMPANY PLC** by **Issa ABUBAKAR** meets the regulations governing the award of the degree of Master of Laws-LL.M (Commercial Law) of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

I dedicate this Dissertation to My Late Father, Alh Uthman Abubakar, of blessed memory late Emir of Ilesha-Baruba, Baruten local Government Area of Kwara State and My Dear Mother, Hajiya Hawau Abubakar.

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AGM	-	-	Annual General Meetings
BOFIA	-	-	Banks and Other Financial Institutional Act
BIC	-	-	Banque International De Credit
BBWA	-	-	Bank of British West Africa
CAMA	-	-	Companies and Allied matters Act,
CAC	-	-	Corporate Affairs Commission
CBN	-	-	Central Bank of Nigeria
CCG	-	-	Code of Corporate Governance
CEO/MD	-	-	Chief Executive Officer/ Managing Director
EDs	-	-	Executive Directors
ED	-	-	Executive Director
FRC	--	-	Financial Regulation Council
FBNHoldings	-	-	First Bank Nigeria Holdings Company Plc.
GDR	-	-	Global Depository Receipt
GMD	-	-	General Managing Director
GMD	-	-	Group Managing Director

ICB	-	-	International Commercial Bank
IoD	-	-	Institute of Directors
ICSA	-	-	Institute of Chartered Secretaries and Administration
KPMG-	-	-	KPMG Advisory Service
NEDs	-	-	Non Executive Directors
NAICOM	-	-	National Insurance Commission
NDES	-	-	Non Executive Directors
NEPA	-	-	Nigerian Enterprise Promotion Act
NSE	-	-	Nigerian Stock Exchange
NTA	-	-	Nigerian Television Authority
OECD	-	-	Organization for Economic Co-operation and Development
PENCOM	-	-	Pension Commission
PFA	-	-	Pension Fund Administrator
PFC	-	-	Pension Fund Custodian
PwC-	-	-	PricewaterhouseCoopers
SEC	-	-	Securities and Exchange Commission
SAC	-	-	Statutory Audit Committee

UK - - - United Kingdom

USA - - - United States of America

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ABSTRACT

This research deals mainly with First Bank Nigeria Holdings Company PLC; it discusses its corporate governance on the premise that The Board and Management of the company stated on its 2016/17 Annual Report that its success is based on its good corporate governance practices which remain the best tool to deliver increased shareholder value in contrast of Securities and Exchange Commission's Report April, 2013, that Corporate Governance is in its rudimentary stage in Nigeria and only 40% of quoted companies including banks have recognised the code of Corporate Governance. That corporate governance has succeeded in attracting a good deal of public interest because of its apparent importance for the economic development of companies and the society in general, the question in this research is how true the above statements, considering the structural application of corporate governance principles in the First Bank of Nigeria Holdings Company plc. This research answers the question with core interest in one of the stakeholder (Directors) which is core in corporate management, considering Directors appointments, compositions, independence, committees, accountability and transparency in reporting and the effect of mandatory regulations, laws and codes. The study also examines the statutory and functional responsibility of Directors' fiduciary relationship, with the aims and objectives to ascertain the veracity of the above statements and how the principle of corporate governance is administered by the company. The research is doctrinal base and targeted the positive outcomes or result of First Bank Nigeria Holdings Company PLC, by using its books, circulars, financial regulations, relevant laws and textbooks in the field of corporate governance. Finally, findings were made which include, no adequate adherence to the principles of corporate governance, problems of application and enforcement of relevant laws and codes, and problems of checks and balance in company management, finally few recommendations were made which include Directors training, application and enforcement of the laws which includes upgrading of some of the codes to laws there to establish Institute for Corporate Governance. Despite Institutions like Institute of Directors (IoD) and The Institute of Chartered Secretaries and Administration (ICSA) lastly, adoption of proper checks and balance principles between the stakeholders, i.e. Directors, shareholders, employee etc.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

The Companies and Allied Matters Act has been the major law regulating corporate governance in Nigeria. It provides some mechanism for corporate governance among which is appointment of directors, composition of board of directors etc. This research ‘An Examination of Directors’ Statutory Responsibilities of Good Corporate Governance: A Study of First Bank of Nigeria Holdings Company Plc’ The company here refers to (FBNHoldings) or “the Company” The Company was incorporated as a private limited liability company in Nigeria in 2010 and was converted to a public company in September 2012. The Company’s shares were listed on the Nigerian Stock Exchange on 26 November 2012 after the shares of First Bank of Nigeria Plc were delisted on 23 November 2012.¹ The company as it commemorates its 125th anniversary of its flagship business - FirstBank, the Group is geared to shape the future more than ever before and deliver sustainable value².

The Board and Management of FBNHoldings Plc. stated that the company remained steadfast in the unified belief that observing good corporate governance practices remain the best tool to deliver increased shareholder value³ which has succeeded in attracting a good deal of public interest because of its apparent importance for the economic health of companies and the society in general. Events worldwide, particularly the collapse of Enron and other leading multi-national companies in the United States of America, brought to the fore, the imperative of a code

¹ Premium Board (2017) *FBNHoldings Plc Corporate Governance Annual Report*, Study surefooted p. 3

² Premium Board (2018) *FBNHoldings Plc Corporate Governance Annual Report*, Timeless 2018 p. 2

³ Ibid p. 1

of corporate governance.⁴ Corporate organisations are the drivers of every nation's industrialization, commerce, employment and general economic development. Companies are business ventures that are established to produce goods or provide services for consumption by individuals, organisations and government. They are regarded as the engine of growth and development⁵

The debate over how companies are best governed is at least as old as companies themselves. That there is no one best system of governing them is suggested by the fact that the world's greatest companies have grown up under a number of very different regimes: Toyota in Japan, Johnson & Johnson in the United States, Daimler-Benz in Germany and Marks and Spencer in the UK,⁶ Over the years, the registered public companies⁷ had grown to become the most viable and important unit of investment in Nigeria. This could be attributed to the discovered legal advantages it has over other forms of business.⁸ This noticeable growth necessitated the need for effective regulatory framework. On that basis a body Corporate Affair Commission was established (here referred to as CAC) to regulate operations of register companies.

On corporate governance for public companies in Nigeria, their legal advantages alone do not shield them from financial vulnerability in financial crises and loss of investors share. However despite the statutory empowerment by Companies and Allied Matters Act⁹ on regulatory institutions, company failure has continued to be on the increase. Many corporate

⁴ Nkemehule R. (2008) *Icon of corporate Governance thisday Newspaper*, Wednesday July 28 2008 P.50

⁵ Oso, I and Semiu, B (2012) *the concept and Practice of Corporate Governance in Nigeria: the need for Public Relations and Effective Corporate Communication*. 3 (1) p 1

⁶ A.R Agom(2003-2005), 'Lesson from the Burst of Enron and the Challenges for Securities Regulation 2 (2) *Ahmadu Bello University Journal of Commercial Law* 142-155

⁷ Section 24 Companies and Allied Matters Act, Cap C 20 Laws of the Federation of Nigeria, 2004

⁸ Section 22 Ibid

⁹ Ibid

entities have failed to thrive or survive despite several enactments, relating this to this research. Corporate organizations are the drivers of every nation's industrialization, commerce, employment and general economic development. Companies are business ventures that are established to produce goods or services for consumption by individuals, organizations and government. They are regarded as the engine of growth and development¹⁰.

First Bank Nigeria Holdings Company Plc. has its legal backing for its incorporation with its subsidiary bodies. This is based on law and various monetary policies. Such as the Central Bank of Nigeria Act of 1958 (CBN) as amended, CBN Decree No. 24 of 1964, CBN Decree (Amendment) No 3 of 1997, Amendment Decree No 4 of 1997, Amendment Decree No 38 of 1998, Amendment CBN Decree 1999 and CBN Act of 2007 which is the current law (repealed the Universal Banking Guidelines, and introduced a New Banking Model in 2010 as part of the strategic initiatives to reposition the Nigerian banking system on the path of sustainable viability.¹¹ The New Banking Model permits banks/banking groups to retain non-core banking businesses by evolving into a non-operating Holding Company structure¹². Under this Model, a non-operating Holding Company (HOLDCO) is expected to hold equity investment in banks and non-core banking businesses in a subsidiary arrangement. This arrangement seeks to ring-fence depositors' funds from risks inherent in non-core banking businesses.

In 2012, in response to the Central Bank of Nigeria, (CBN) new policy framework, the Group adopted a holding company structure and all non-banking subsidiaries were transferred to the holding company, while the Bank retained the banking businesses and subsidiaries.¹³ First Bank Nigeria Holdings also refers "FBNH" as the non-operating holding company of the First

¹⁰ Oso, I and Semiu, Op.Cit p2

¹¹ Guideline for Licensing and Regulation of Holding Companies in Nigeria by Central Bank of Nigeria (2012) p 1

¹² Ibid p 1

¹³ First Bank Nigeria Holding Annual Report(2013) www.fbnholdings.com/annual/report/ retrieved 17th June, 2013 p.12

Bank Group which is the focus of this study. The business groups within FBNH offer a broad range of products and services, including Commercial Banking, Investment Banking, Asset Management, Insurance and Other Financial services to millions of customers, with the bulk of the business in Nigeria¹⁴.

FBNH's principal bank subsidiary is First Bank of Nigeria Ltd (First Bank), a commercial bank with operations in 11 countries.¹⁵ FBN Capital is leading investment banking and asset management company, FBN Insurance, is a life insurance business until March 2014, now a composite insurance company; FBN Insurance Brokers; and MFB, which offers microfinance services. The bank and non-bank subsidiaries of FBNH operate in Nigeria, as well as through overseas branches and subsidiaries and representative offices. The strategic vision for the Group in 2014–16 is 'to become the pre-eminent financial services group in Africa, providing value to its stakeholders'¹⁶.

This research deals mainly with one of the stakeholder (Directors) very core in corporate management, the studies examine the statutory and functional responsibility of Directors' fiduciary relationship, the statutory as well as functional responsibilities of the Directors, has Executive, non Executive and independent directors. Fiduciary responsibilities cover all the statutory functions of the directors¹⁷ and the term 'FBNHoldings Plc.' Means the 'Group'¹⁸

This research encompasses First Bank Nigeria Holdings Company Plc. a Parent company in the "Holding" which in its statement provides a summary of the Board's approach to governance for the year 2017, which was challenging for all businesses in the country, as the

¹⁴Ibid p10

¹⁵Ibid p6FBNBank (UK) Limited, FBNBank DRC Limited, FBNBank Ghana Limited, FBNBank The Gambia Limited, FBNBank Guinea Limited, FBNBank marketplace 28 Sierra Leone Limited, FBNBank Senegal Limited, etc.

¹⁶Ibid p11

¹⁷ Section 279-284 CAMA

¹⁸Premium Board (2017) *FBNHoldings Plc Corporate Governance Report*, Op. cit,1 at 1

economy had to deal with recession arising from low oil prices globally. The negative trends witnessed in business from 2016 which continues but though seen abated in 2017. Notwithstanding macroeconomic volatility, the Board and Management of FBNHoldings Plc stated that, ‘it remained steadfast in the unified belief that observing good corporate governance practices remains the best tool to deliver increased shareholder value¹⁹. Reference will be made to other corporate bodies operating in Nigeria and beyond for better understanding. On 23rd December, 2018, at the end of year party, The GMD FBNHoldings said “FBNHoldings is the lead financial institution in Nigeria and Africa at large”²⁰ how worthy is this statement and what are the intricacies that led the group to maximum performance.

The Directors, as stakeholders in company management their duties connote corporate governance, also the position of directors’ Board and relationship of shareholder, the principles of separation of ownership from management all these form corporate governance. In (FBNH). An Executive Director in carrying out day-to-day tasks is answerable to the Managing Director/ Chief Executive Office as the Lead Employee, but whilst carrying out statutory responsibilities of the office of a Director, he has a duty not to fetter his discretion in order to maintain the fiduciary relationship with the company²¹. The expression Group Managing Director is really more of a title rather than as a position of fact or law, because the subsidiaries are separate legal entities with separate officers and Board of Directors. Group issues relate more to accounting and Financial Statements Consolidation, with the aim at the end how separation of powers and check and balance are guarantee.

¹⁹ FBH Holdings Plc Op cit1 at 2

²⁰ TVCNEWS television recorded programee published 23rd Dec 2018 10 am .Lagos

²¹Fabian A.(2000) *The Relationship between a Parent Company and its Subsidiaries* Pan-Africa University p. 5

In 2003, the Bankers' Committee made a giant step by introducing the first formal corporate governance code in Nigeria²² It was made in response to financial crisis in Nigeria in the early 1990s. Consequently, the major short coming of the code was based on the fact that it was not issued by a regulator. However, the shortcoming of the Bankers' Committee code was soon thereafter remedied by the introduction of the Code of Best Practices on Corporate Governance in Nigeria 2003 (SEC 2003 code) by SEC which was the first code to be issued by any regulator in Nigeria. The SEC 2003 code was also applicable to all public companies in Nigeria.

1.2 Statement of the Research Problem

In Nigeria, a survey, by Securities and Exchange Commission (SEC) conducted and reported in April 2013 showed that corporate governance was at a rudimentary stage, as only about 40% of quoted companies including banks, have recognized Codes of Corporate Governance, the above survey, couple with the FBNHoldings statement prompt the need of this study, with the following problems identified for study,

Poor corporate governance was identified as one of the major factors in virtually all known instances of a financial institution's distress in the country.²³ There is no doubt that FBNHoldings businesses are streamline, align and cluster to similar or overlapping businesses under four broad "businesses groups" operating a corporate centre with responsibility for setting strategic direction, providing group-wide oversight and ensuring the leveraging of synergies across the group through the constitution of a governing board and committees at the group level to optimally align corporate and management roles.²⁴ These are very important businesses and

²²Code of Corporate Governance for Banks and Other Financial Institutions in Nigeria 2003

²³ Premium Board (2017) *FBNHoldings PLC Corporate Governance Report*, Op. cit1 at 6

²⁴ Ibid p 2

huge investment to Nigeria economic, the problem is how the principle of corporate governance operates in FBNHoldings Company considering the survey report and their performance.

Directors are core to company management, their appointment, rights, duties, powers, privileges and immunities appertaining to their offices. This includes Directors' as Board, involved in the day-to-day activities, on management of the company, scope of authority, relation to shareholders who happened to be members of the company and also have interest in subsidiary company, how this fit within the corporate governance of First Bank Nigeria Holdings Company.

How effective Directors' Composition, Independence, Committees, Accountability transparency and Board oversight functions, among members of the Board affecting the company's administration, and finally the effect of weak internal and external control, ignorance of laws rules and regulations. In discussing these problems reference is made to relevant laws, which include Companies and Allied Matters Act²⁵. Also referred as (CAMA), Code of Corporate Governance²⁶ referred as (CCG) Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006²⁷ refers as (The Code) and Banking and Other Financial Institution Act²⁸ refers as (BOFIA) now repealed by 2014 Code²⁹.

1.3 Aim and Objectives of the Research

The aim of this research is to examine Directors' Statutory Responsibilities of Good Corporate Governance in First Bank of Nigeria Holdings Company Plcwith the view to making

²⁵Companies and Allied Matters Act Cap C30 LFN 1990 as amended 2004 now repealed 2020

²⁶ Code of Corporate Governance for public Companies 2011

²⁷ Corporate of Governance for Banks in Nigeria Post Consolidation 2006

²⁸ Banks and Other Financial Institutional Act Cap B2 LFN (2004) (Originally Promulgated as Decree No 25 of 1991)

²⁹ Code of Corporate Governance for Banking and Discount Houses in Nigeria 2014

recommendations to strengthen the statutory provision in the banking industry toward effective Good Corporate Governance in First Bank of Nigeria Holdings with international best practices.

The Dissertation seeks to achieve this through the following specific objectives:

- i. To examine the nature of Statutory Responsibilities of Good Corporate Governance in First Bank of Nigeria Holdings Company Plc.
- ii. To appraise the workability of the existing law and code of Corporate Governance in First Bank of Nigeria Holdings Company Plc and its compliance with the relevant statutory law.
- iii. To appraise the level of shareholders awareness of their statutory right in Corporate Governance in First Bank of Nigeria Holdings Company Plc

1.4 Scope and Limitation of the Research

The territorial scope of this research is Nigeria. However, some jurisdictions are referred to by way of discussion for a better understanding of the topic. The subject matter area of discussion is mainly on First Bank Nigeria Holdings Company Plc and reference has been made as to its subsidiaries particularly First Bank Nigeria Ltd and all relevant laws. This research will go further to see the level of compliance with Code of Corporate Governance other relevant Laws, Codes and Regulations by the company bearing in mind the fact that Directors in contemporary corporate practice are an indispensable organ of corporate governance.

1.5 Research Methodology

This research relies on doctrinal method which includes the primary and secondary sources. Primary sources consulted are statutes, codes and case laws. Statutes such as Constitution of the Federal Republic of Nigeria 1999³⁰ (as amended), Companies And Matters Act (CAMA), Central Bank Act, Banks Other Financial Institution Act (BOFIA) codes includes

³⁰ Constitution of Federal Republic of Nigeria C LFN (1990) as Amended 2011

Code of Corporate Governance, for Banks, and Public Companies, SEC, etc.. The Secondary sources consulted include materials from the written directives, Notices, Circulars, internet, seminar papers, books, articles and newspapers Materials etc. Doctrinal research affords the researcher opportunity to refer to scholars' legal books, articles in journals and credible commentaries and views of experts relevant to the subject matter as well as case laws.

1.6 Literature Review

There are some literature written by several scholars nationally and internationally on corporate governance but most of these works do not touch on the areas presented in this research, among the authorities the first in question is one written effect of the Board of Directors as the most important organ of the company solely responsible for the management of the company with the principal objective of the board to ensure that the company is properly managed³¹.

That is to say the board must act responsibly in ensuring an effective performance of the management in order to protect and enhance shareholder value and to meet the company's obligations and other stakeholders, the Cadbury Report³² which goes further defined corporate governance as "the system by which companies are directed and controlled" The report included a Code of Best Practice (The Cadbury Code). In its principles of corporate governance (2004), The Organization for Economic Co-operation and Development (OECD)³³ defined corporate governance as a set of relations between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the

³¹ Oso L. and Semiu B. Op. Cit p 2 at 6

³² Cadbury, Adrian, Report of the Committee on the Financial Aspects of Corporate Governance, Gee, London, December, 1992, p. 15

³³ "OECD *Principles of Corporate Governance*" OECD publication service, p. 11-15

objectives of the company are set and the means of attaining those objectives and monitoring performance are determined.

According to Oman³⁴ corporate governance in private and public institution, including laws, regulations and accepted business practices, which in the market economy; govern the relationship between corporate managers and entrepreneurs on one hand, and those who invest resources in corporations on the other. Okehalam and Akinbode³⁵ defined corporate governance as the manner in which the power of a corporation is exercised in the stewardship of the corporation's total portfolio of assets and resources with the objective of maintaining and increasing shareholder value and satisfaction of other stakeholders in the context of its corporate mission.

Corporate governance is a set of rules, practices and processes used to direct and control a company. It involves balancing the interests of a company's stakeholders such as management, shareholders, suppliers, customers, financiers, government and the community. Moreover, it is essential for the success and sustainability of the business over a period of time. When the set of rules and processes which form the governance mechanism of a firm are ineffective or fail, it can have disastrous consequences for a business. Several large organizations such as Enron, Satyam, Cadbury, Wal-Mart & Xerox were severely impacted due to corporate governance failures³⁶.

Corporate failure doesn't happen overnight and there are several warning signs which a firm must take note of in order to avoid such failures. Some of the governance issues faced by the firms which eventually lead to corporate governance failures are –

³⁴Oman CP (2001). “*Corporate Governance and National Development*” OECD Development Centre's Experts Workshop, Lagos. Organization for Economic Corporation and Development (2004)

³⁵Okehalam C, Akinbode O (2003). *A Review of Corporate governance in African: Literature, Issues and challenges* ‘A paper on Global Corporate Governance forum’ June 15, Lagos.

³⁶ <https://diligent.com/en.gb/blog/business-continuity-plan-maintenance-a-step-by-step-guide> p4 retrieved 30th July, 2021

Ineffective governance mechanisms, for example, lack of board committees or committees consisting of few or a single member. Non-independent board and audit committee members, for example where a CEO fulfilled multiple roles in various committees Management, who deliberately undermines the role of the various governance structures by circumventing the internal controls and making misrepresentations to auditors and the Board. Inadequately qualified members, for example, audit committee members not having appropriate accounting and financial qualifications or experience to analyse key business transactions, family members holding board positions without appropriate knowledge or qualifications. Ignorance by regulators, auditors, analysts etc this leads to poor financial results and red flags.³⁷

Corporate governance failures have resulted in massive problems faced by the companies over the years. A couple of examples of corporate governance failures which forced businesses and government authorities to rethink their stance on corporate governance are: The Enron scandal, which broke out in October 2001, eventually led to the bankruptcy of the Enron Corporation, an American energy company based in Houston, Texas. It was the largest bankruptcy reorganization in American history at that time.³⁸

The primary reason for the failure of Enron was attributed to an audit failure. The problem faced by Enron was despite having structures and mechanisms in place for good corporate governance. Nobody flaunted and flouted these rules and regulations. The board of directors turned a blind eye to open violation of the code. Particularly, when it allowed the CFO to serve in special purpose entities (SPEs). The auditors failed to prevent suspect and questionable accounting. The auditors did not even examine the SPE transactions.

³⁷ Ibid 4

³⁸ Ibid 6

Enron shareholders filed a \$40 billion lawsuit after the company's stock price fell. It achieved a high of US\$90.75 per share in mid-2000, plummeted to less than \$1 by the end of November 2001. On December 2, 2001, Enron filed for bankruptcy under Chapter 11 of the United States Code

In similar development, Satyam began facing problems from December the 16th, 2008. Its chairman Mr Ramalinga Raju, in a surprise move announced a \$1.6 billion bid for two Maytas companies. He wanted to deploy the cash available for the benefit of investors. Raju's family promoted and controlled the two companies. The share prices plunged 55% voicing concern towards Satyam's poor corporate governance. They overturned the decision in 12 hours. This resulted in the resignation of several independent directors of the firm. Thus, this resulted in a further fall in the share prices of Satyam. In similar development, here in Nigeria case of *Longe vs. First Bank, Plc*³⁹ comes to mind, where first Bank lost a lot of Millions of Naira base on the no compliance with the principles of corporate governance.

On 7th January 2009 B Ramalinga Raju, the founder of Satyam Computer Services, confessed to a Rs 7,000-crore balance sheet fraud . He had hidden it from the IT company's board, employees and auditors for several years. He revealed in his confession that his attempt to buy Maytas companies was his last attempt to "fill fictitious assets with real ones". The government reacted to the fraud by overhauling the regulatory framework. It introduced the new Companies Act 2013, which fixed liabilities of auditor and independent directors, among other changes. In 2014, market regulator SEBI amended Clause 49 of listing guidelines to improve corporate governance.

³⁹(2006)3NWLR (pt967) p.228 CA;

This research looked at the Directors synonyms to board of directors as currently structured under CAMA 2004 now repealed with the 2020 Act. and the impact of the different Codes on Corporate Governance.⁴⁰ A Company should have objectives. Generally, the most important objectives are required to be written out in the companies' memorandum and articles of association.

Historically, this is so mandatory and serious that where the company goes beyond its stated objects such act is beyond its powers and illegal and must be rendered null and void. The important objectives and essentially the way and manner of achieving these objectives are never stated in the registered documents and may only be ascertained in the internal documents of the Company⁴¹. Corporate governance is therefore not only about the day to day operational management of the company by the managers and executives, but is concerned with the overall strategic plan to move the company forward⁴².

There are a lot of available literatures on Corporate Governance⁴³, but not much in relation to Directors responsibilities, which is core principle for building good corporate governance.⁴⁴ This research addresses same by examine the director's performance in optimum corporate governance. The board of directors of a company is a very important organ not only responsible for management but also for adopting good corporate governance and practice in the company.

⁴⁰Sir Adrian Cadbury's speech on the 20th Anniversary of the Corporate Governance Code Event – October 2012.

⁴¹Orojo, J.O. (2008). *Company Law and Practice in Nigeria*. 5th edition, LexisNexis Butterworths, Durban, South Africa, at p.269.

⁴²Akinpelu O. A (2012) *Corporate Governance Framework in Nigeria: An International Review* Paperback – Illustrated, p 4

⁴³ Chianu. E. (2012) *Company law lawlords publication* 1st Abuja 504

⁴⁴ Ibid pg 506

In Nigeria corporate governance effect on the board structure, the role, effectiveness and duties of the non executive directors (NEDs) and how their independence can be assured, guaranteed and monitored to enhance the board's effectiveness, all these to ensure full compliance with the codes of corporate governance. The regime of compliance and regulation is extremely weak and a case is made for a specialized regulator agency to monitor compliance with the codes, upgrade standard and harmonize

From the different perspective of corporate governance given above, we can summarize that the term is concerned with the processes, systems, practices and procedures as well as the formal and informal rules that govern institutions and the manner in which these rules and regulations are applied and followed.

Nigerian, as an emerging economy, looks to the private sector for the required quantum leap of development. A sound system of corporate governance is imperative to ensure that managers and directors of enterprises carry out their duties within a framework of accountability and transparency⁴⁵Development of company in Nigeria coincided with the discovery of the wider world such as Columbia, West Indies etc

The first Legislation on Companies was enacted in 1912 known as Company Ordinance 1912 which for the first time made provisions for incorporation of companies in Nigeria This Act was based on the 1908 Consolidation Act of Great Britain. After the amalgamation of the Northern and Southern Protectorates in 1914, the Companies Amendment and Extension Ordinance extended the provisions of the Act to cover the entire country. In 1922 the earlier ordinance was repealed and replaced with the Companies Ordinance of 1922. This ordinance was

⁴⁵Report of the Committee on Corporate Governance, 2003

later changed to Companies Act and appeared as Chapter 37 of the 1958 Laws of the Federation. This was the Law in force in Nigeria until the Companies Act of 1968.

The provisions of the 1922 Companies Ordinance was not altogether different from the 1912 Companies Ordinance See Part X Section 369 of The Companies Act 1968 Companies and Allied Matters (Amendment) Decree No. 32 of 1990⁴⁶ now 2020 Act which is the current law in company management in Nigeria. Its stated not only did not permit individual control of public utilities such as electricity, water, telecommunications postal services, air travel etc. The virtual monopoly of government in the provision of infrastructure and development in many ways contributed to the under -development of the country. The government enacted two important pieces of legislation, these are the Foreign Exchange Control Act 1962 and the Nigerian Enterprises Promotion Decree (now Act) No 4, of 1972 and 1980

We say that the government was really interested in corporate governance in Nigeria. However, there was no conscious effort made in this direction until the SEC set up a committee to look into the issue of corporate governance under the chairmanship of Atedo Peterside which produce what is known or Otherwise known as Indigenization Decree⁴⁷.

The committee submitted its report in October 2003. This led to the issue of the code of corporate governance for public companies. The same year saw the Central Bank also issuing a Code of Corporate Governance for Banks and Other Financial Institutions in Nigeria. This code came about as a result of the work done by the Bankers "Committee of the bank, under the supervision of United Bank for Africa. However, in spite of the codes in 2003, the banking

⁴⁶Ahunwon B, (2002)Corporate Governance in Nigeria, *JBus.Ethics*1(37):Dependence of the Post Colonial Nigeria P.4.

⁴⁷Yerokun O (1992); „*The Changing Investment Climate Through Law and Policy in Nigeria*“ in C.O.Okonkwo (ed.),*Contemporary issues in Nigerian Law, Lagos*; Taiwo Fakoyede,p.219

subsector in Nigeria was characterized by weak and fragile banks, as far back as 1989 -1991 there has been noticeable financial crisis as some seven distressed banks failed and caused huge disruptions in the economic stability of the country. The interbank market also collapsed in 1993 which spread to all segments of the financial system in 1995.

The Banking system was characterized with poor corporate governance, poor monitoring and reporting mechanism, very low minimum capital requirements there were eighty-nine small banks most at the brink of failure. This was the position before consolidation of Banks in Nigeria. The Central Bank of Nigeria (CBN) thereafter, realizing that the ongoing industry consolidation is likely to pose additional corporate governance challenges arising from integration processes, IT and culture. Research had shown that two-thirds of mergers, worldwide, fail due to inability to integrate personnel and systems as well as due to irreconcilable differences in corporate culture and management, resulting in board and management⁴⁸

In addition, the emergence of mega banks in the post consolidation era is bound to task the skills and competencies of boards and managements in improving shareholder values and balance same against other stakeholder interests in a competitive environment. A well –defined code of corporate governance practices should help organizations overcome such difficulties” The above was one of the avowed rationales for the review of the Bankers Committee Code of Corporate Governance for the Banking industry. The CBN issued the current Code of Corporate Governance effective from April, 3, 2006. Compliance with the provisions of the Code is mandatory.

⁴⁸Adeyemi K.S.(2006) *Banking Sector Consolidation in Nigeria: Issues and Challenges for a full discussion on the pre-and post consolidation issues in Nigeria* Banking Industry accessed on 6th November 2012 [http://www.efiko.org/material/Banking Sector Consolidation in Nigeria](http://www.efiko.org/material/Banking%20Sector%20Consolidation%20in%20Nigeria).40 Code of Corporate Governance for Banks in Nigeria Post Consolidation,(effective date April 3, 2006) issued in march 1, 2006 para. 1.4

In 2008, the SEC inaugurated a national committee chaired by M.B. Mohammed for the review of the 2003 Code of Corporate Governance for Public Companies which Minimum Capital more than N1 billion operating Banking business⁴⁹ code of Corporate Governance 2006, Nigeria to address its weaknesses and to improve the mechanism for its enforceability”. The Committee has to identify the weaknesses and constraints to good corporate governance and to recommend ways of effecting greater compliance. The SEC issued the new code in April, 2011.

The Companies Act do not define the term “director “ but seemed to describe or ascribe a meaning to it. Section 269(1) of CAMA 2020 merely stated that “directors of a company under the Act are persons duly appointed by the company to direct and manage the business of the company Section 650 also defines the director as including “any person occupying the position of directors by whatever name called, it may be easier to understand the position of the director by simply understanding their roles and duties in the Company⁵⁰.

The law is that the board of directors is the sole organ of the company responsible for the management of the company. In Nigeria, Company must have a minimum of two directors while in UK a private company must have at least one director and a public company must have two directors. The Act is silent on the day to day role and power of the directors and has been left to the company articles. There is also no mention of the way and manner the board ought to be organized, it follows that each company apart from appointing members of the board must also specify the structure, role and powers of its directors in the articles of association.

First directors are appointed by subscribers in the memorandum and articles of association while subsequent appointments are made by the general meetings. The Act does not

⁴⁹ AigImoukhuede A, (2009) *Nigerian Banks in Sub-Saharan Africa* Frontier Markets Keynote Address at the Nigerian Development & Finance Forum (2009) at Gusman Cunderland Hotel, Londons

⁵⁰ Gower and Davies (1987) *Principles of Modern Company Law* 8th edition, Sweet & Maxwell, London p. 12

also give any indication as to the type of person that may be appointed and the quality or qualification they possess. This is also left to the discretion of the members. However, the law listed certain categories of persons that are disqualified from being appointed as directors in Nigeria. Section 283 listed the following: An infant, that is , a person under the age of 18, A lunatic or person of unsound mind, A person disqualified under Sections 269, 272, and 273 of the Act. Section 87(3) CAMA 2020 also Section 154 UK Companies Act 2006 in UK Act Provide that the names of the Directors may be listed in the articles of association, also Section 288 of CAMA provides the members in general meeting shall have the power to re-elect or reject directors and appoint new ones.

We must note quickly, that the disqualification of certain categories of persons is not only uncalled for but may be difficult to enforce. For instance, the disqualification of an infant in this contemporary world, young persons or child under 18 are doing well in business that is to say they are enterprising enough to establish his/her own business, though the Act allows an infant if he joins with two other person not disqualified as subscriber to the memorandum. If the so called infant understands the effect of his action there ought not to be any restrictions on his right to be appointed a director, in any case should be left to preference of the shareholders of the Company.

In Nigeria, there are no proceedings to declare a person a lunatic or person of unsound mind, except only where the unsoundness is obvious by character, it will be difficult for this subsection to disqualify anybody. The other provisions on disqualification are obviously unenforceable.

There are two main categories of directors, the Executive and the Non Executive Directors (NEDs). The executive director is a full time officer of the company, who may

generally be appointed under a contract of service with the company. The articles normally provide for the appointment of the Executive Director and he is normally part of the management team but usually as the head of specific department in the company. They are professionals who are required to be qualified for their office either by educational qualification or cognate experience or both. The executive director has been described as an employee of the company with a proper contract of service with the company.

The Non Executive Directors (NEDs) are normally appointed to the board (mainly in public companies) to act as monitors of the executive management. Their appointments are typically on part -time basis and are only expected to attend meetings without having any office in the company, their position is adversarial mainly and they are not expected to participate in to the day to day management of the company.

In U.K the minimum age for company membership or directorship is 16 years. The 2006 Act add copious provisions on the issue including exceptions from minimum age requirement etc, if the issue of minimum age had been left to the General Meeting, the Company will be in the best position to ascertain the desirability of appointing an infant as director.

Considering NEDs come in mind to what is a Shadow Director. A shadow director is simply a person on whose instructions and directions the directors are accustomed to act. The Supreme Court decision that overruled the Court of Appeal decision in SC116/2007 delivered on 5/ 3/ 2010. “pull the strings” to control the defacto directors, the law ascribes the role to such a person and he will be held liable for any breach of duty by the defecto directors. But a professional person may not be a shadow director if he only acts in a professional capacity. If however, his conduct amounted to effectively controlling the company’s affairs, he will be held

to be a shadow director. Millet J. in the case of ReHydrodam (Corby) Ltd⁵¹ identified four factors to consider in determining whether or not an individual is a shadow director.

The demure directors of the company must be identifiable, that the person in question directed those directors on how to act in relation to the company's affairs or that he was one of the persons who did the act, that the directors did act in accordance with his instructions and that they were accustomed to so act.

Millet J. went further when he stated that, it must be shown a pattern of behaviour, in which the board did not exercise any discretion or judgment of its own but acted in accordance with the directions of others. The shadow director must also be proved to have exercised control over the board and not individual director. Therefore a distinction has to be drawn for the sake of liabilities between Non Executive Director and Shadow Director, with the knowledge and possibility for Non Executive Director to be Shadow Director.

According to Osaze (2007), the whole essence of corporate governance is to assure transparency, investor protection, full disclosure of executive actions and corporate activities to stakeholders, environmental impact assessment of corporate activities, assurance of performance related to executive compensation and full disclosure of executive compensation⁵².

Though the concept of corporate governance is not new in Nigeria, the cases of gross abuse of corporate governance are reported in Nigeria. Some of these include the case of Lever Brothers Plc., under the leadership of Late Chief Rufus Giwa and Cadbury Nigeria Plc., under the leadership of Mr. Bunmi Oni. While the allegation of abuse of corporate governance principles levelled against the management of Lever Brothers in the Late 1990s were well publicized, the outcome of the investigations and sanctions, if any, were not made public. On the

⁵¹ (1962) All N.L.R. 164

⁵²Osaze B. E. (2007). "The Imperative of Corporate governance and Post-Merger Acquisition/Consolidation for sustainable growth", J. Finance and Banking, 1 (1):46-52.

other hand, following the investigation in the case of Cadbury Nigeria Plc., the Securities and Exchange Commission (SEC) was reported to have decided among other measures that the company should pay fines for several breaches of corporate governance codes established against it⁵³ According to Sanusi (2003), the widespread of corporate Scandals and failures that were witnessed in the Late 1990s and the early 2000s had their root in dishonest management decisions and in some cases, outright cover-ups of illicit activities. These, he said, had wrecked many companies and consequently, the lives of millions of innocent citizens who had a stake in then.⁵⁴ Other case of abuse of corporate governance are; the case of gross financial misconduct committed by the former managing directors of the Union Bank of Nigeria Plc., Oceanic Bank of Nigeria Plc.,(now Eko Bank Plc) and the Intercontinental Bank of Nigeria Plc.,(now Access Bank Plc) also, the Directors General of the Nigerian Stock Exchange (NSE) and the Nigerian Securities and Exchange Commission (SEC) were found to have committed serious breach of corporate governance codes.

Considering the position discussed above, the principles of corporate governance are incorporated in the revised OECD principles of corporate governance which were endorsed in April 2004. The main area covered by the OECD principles includes; Rights and Equitable Treatment of Shareholders: Organization should respect the rights of shareholders and help them to exercise those rights. They can help shareholders exercise their rights by effectively communicating information that is understandable and encouraging shareholders to participate at General meetings. Interests of other Stakeholders: - Organization should recognize that they have

⁵³Ahmad M. K. (2008). “*Corporate Governance in the Pension Industry*”, A paper presented at the Adebayo Akerele Distinguished lecture series at the Faculty of Management science, University of Benin, May 25, Benin City. Corporate Affairs Commission (CAC); “Companies and Allied Matter

⁵⁴Sanusi J. O. (2003), “*Embracing Good Corporate Governance Practices in Nigeria*”, A keynote address at the 19th Annual Bank Directors seminar organized by the Financial Institute Training Centre, June 19, Abuja.

legal and other obligations to all legitimate stakeholders, i.e. employees, customers government etc.

Also some of the laws often review though age has not enjoyed so much jurisprudence as to the totality or application to case herein. More so, no study relates to the provisions of the law to what is practically obtainable in our companies as to corporate governance particularly First Bank Nigeria Holdings Company Plc. This work stand to philosophical analysis the relationship as relates to CAMA other laws and the Codes with particular happening in the case at hand "FBNH" Following the above literatures reviewed and all those refers above with interest reviewed⁵⁵ it is necessary and important to note or understand Parent Subsidiary relationship in company law. Parent – subsidiary relationship arises when a company A" holds more than 50% of the shares in the capital of another company, B".⁵⁶ „A" becomes the parent company and „B" the subsidiary. A holding company is a company that is organized for the purpose of owning shares in other companies. It is characterised by its control of the voting power of other companies. For the purpose of exercising management control, it should acquire enough voting stock in those companies in order to become their holding company. A very good example is the case at hand FBNH and its subsidiaries.

The basic principle on the governance of the affairs of a company is set out in the Companies and Allied Matters Act 1990 (CAMA). Now repealed with 2020 retaining the same provisions in Section 87(3) of the Act It provides.

a company shall act through its members in general meeting (shareholders) or its board of directors or through

⁵⁵Barness K. D. (1986) 2 "An Examination of legal Concept Defining Directors Fiduciary Duty Ibadan University law Review 221,.Akanki O "Abuse of Power and Breach of Duty by Company Directors (1975) 6 *Nigerian Journal of Contemporary law*. J Olakunde Orojo (2008) *Company Law and Practices in Nigeria*5ed Lexis Nexis Butterworth

⁵⁶ What is required is a minimum of 50% plus 1 share.

*officers or agents, appointed by, or under authority derived from, the members in general meeting or the board of directors. It further provides that the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles.*⁵⁷

The Act further provides that except as otherwise provided in the company's Articles, the business of the company shall be managed by the board of directors who may exercise all such powers of the company as are not by the Act or the Articles required to be exercised by the members in general meeting.⁵⁸ Every company regardless of size has two organs: the Board of Directors and the Shareholders in General Meeting. This division of powers is not only recognized, it is also a matter of contract by virtue of the Memorandum and Articles of Association of the company. The position is explained clearly in *John Shaw & Sons (Salford) Ltd vs Shaw*⁵⁹ Corporate governance consist of all organs of corporate management. This research focuses on Directors which include Board of Directors and consist of, Executive, Non Executive, Executive and Chairman Board of Directors.

It is important to note that in Nigeria, CAMA repealed and replaced the Companies Act 1968 as the principal statute regulating companies in Nigeria though now 2020. It is also worthy to mentioned that when it was introduced in 1990, corporate governance was yet to emerge as a distinct concept. However, soon after the promulgation of CAMA, the corporate challenges around the world necessitate the issue of corporate governance to the fore. As a result of which different countries across the globe started reviewing their corporate governance practices.

⁵⁷ Section 87 (3) of CAMA

⁵⁸ Section 63 (3) of CAMA

⁵⁹ (1935) 2KB 113 at 134, CA per Greer LJ

This made certain countries issuing corporate governance codes of practices to address new issues that were not adequately and specifically covered by the company legislation. Nigeria happened to be among. With the collapsed of Enron and other major corporations in United States and United Kingdom in early 2000s, the concept of corporate governance gain wider consideration worldwide. That today in Nigeria 1990 CAMA amended 2004 now repealed and replaced with the Current Act 2020. With fundamental changes but does not affect the content of the provisions in this work.

1.7 Justification of Study

The research is to make findings and possible solutions why corporate failure, having in mind performance and problems of First Bank Nigeria Holdings Company Plc. With practical or in relation to Directors, how Directors with whatever name called operate in respect of corporate governance for ultimate productive, what are the laws and their effects governing Directors and corporate governance also considering disagreement in management arising from Board and shareholders where is the place for corporate governance in developing economy practically in Nigeria

The under mentioned persons or bodies shall benefit directly from this work, namely: Judges, especially those in Nigeria, West African, African and the World at large, also Business Communities, legal academics, students of law, legal practitioners, legal officers and researchers in the above court (judiciary) and other includes, local and international Businesses, as well as the legislators, because the research added value, and literature on the subject matter since no one within my knowledge or findings wrote on corporate governance of First Bank Nigeria Holdings plc, with key interest on Directors. This work will benefit the company, legal

practitioners, persons in corporate practices, businessmen, scholars, students and Government at large serve as reference point for corporate governance decisions.

1.8 Organization Layout

The research is divided into five chapters with each having sub-headings discussed there under. Chapter one introduces the topic providing hints as to what the reader should expect in the course of reading the dissertation. Thus, the general introduction, background of study, problem of the research, aims and objectives of the research, its scope and limitation, literature review, research methods employed justification for embarking on the research, as well as the organizational layout.

Chapter two discusses introduction, history and formation of First Bank Nigeria Holdings company plc, stakeholders on FBNHoldings plc, Corporate governance, legal framework for good corporate governance, mechanism for implementation of corporate governance principles and appointment characteristic of its directors in FBNHoldings Plc. In chapter Three, Introduction, duties of company Directors, relationship between the company and its' directors

Chapter four deals with introduction, governing structure FBNHoldings, operational responsibility of Directors in FBNHoldings Plc and fiduciary responsibilities of Directors in first Bank Nigeria Holdings company plc. Chapter five summaries the works and make findings with recommendations to the research

CHAPTER TWO

THE CONCEPT AND NATURE OF CORPORATE GOVERNANCE

2.1 Introduction

The Nigerian legal system is derived from English Law, by virtue of its colonisation. It includes common law, the doctrines of equity, statutes of general application in force in England since 1st January, 1900 and English law made before 1st October, 1960 and extending to Nigeria. Nigeria law has developed through legislation passed by the Nigerian legislature, application of customs and traditions into customary law as well as judicial precedents.¹ The Companies and Allied Matters Act Cap C20, Laws of the Federation of Nigeria 2004 CAMA now repeal with the new Act² is the principal legislation that regulates the affairs of companies in Nigeria, much has been said about corporate governance in chapter one under literature review.

The companies and Allied Matters Act has been the major law regulating corporate governance in Nigeria. It provides some mechanisms for corporate governance among which are appointment of directors by the company, removal of directors by ordinary resolution, duties and liabilities of directors, provisions for auditors and audit committee, mandatory involvement of shareholders in some corporate decisions, etc³

In the governances of companies, the Boards of Directors and Shareholders in general meeting play significant roles. The board of directors exercise management power in the company.⁴ While some corporate decisions cannot be taken without the resolution of members in General Meeting, the Article of Association determines the division of powers between the

¹ Asein J.O. (2005) *Introduction of Nigerian Legal System* 2nd Edition Abara Press p.3

² Companies and Allied Matters Act 2020

³ Anthony O. N (2020) *Comparative Company Law*, Malthouse Press lagos p 5

⁴ Section 87 (3) CAMA

board and general meeting and where the article vests powers in the board, the general meeting cannot prevent the exercise of such powers by the board of directors.⁵

In Nigerian corporate structure, there is quite a number of corporate governance provisions that every company is required to abide by. A company must among others comply with the provisions of the Companies and Allied Matters Act⁶ (CAMA) which is the principal law regulating the activities of companies in Nigeria, Investments and Securities Act⁷ (ISA), Central Bank of Nigeria Act⁸ (CBA)

Nigerian Deposit Insurance Corporation Act⁹ (NDIC.) Act, all these laws were designed for Nigeria's companies. The Code of Corporate Governance in Nigeria 2011 for public companies which was issued by Securities and Exchange Commission (SEC) applicable to all public companies Registered in Nigeria. Code of Corporate Governance for Banks in Nigeria Post-Consolidation 2006 (CBN 2006 Code) which was issued by Central Bank of Nigeria (CBN) and applicable to all banks operating in Nigeria, the Code of Corporate Governance for Licenses Pensions operators 2008, which was issued by National Pension Commission (NPC) and applicable to all Pension Fund Administrators and Pension Fund Custodians operating in Nigeria. Also Code of Good Corporate Governance for the insurance industry in Nigeria 2009 issued by National Insurance Commission (NAICOM) and applicable to all insurance and re-insurance companies operating in Nigeria and the provisions of Financial Reporting Council of Nigeria Act.(FRC Act)¹⁰ and also the code of corporate governance for telecommunication industry 2014 issued by the Nigerian Communications Commission (NCC). Some of these codes

⁵ Ibid (4)

⁶ CAMA Op cit.

⁷ Cap 124 Laws of Federation of Nigeria (LFN) 2004 as amended by Act No. 7 2007

⁸ Cap C4 Laws of Federation of Nigeria (LFN) 2004 as amended by Act No. 7 2007

⁹ Cap N102 Laws of Federation of Nigeria (LFN) 2004 as amended by Act No. 16 2006

¹⁰ Act No 6 of 2011

are repealed and later re-enacted among are Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014.

Therefore, corporate governance in Nigeria is generally concerned with the processes by which corporate entities, particularly public liability companies, are controlled, regulate and directed. The board of directors being elected by the shareholders should fairly represent the company within the framework of the relevant legislations, the memorandum and articles of association and the internal regulations and policies. In this regard, corporate governance cannot be separated from company law in general.

2.2 Historical Formation of First Bank Nigeria Holdings Company PLC

First Bank of Nigeria Holdings Company Plc, metamorphosis from different names before First Bank Nigeria Plc and finally Holdings (“FirstBank”), established in 1894¹¹, is the premier Bank in West Africa, Nigeria’s number one bank brand and the leading financial services solutions provider in Nigeria. The Bank was founded by Sir Alfred Jones, a shipping magnate from Liverpool, England. With its head office originally in Liverpool, the Bank commenced business on a modest scale in Lagos, Nigeria under the name, Bank of British West Africa (BBWA).¹²

In 1912, the Bank acquired its first competitor, the Bank of Nigeria (previously called Anglo-African Bank) which was established in 1899 by the Royal Niger Company. In 1957, the Bank changed its name from Bank of British West Africa (BBWA) to Bank of West Africa (BWA). In 1966, following its merger with Standard Bank, UK, The Bank adopted the name

¹¹Irokalibe G. I. J. (2007) *Law of Banking in Nigeria*, Malthouse Press Limited, Surulere Lagos p.1

¹² Ibid p.7

Standard Bank of West Africa Limited and in 1969 it was incorporated locally as the Standard Bank of Nigeria Limited in line with the Companies Decree of 1968.¹³

Changes in the name of the Bank also occurred in 1979 and 1991 to First Bank of Nigeria Limited and First Bank of Nigeria Plc, respectively. In 2012¹⁴, the Bank changed its name again to First Bank of Nigeria Limited as part of a restructuring resulting in FBNHoldings Company Plc (FBNHoldings) having detached its commercial business from other businesses in the First Bank Group, in compliance with new regulation by the Central Bank of Nigeria (CBN). FirstBank had 1.3 million shareholders globally, was quoted on The Nigerian Stock Exchange (NSE), where it was one of the most capitalized companies and also had an unlisted Global Depository Receipt (GDR) Programme, all of which were transferred to its Holding Company, FBNHoldings, in December 2012.

Building on of its solid foundation, the Bank has consistently broken new ground in the domestic financial sector for over a century and two decades. First Bank is present in the United Kingdom and France through its subsidiary¹⁵ these were major landmarks in its plan for growing its sub-Saharan African footprint and all the African subsidiaries now bear the FBN Bank brand¹⁶.

As the global operating environment evolves, First Bank has kept pace, responding to the dynamic needs of its customers, investors, regulators, host communities, employees and other

¹³ Ibid p 7

¹⁴ Ibid p 8

¹⁵FBN Bank (UK) Limited with branches in London and Paris; and in Beijing with its Representative Offices there. In October 2011, the Bank acquired a new subsidiary, Banque International de Credit (BIC), one of the leading banks in the Democratic Republic of Congo. In November 2013, FirstBank acquired ICB in The Gambia, Sierra-Leone, Ghana and Guinea, and in 2014, the Bank acquired ICB in Senegal.

¹⁶First Bank Nigeria Holding Annual Report 2013 p.12 Op Cit

stakeholders. Through a balanced approach to plan execution, First Bank has consolidated its industry leadership by maintaining trans-generational appeal. Thus, the Bank has continuously boosted its customer-base, which cuts across all segments in terms of size, structure and sectors. Leveraging experience spanning over a century of dependable services, First Bank has continued to build relationships and alliances with key sectors of the economy that have served as strategic building blocks for the wellbeing, growth and development of the country. With its huge asset base and expansive branch network, as well as continuous re-invention, First Bank is Nigeria's strongest banking franchise, maintaining market leadership on all fronts in the nation's financial services industry¹⁷

A best-fit corporate governance promoter, First Bank's corporate governance practice remains at the industry's leading-edge. This is especially evident in its laudable leadership transition processes, ensuring that there is seamless business continuity and stability in all aspects of the Bank's businesses. This corporate governance posture has won the Bank much respect and recognition both locally and internationally. The Bank's prime status has been reinforced with the award of the prestigious ISO/IEC 27001:2005 certification, the world's highest accreditation for information protection and security from the International Organization for Standardization (ISO). By this certification, First Bank distinguished itself as the first organization in Nigeria to achieve the ISO 27001, which is an affirmation that the Bank has adopted and complied with the highest known standards in information security globally. After three years of certification, the company has successfully implemented the recertification of ISO/IEC 27001:2005 in 2013¹⁸.

¹⁷ Premium Board (2017) FBNHoldings Plc Corporate Governance Annual Report Op.cit 1at p. 3

¹⁸ Ibid p. 3

In addition to this certification, First Bank Nigeria Holding Company Plc, again became the first organization to be awarded the BS25999 certification, the highest accreditation in Business Continuity Management received from the British Standard Institute. The certifications confirm the Bank's ability to safeguard its assets, staff well-being and customers' investments, and favorably respond to incidents and business disruption to ensure business continuity at all times¹⁹.

2.3 Corporate Governance Stakeholders on FBNHoldings PLC

The structure of corporate governance specifies the distribution of rights and responsibilities among different participants in the corporation, such as the board, managers, shareholders, and other stakeholders²⁰ other stakeholders of corporate governance include employers, suppliers and neighbouring communities. The Board enjoy independence from any external influence on the one hand while the shareholders who are loosely referred to as owner of the company must enjoy some form of rights.

The FBNHoldings Company Plc said for over a century , it have remained committed to delivering a diverse range of innovative products and services while creating opportunities that provide sustainable value over the long term. In line with this avowed commitment and focus to lead in the digital age, its leveraging cutting-edge technology to develop and deliver mutually beneficial innovative financial solution to its customers in an environmentally friendly and sustainable manner. Consequently, it re-organised its workforce, revamped its processes and

¹⁹ Ibid p 3

²⁰<http://on. Nigeria. Org// corporate governance>. Retrieved 1st August 2019 p. 10

currently overhauling upgrading and re-modelling its IT infrastructure as an enabler of its digital initiatives²¹

The Company went further to state its ability to reach the hitherto unbanked and under banked to seamlessly deliver tailor-made financial solutions, provide multiple financial access and inclusion, even at the height of the debilitating and rampaging COVID-19 pandemic, while embedding flexible working arrangements to improve overall employee experience and productivity, is a testament to the Group's current transformation. That confident of it on-gong improvements in its business, following continuous investments in innovation financial solution, resulting in improving financial metric despite the challenges, we continue to forge ahead with vigour and unwavering commitment towards a brighter future²².

All parties to corporate governance have a stake or interest whether it is direct or indirect in the effective performance of the organization. Directors, workers and management team receive salaries or benefits and reputation while shareholders receive capital return which may be in the form of dividend or bonus. A customer receives goods and services, suppliers receive compensation for their goods or services. In return, these individuals or stakeholders provide value in the form of natural, human, social and other forms of capital²³.

The FBNHoldings, stated its corporate governance is the bedrock of its ability to operate in the evolving business environment and deliver long-term sustainable value to all its

²¹ Premium Board listed FBN HoldiingsPlc Corporate Governance Report 2020 Op. Cit 1at p.1

²² Ibid p.1

²³ Ibid p. 10

stakeholders, especially during the uncertainty and instability from the protracted COVID-19 pandemic²⁴

In 2020, the Board Remained committed to ensure that the highest standards of corporate governance were applied throughout the Group recognising that good governance is critical for achieving its long-term strategy, promoting ethical and responsible decision-making and ensuring transparency and accountability to all shareholders. The corporate governance framework adapted is to suit market realities and emerging trends these include issues relating to changing workplace arrangements and people cyber security risks and the adoption of technology to drive the future of its businesses.

The Board of each operating entity is charged with the responsibility of translating the Group Vision into reality at various levels while ensuring compliance with industry specific statutory regulatory requirements. At the Holding company across its operating entities, the Board operate through various committees FBNHoldings governance framework ensures that there is a dynamic blend of Board autonomy and Group coordination at operating company level. The governance framework is in alignments with global best practices and in compliance with the requirement of the Central Bank of Nigeria. National Insurance Commission, Securities and Exchange Commission, the Nigerian Stock Exchange and Financial Reporting Council of Nigeria²⁵

The Company believe diversity produces the best result and enhances the ability to create superior value. Today, diversity within FBNHoldings is reflected not only in the gender mix,

²⁴<https://www.fbnholdings.com/wp-content/uploads/2021/04/FBN-Holdings-Plc-2020-Corporate-Governance-Report.pdf> retrieved on 31 July 2021

²⁵ Ibid p.2

which complies with CBN recommendations but also through the diversity of thought, experience, cultures, nationalities, social and academic backgrounds across the Group and through inclusive policies that prevent all forms of discrimination. FBNHoldings create a robust policy and procedures that create an enabling environment that fosters a culture of equal opportunity, diversity fairness respect and inclusion of all stakeholders²⁶.

2.4 Legal Framework for Good Corporate Governance

How a company is governed would be guided strategy by its memorandum and articles of association, existing corporate and securities laws. Capital market forces and regulatory authorities activism²⁷ it is in this regard that countries across the Globe have been formulating codes of corporate governance which aims to enhance separation of the office of Chairman and Chief Executive Officers and encouraging independent audit committees. Accordingly, the Director General Securities and Exchange Commission (SEC) explained that

Although the main aim of the code is the board of directors as leaders of corporate organizations. The responsibilities of other stakeholders including shareholders and professional bodies were equally given due attention. We believe that one of the way to improve the standard of corporate governance is to ensure that all stakeholders have a clear understanding of their roles. This is aptly provided by this code.

The stakeholders or persons that make up the structure of corporate governance are specifies, the distribution of rights and responsibilities among different participants in the corporation, such as the board, managers, shareholders, and other stakeholders of corporate governance, employers, suppliers and neighbouring communities all have role to play for the development of the company. FBNHoldings corporate governance is build on the following premise.

²⁶ Ibid p.2

²⁷ Ibid p. 11

1. Composition of Directors, and its engagement with the workforce
2. Independent and health Corporate Governance
3. Multiple Directors ensure diversity
4. Board of directors and committees, assured independence.
5. Boards' accountability criteria transparent and within best-practice
6. Mandatory and self-regulatory requirements of the provisions of the codes²⁸

In FBNHoldings 2017-2019, the Board composed of 10 Directors: seven Non-Executive Directors, two Independent Non-Executive Directors and one Executive Director, who is also the Group Managing Director (GMD). This composition is in alignment with best international practices, which encourages a higher percentage of Non-Executive Directors to Executives. With 90% of the Board's composition independent of the Company's Management, the FBNHoldings' Board is structured to be significantly independent and devoid of executive influence in decision-making. Ultimately, the Board is well-structured to ensure that the interests of stakeholders are protected and shareholder value is enhanced²⁹.

A change to Board Composition, The FBNHoldings Board is a considered blend of diversity, experience and knowledge. The Board continuously seeks to review and refresh its composition to ensure that new ideas and experience are added to its decision-making processes. Since the last Annual General Meeting of FBNHoldings, there have been no changes to the Board's composition. Board Induction, due to the foregoing, there has been no necessity to have an induction programme during the 2017 financial year. With the sacking of the above Board the composition of the new Board charge to 12 Directors.

²⁸ Ibid p.4

²⁹ Ibid p. 19

Based on the Code and the FBNHoldings 2020 Corporate Governance Report the basic corporate governance framework organizations are designed in the above six ways has earlier mentioned above. For more emphasis and study the above points are discussed.

2.4.1 Composition of Directors and its Engagement with the Workforce

The first approach is to appoint the right people individuals who have displayed excellent business knowledge and Board experience. Elective observance of Codes of Corporate Governance (Codes) must be complemented by an ethical Board. It is essential that Board members are persons of integrity, willing to comply with the letters and spirit of the Codes as well monitor the harnessing of available resources. With the understanding to ensure that the current composition of the Board is the best mix of competence and experience required for to enhance shareholders value.³⁰ From this position, couple with the composition discussed above is correct to say that FBNHoldings is in corporate compliance of Board appointments and composition.

Also, base on the London office report Baker Mackenzie says, “Boards must ensure effective engagement with, and encourage participation to all shareholders and stakeholders. On the basis that no single individual is left unattended by so doing three methods are used for gathering the views of the workforce, stating that this would normally be done by: (a) appointing a director from the workforce (b) establishing a formal workforce advisory panel or (c) designating a NED to do this. However, the revised “Guidance on Board Effectiveness” (the Guidance) makes it clear that this is not prescriptive and boards may opt for innovative

³⁰ Ibid p. 19

alternatives (including adopting a combination of methods, or multiple channels for engagement at different levels) if they believe they would be as, or more, effective.³¹

The Board and management of the FBNHoldings are committed to stakeholder engagement and connect through shareholder group and other platforms. Engagement sessions continue to provide valuable opportunities for the Board and Management to listen to external perspectives and gain insight into shareholders concern by so doing is engaging regulators to foster an atmosphere of trust and cordiality among the workforce and the stakeholders at large³². The reason for this is for effectiveness in productivity which is cardinal in corporate performance.

2.4.2 Independent and Health Corporate Governance

In FBNHoldings the Board engaged the services of an independent consultant Messers Pricewaterhouse Cooper (PwC) to conduct an appraisal of the Board of Directors and evaluation of corporate governance practices for the year ended 31st December 2020³³ this appraisal covered the Board's Structure, composition, processes, relationships, competencies roles and responsibilities. While the Corporate Governance evaluation covered the Governance structure and practices. The finding reveals compliance with corporate governance principles, with key provision of the Code of Corporate Governance of the Central Bank of Nigeria, Financial Reporting Council and guidelines for Securities Exchange Council of Nigeria. Specific

³¹Lakshna R. (2021) New UK Corporate Governance Code Principles. Diligent Corporation.p.3

³² Premium Board listed FBN Holdings Plc Op. Cit p.1 at 27

³³ Ibid p. 20

recommendations for further improvement of the governance practices were also articulated and included in a detailed report to the Board³⁴

A healthy culture ensures that the systems, procedures, and overall functioning and mutual support of an organization work effectively together, the report continues. In particular, new Principles requiring a company's purpose, strategy and values to be aligned with its culture and the workforce to be able to raise concerns in relation to management and colleagues where they consider that conduct is not consistent with the company's value and responsibilities, the directors are requiring to embody and promote the desired culture of the company including whistle blowers policy³⁵.

Corporate governance is a system that aims to in still policies and rules that helps maintain the cohesiveness of an organization. It exists to help hold a company accountable, while helping them steer clear of financial, legal, and ethical pitfalls. The importance of corporate governance is made abundantly clear by the direct benefits seen when a good corporate governance framework is in place.

FBNHoldings Company Plc. Nigeria's leading financial holdings company, has in 2020 announced the appointments of Mr. Seni Adetu and Mrs. Juliet Anammah as Independent Non-Executive directors, while Mr. Otu Hughes has been appointed as a Non-Executive director. These appointments are later approved by the Central Bank of Nigeria (CBN) Speaking on the appointments, the Group Chairman of FBNHoldings Plc, Dr. Oba Otudeko, CFR, said, "On behalf of the board, management and staff of FBNHoldings, He is delighted to welcome the trio of Seni Adetu, Mrs. Juliet Anammah and Otu Hughes to the FBNHoldings board as they bring to

³⁴ Ibid p. 20

³⁵ Lakshna R Op. Cit 36 at 32

the board their combined professional experience and expertise of over 97 years, cutting across various industries and institutions of global repute³⁶ That is to say the company goes for the best brain and experience as stated by the Chairman.

2.4.3 Multiple Directors ensure Diversity

Base on the report by Oxford Law Faculty concludes, the revised Code takes into account the recommendations of the recent diversity reviews. It aims to ensure that appointment and succession planning practices are designed to promote diversity of gender, social and ethnic backgrounds. Proposals also encourage the building of diversity in the executive pipeline, with oversight from the nomination committee and enhanced reporting from that committee on actions taken. The FRC also proposes that listed companies should disclose in their Annual Reports the gender balance of those in senior management (i.e., in the first layer of management below the board) and their direct reports.

The Company believe diversity produces the best result and enhances the ability to create superior value. Today, diversity within FBNHoldings is reflected not only in the gender mix, which complies with CBN recommendations but also through the diversity of thought, experience, cultures, nationalities, social and academic backgrounds across the Group and through inclusive policies that prevent all forms of discrimination. FBNHoldings create a robust police and procedures that create an enabling environment that fosters a culture of equal opportunity, diversity fairness respect and inclusion of all stakeholders³⁷

³⁶ Premium Board listed FBN Holdings Plc Op. Cit 1 at 5

³⁷ Ibid p. 2

2.4.4 Board of Directors and Committees, assured Independence

The Board principal responsibility is to promote the long-term success of the Group by creating and delivering sustainable shareholder value. The Board leads and provides firection by setting policy and strategy directions as well as overseeing their implementation. The Board is also responsible for ensuring that Executive systems of internal controls and risk management are maintained across the Group, determining and promoting the collective vision of the Group's purpose, value and culture.³⁸

As the Faculty report points out, the revised Code in UK gives greater focus to the importance of non-executive director independence with proposals to strengthen the independence provisions in the organisation's corporate governance framework. These, in the past, have been rated lowest in terms of compliance. Specifically, a proposed change of emphasis means that a non-executive director will not be considered to be independent where the director does not meet the specific criteria laid down for independence. (As always, companies have the option to explain non-compliance.) The revised Code also proposes clarifying the role of the chairman as an independent director at all times (not just on appointment), and allowing the chair to be counted for the purpose of meeting committee composition recommendations.

In FBNHoldings Company Plc, some of its committees are Board Finance and Investment Committee, Statutory Audit Committee, Group Executive Committee and Management Committee, both with its membership and assigned specific statutory responsibilities, for the good and health management of the company administration. Some of these Board and their Functions will better discuss under mechanism of corporate governance control.

³⁸ Premium Board listed FBN Holdings Plc Op. Cit 1 at20

2.4.5 Boards Accountability Criteria, Transparent and within Best- Practice Standards

Report from the London-based CMS law firm explains that remuneration committees should now consider wider employee pay, not just those of executive directors and senior management. Wider employee pay is to be considered not just to judge any disparity between the executive and all-employee pay scene, but for general supervision too in terms of adequacy and other factors. This will be a major change for many remuneration committees, who have traditionally focused and been advised only on executive pay has in First Bank Nigeria Holdings Company Plc.

Shares from long-term incentives may not be sold within five years of award. Again, this was another recommendation from the Government's corporate governance consultation. The proposed wording says that this should apply "in normal circumstances ...,"³⁹ which presumably still allows earlier receipt in good leaver and change of control situations, and shares to be sold to meet exercise price and tax commitments. Market practice has been moving in this direction anyway, according to the report.

2.4.6 Mandatory and Self-Regulatory Requirements of the Provisions of the Codes

Remuneration committees should have discretion to override formulaic outcomes, the report continues. Remuneration committees should not be tied by the mathematical result of conditions set at award and should always have the discretion to change (by which is presumably meant reduce) vesting levels. But greater explanation is required. Following the general trend, much greater disclosure of how decisions have been met is required. Clarity, transparency and alignment should be demonstrated, as well as a description of the remuneration committee's work within the year.

³⁹Lakshna R. (2021) Op. cit 36 at 7

Under the new Code, there is also more emphasis on a company explaining to its shareholders how it has applied the framework principles – for example, why the board has implemented certain structures, policies and practices. The framework principles should then be linked to the company’s strategy and business model, and related to outcomes achieved. Companies should then state the extent to which they have complied with the provisions, and explain any non-compliance, taking into account their own particular circumstances, the report says.

Board directors are obligated to perform a host of varied duties and responsibilities. Diligent developed a suite of governance tools to help them fulfil their responsibilities accurately and efficiently. The Governance Cloud ecosystem of products includes: Diligent Boards, Board Evaluations, Diligent Messenger, Diligent Minutes and Entity Management

As board directors, leadership teams and general counsels continue to express their needs to digitize governance processes, Diligent will be the partner to grow with them. Collectively, these tools enable corporations to achieve a fully digitized and integrated governance ecosystem to mitigate risk, plan for strategic growth and, ultimately, govern at the highest level. Best Practices, Governance, Issues & Trends, and Risk & Compliance⁴⁰

2.5 Mechanism for Implementing Good Corporate Governance Principles

In order to retain shareholders confidence through institutionalized the principles of good corporate governance, the management of companies and government institutions saddled with the responsibilities of monitoring the capital market, is to ensure that certain mechanisms are put in place and the principles of good corporate governance are implemented by companies⁴¹. Well

⁴⁰ Ibid p.56

⁴¹ Junaidu B. (2015)*Corporate Governance in Nigeria*. Marshall Mathouse Press Nigeria p.7

defined corporate governance principles will go a long way in helping an organization to provide its stakeholders a superior assurance in the quality of governance. It must be noted however, that where the principles of good corporate governance are effectively implemented, the company will be able to create a robust platform for maximizing the potentials and returns for both the institution and the shareholder.

Corporate governance mechanisms and controls are designed to reduce the inefficiencies that arise from hazards and moral selection. For example, to monitor a manager's behaviour, an independent third party (the auditor) attests to the accuracy of information provided by the management to investors, an ideal control system should regulate both the motivation and ability.⁴² The mechanism for implementing corporate governance are shareholders meetings which have supervisory and advisory functions over the board of directors, preparation of the financial statement by the board of directors, and a policy of commitment to ethical and professional conduct by the board and management, then external control mechanism on the other hand include external. Auditors certification of financial accounts prepared by companies, different Returns expected to be sent to regulatory agencies like the Corporate Affairs Commission (CAC) which registers all incorporated companies. The Securities and Exchange Commission (SEC) which registers all shares of quoted companies.

2.5. I Internal Control

The shareholders acting collectively in a general meeting may exact some form of control or influence over the board, shareholders can use the general meeting to exercise or express their collective will as a corporate body. The law⁴³ provides that members may meet to advise or carry on other businesses of the company which may be ordinary or special business. It is in these

⁴²<http://en Nigeria Org//corporate %5of governance> Retrieved on 19 Nov., 2012.

⁴³ Section 237 CAMA

meetings that the shareholders get the avenue to express their opinions about the way the company is run and make suggestions about how the company's operations can be improved.⁴⁴

Basically, Annual General Meeting (AGM) receives and approves the annual report of the company containing the balance sheet, profit and loss account, the director's report and the auditor's report,⁴⁵ one of the businesses of the (AGM) is appointment of members of the audit committee.⁴⁶ The audit committee shall be composed of an equal number of directors and representatives of the shareholders of the company subject to a maximum of six members.⁴⁷ The board of the directors who are saddled with the responsibilities of managing the affairs of the company may provide the company with strategies plan aimed at providing leadership and corporate culture in the company. Employees of the company usually undergo an induction programme where they are introduced to the strategic goals, vision of mission of the company. The employees are then expected to conduct themselves within the strategic policy of the company towards maximizing the potentials of the company.

The Board and Management of FBNHoldings actively encourage embracing the Group values of integrity dependability and transparency. The Group has a robust whistle blowing procedure that encourages reporting of financial and ethical improprieties through dedicated and confidential channels and all other stakeholders are obliged to report unlawful, irregular or unethical conduct observed⁴⁸ this mechanism is both internal and External depending on complainant.

⁴⁴ Section 87 (5)(c) (d) CAMA

⁴⁵ Section 238 (CAMA)

⁴⁶ Section 408(1) (CAMA)

⁴⁷ Section 404 (CAMA)

⁴⁸ Premium Board listed FBN Holdings Plc Op. Cit 1 at 41

On the basis of our review, except as noted below, the Company's corporate governance practices are largely in compliance with the key provisions of the CBN and SEC Codes. Specific recommendations for further improving the Company's governance practices have been articulated and included in our detailed report to the Board. The key areas identified include enhancement of the Company's related party process.

The Companies and Allied Matters Act 2020 (CAMA) states several basic rights of shareholders. These rights include, but are not limited to, the following; every shareholder shall have the right to attend any general meeting of the Company in accordance with the provisions of Section 107 of CAMA. A shareholder has the right to query a company for not receiving notice to attend any general meeting, irrespective of the number of shares the person has in the Company. Shareholders have the right to speak and vote on any resolution before the meeting, in accordance with the provision of Section 107 of CAMA. Shareholders have the right to vote in person or in absentia, and equal effect shall be given to votes cast in person or in absentia. Shareholders should be given sufficient and timely information concerning the date, location and agenda of the general meetings, as well as full and timely information regarding the issues to be decided at the meeting⁴⁹.

Shareholders shall be given the opportunity to ask the Board questions and to place items on the agenda at the general meeting, subject to reasonable limitations. Reports indicated that shareholders' rights are respected and upheld at FBNHoldings Group. For shareholder enquiries,⁵⁰

⁴⁹ Ibid P.41

⁵⁰ Premium Board listed FBN Holdings Plc Op. Cit 1 at 27

The Statutory Audit Committee (SAC) is one of internal control mechanism its oversees the Group's operations on behalf of shareholders. In this age of increasing transparency, shareholders' perceptions, expectations and Understanding of the Group's operations and performance are important to the business. The SAC's duties are therefore to, Ensure that the Group's accounting and reporting policies comply with legal requirements and agreed ethical practices, Review the scope and planning of audit requirements, Review the findings on Management matters in conjunction with the external auditor Keep the effectiveness of the Company's system of accounting and internal controls under review Make recommendations to the Board regarding the appointment, removal and remuneration of external auditors to the Company Authorize the internal auditor to carry out investigations into any activities, Hold the Board accountable for the observance of effective corporate governance practices, an Approve the appointment of members of the Board of Directors and the external auditors, as well as granting approval for certain corporate actions, such as approval of dividend payments⁵¹.

Events at the Annual General Meeting FBNHoldings held for its 8th Annual General Meeting on Monday, 27 April 2020 at 10.00am at the Oriental Hotel, Victoria Island, Lagos, Nigeria. The Notice of AGM is typically sent out at least 21 days before the AGM and published in two national daily newspapers. Documents for consideration at the meeting are sent to the shareholders' addresses through surface registered mail and disseminated electronically. All businesses transacted at the AGM are deemed special businesses, except for specific businesses which are stipulated as ordinary businesses under the Companies and Allied Matters Act. These include: receiving the consolidated Annual Report and Accounts, declaring a dividend, re-

⁵¹ Premium Board listed FBN Holdings Plc Op. Cit 1 at 41

election of Directors, appointment and fixing of the remuneration, and discuss related matters of concern with regards to the Company, Board of Directors and Management⁵².

2.5.2 External Control

The use of external auditors to examine the books of the company is a way of exercising, monitoring and control over management. The law⁵³ requires that all companies must appoint a qualified person as external auditors who must make a report to all members of the company on all account they examined. The whole essence of external auditors is to ensure that the board of directors has no overbearing influence over the auditors. The board should ensure that an objective and professional relationship is maintained with the auditors.

The auditors should not be involved in business relationships with the company.⁵⁴ The organization should clarify and make publicly known the roles and responsibilities of board and management to provide shareholders with a level of accountability. They should also implement procedures to independently verify and safeguard the integrity of the company's financial reporting. Disclosure of material matters concerning the organization should be timely and balanced to ensure that all investors have access to clear and factual information.⁵⁵ The auditors are to be independent of the company particularly the board of directors. The Auditors must maintain a high degree of integrity, commitment and honesty in the performance of the audit function. It must be noted, that for a person to qualify as an auditor he must be a member of the institute of accountants in Nigeria established by an Act.

⁵² Ibid p.41

⁵³ Section 357 (1) CAMA

⁵⁴ Code for International Best Practice.

⁵⁵ [http://en.nigian.Org/corporate %5fgovernance](http://en.nigian.Org/corporate%5fgovernance) Retrieved on 19 Nov., 2015.

It must be noted that in FBNHoldings the following persons in complying with the law have been disqualified for appointment as auditors of a company, an officer or servant of the company, a person who is a partner of or in the employment of an officer or servant of the company⁵⁶ a person or a firm who or which offers to the company professional advice in a consultancy capacity in respect of secretarial, taxation of financial management or a body corporate. The provision noted above has been described as very salutary. That makes it a good principle for FBNHoldings application

2.6 Appointment and Characteristic of Directors of FBNHoldings Plc

Appointment as a director of a company has certain implications. Every company must have at least 2 directors. Appointment of directors is by ordinary resolution. But a special notice is required, where a 70 year old person is to be appointed a director, where a retiring director is to be re-appointed as a director, where a director is appointed to fill a casual vacancy, where a life director is to be appointed.

In FBNHoldings Plc Non-Executive Directors are appointed for an initial term of four years and can be re-elected for a maximum of two subsequent terms of four years each, subject to satisfactory performance and approval of the members. Executive Directors are appointed for an initial term of three years and their tenure can be renewed for another three years, subject to a satisfactory annual performance evaluation. Hence, the maximum tenure of an Executive Director is six years. The Board may grant a waiver of the tenure limit in the case of an Executive Director whose performance is deemed exceptional⁵⁷. This will, however, require formal justification and unanimous approval of the Board. Executive Directors are discouraged

⁵⁶ Section 357 (1) CAMA

⁵⁷ Premium Board Op.cit 1 at 19

from holding directorships external to any Group. Must often seek Independent Professional advice⁵⁸ the above provisions are subject to the powers of regulatory bodies⁵⁹.

The Board has the power to obtain advice and assistance from, and to retain at the Group's expense and subject to the prior approval of the Chairman, such independent or external professional advisers and experts as it deems necessary or appropriate to aid the Board's effectiveness. This option was exercised at different times within the 2017 financial year. In FBNHoldings A director to be appointed is to be nominated by a fellow director. A retiring director may however nominate himself. A member can also nominate a director if he gives an ordinary notice.

FBN Holdings first Directors are appointed by the Memorandum of Association of the company, By naming the first directors in the Article of Association of the company and subsequent Director by ordinary resolution of the members at a general meeting, By members at the Annual General Meeting re-electing another director in the case of death of a director for the tenure of the deceased director, By Board of Directors, in the event of a casual vacancy arising out of death, re-assignment, retirement or removal of a director pending the next Annual General Meeting, and Appointment by a third party pursuant to powers conferred in the company's Memorandum of Association.

It is inferable from the above highlights that appointment of directors depends on the time and circumstance of their appointment. For instance, Appointment of First Directors of the

⁵⁸ Ibid p 13

⁵⁹The CEOs of two commercial banks were removed by the CBN in 2009 in scandals of looting hundreds of billions of the investors money despite the presence of 2006 CBN code. Subsequently, other three CEOs were removed from office for staying longer than necessary in the office.

company is by the subscribers to the company's memorandum at the point of incorporation of the company. Usually, it is either stated in writing by the subscribers of the memorandum of association or a majority of them, otherwise the first directors may be named in the company's Articles of Association, section 247 of the CAMA.

Much often corporate failure doesn't happen overnight and there are several warning signs which a firm must take note of in order to avoid such failures. Some of the governance issues faced by the firms which eventually lead to corporate governance failures are⁶⁰ Ineffective governance mechanisms, for example, lack of board committees or committees consisting of few or a single member. Non-independent board and audit committee members, for example where a CEO fulfilled multiple roles in various committees, Management, who deliberately undermines the role of the various governance structures by circumventing the internal controls and making misrepresentations to auditors and the Board⁶¹.

In the final analysis FBNHoldings Company is a great company operating well in Nigeria with structural and operational framework governed by Directors with internal and external control in the next chapter (Chapter Three) we will be studying Directors as to their compositions, functions, responsibilities and liabilities.

⁶⁰Choudhary Slahudin, 'OECD Principles and the Islamic Perspective on Corporate Governance' (2008) in Junaidu B. M. (2016)Corporate Governance in Nigeria, Current Practices and merging Trends Osofar Press Ibadan p 14

⁶¹Lakshna R. (2021) New UK Corporate Governance Code Principles Op. Cit 36 at 7

CHAPTER THREE

GENERAL DUTIES OF COMPANY DIRECTORS

3.1 Introduction

The director is in contemporary practice, a very important office and an indispensable organ of the company, whose role and status transcends the boundaries of the mere management of the business of the company. The directors together form the board which is the principal organ of the company entrusted with the powers of management of the company, and through which the individual directors derive their powers and authority. It must be noted, however, that the word director as defined by the Companies and Allied Matters Act¹ provides that a director is a person appointed by the company to direct and manage the business of the company. The duties company directors owe under the Companies and Allied Matters Act 2020² are anchored in English law, specifically principles of common law and equity³. As the Nigerian corporate legal system is fairly young, there are relatively few local decisions supporting the provisions in the CAMA. Indeed, Nigerian courts more often rely on English decisions to arrive at their own conclusions.

Directors being persons in charge of the management of the company, their duties to the company are in arguably non-exhaustive. This fact springs from the idea of their being the —minds and limbs of the corporation. This therefore means that they are constantly called upon to perform one action or the other in the name of the company. Thus, while they are required to

¹ Section 269 CAMA 2020

² *ibid*

³ In particular, the duties of care and skill are an aspect of the tort of negligence while the fiduciary duties sprung from equity. See Wild, C. and Weinstein, S. (2009). *Smith & Keenan's Company Law*. 14th edition, Pearson Education Limited, England, p. 334

go about their job displaying reasonable care and skill and also uphold their loyalty and good faith to the business, they are also obligated, given the relevant circumstances, to appoint the secretary,⁴ prepare and present the financial statement⁵, make the declaration of solvency⁶, initiate suits in the name, and on behalf, of the company⁷ and give certain notices to the company⁸. Note all these provisions are previously contained in the 1990 Act and same retains without any amendment to provisions in the new Act.

The board of directors as a primary organ of the company acts for and on behalf of the company and binds the company in its transactions with third parties under the general principles of agency⁹. In other words, the directors act as agents of the company. The term “Director” is a noun which is derived from the adjective word ‘direct’. The meaning of ‘direct’ include; to control or be in charge of something; show the way; and give order¹⁰.

FBN Holdings Board is a considered blend of diversity, experience and knowledge. The Board continuously seeks to review and refresh its composition to ensure that new ideas and experience are added to its decision-making processes. Since 2018 Annual General Meeting of FBN Holdings to 2020, there have been changes to the Board’s composition. The Board remains composed of 10 Directors: seven Non-Executive Directors, two Independent Non-Executive Directors and one Executive Director, who is also the Group Managing Director (GMD).¹¹ This composition was said to be in alignment with international best practices, which encourages a

⁴ Section 295 and 296 CAMA

⁵ Ibid 333 and 345

⁶ Ibid 87 (3)

⁷ Ibid 87 (3) and 5 (b)

⁸ Ibid 87 (2)

⁹ Edward, O. E. Esq. “A Critical Overview of the Fiduciary Duties of Directors in the Management of a Company” in *the Pith of Legal Erudition from the Bar. Bench and Academia* 2007. The Development Service Yobe State, Nigeria p. 142.

¹⁰ Hornby, A.S Oxford Advance learners Dictionary of Current English 7th Edition (Oxford University Press London) p 400

¹¹ FBN Holding Plc. Op. Cit 1 at 4

higher percentage of Non-Executive Directors to Executives. With 90% of the Board's composition independent of the Company's Management, the FBNHoldings' Board is structured to be significantly independent and devoid of executive influence in decision-making. Ultimately, the Board is well-structured to ensure that the interests of stakeholders are protected and shareholder value is enhanced¹² despite the Board performance it was sacked 2020, with 2020 FBNHoldings Corporate Governance Report¹³ there was little bit changes in the persons of the Directors which automatically affect the composition of the Board to bring the numbers of Directors to twelve 12. 2 more Directors are added, one as Independent and the other as Non Executive director.

All this is about good corporate governance, to this extent it is important to say that FBNHoldings is in right track but how this translates to productive is another issues to be discuss in due course. Directors are recognized as the chief executives and managers of the company. The directors have the complete control of the company, subject of course to the ultimate authority of the shareholders in a general meeting. Since the powers of the company can only be exercised or discharged by the organs, agents, officers, it became necessary to assign these functions to the company and its management to the various organs, agents and officers.¹⁴ Corporate organs responsible for decision making of the company are primarily two i.e. the board of directors and the members of the company in a general meeting. The directors are entrusted with the powers to manage the business of the company on behalf of the investors or shareholders. The directors as a board, decisions are normally taken by simple majority or as provided by the articles.

¹² Ibid p. 4

¹³ Premium Board listed FBN Holdings Plc Op. Cit 1 at 7

¹⁴ Asomugbe, E.M. *The Division and Exercise of Powers between the Corporate organs* p. 10

FBNHoldings plc at the beginning of my work 2017-2019 has the following persons as Directors 'Debola Osibogun, UK Eke, MFR ; Dr Oba Otudeko, CFR ; Dr Adesola Adeduntan, Oluwande Muoyo, Cecilia Akintomide, OON, Dr Hamza Wuro Bokki, Omatseyin Ayida, Chidi Anya, Seye Kosoko, Oye Hassan-Odukale, MFR.¹⁵

On 29th April, 2020 there was shakeup in the leadership of FBNHoldings Company Plc. Where the Governor of the Central Bank of Nigeria, Godwin Emefiele has announced the sack of the entire board of directors of FBNHoldings Plc and its subsidiary First Bank of Nigeria Ltd¹⁶ Godwin Emefiele cited insider abuse, insider credit and breakdown of corporate governance as the reason behind the sacking of the Board. The Nigeria's Senior Bank Manager, The CBN governor further announced the reinstatement of Dr Sola Adeduntan as the Managing Director of the interim Board after he was removed by the then sacked board of First Bank Holdings Company Plc.

Subsequently, the Board was replaced with the following new members as announced by the CBN for FBNHoldings Plc they are: Remi Babalola – Chairman, Dr Fatade Abiodun Oluwole, Kofo Dosekun, Remi Lasaki, Dr Alimi Abdulrasaq, Alhaji Ahmed Modibbo, Alhaji Khalifa Imam and Sir. Peter Aliogo¹⁷ This is a team of formidable men and women working to achieve, the Vision, to become the leading financial services group in Middle Africa, providing value to its stakeholders and the mission. to provide the best financial services possible. And its Goals to be the undisputed leader in every business it chooses to participate in, delivering superior returns to its shareholders. And finally its Core values Passion, Partnership and People underpin everything it does and apply to everyone across the Group, through good corporate governance.

¹⁵ FBN Holding Plc. Op.Cit 1 at. 10

¹⁶This announcement was made via NTA television broadcast in the early evening of Thursday, April 29, 2020

¹⁷<https://www.proshareng.com/news/People/CBN-Removes-Boards-of-First-Bank-of-Nigeria--FBN-Holdings--Appoints-New-Boards-Chairmen/57044>retrieved 4th August, 2021

3.2 Duties of Company Director

Considering good corporate governance visa viz, corporate existence of FBNH i.e., Its Vision, to become the leading financial services group in Middle Africa, providing value to its stakeholders. Its mission, to provide the best financial services possible. And its Goals to be the undisputed leader in every business it choose to participate in, delivering superior returns to its shareholders. And final its Core values Passion, Partnership and People underpin in everything it do and apply to everyone across the Group. This key statement shall be the basis, parameter or barometer of the study that at the end of the day how the objectives of the company are achieved.

Directors occupy important and strategies position in the management of a company, a position of trust and confidence in relation to the company.¹⁸ The director is therefore to act in good faith and with due diligent in discharging its corporate responsibilities. The board of directors often plays a keys role in corporate governance, it is their responsibility to endorse the organizations strategy, develop directional policy, appoint, supervise and remunerate senior executives. Importantly also, the board is to ensure accountability (a key element in good corporate governance) of the organization to its owners. The duties of directors including the following:¹⁹ The directors are obligated and bound to act with every reasonable degree of diligence, care, skill and judgement in their transactions for an on behalf of the company. A director needs not exhibit in the performance of his duties a greater degree of skills than is to be reasonably expected of a person of his knowledge and experience.

The rule laid down above largely remained subjective as the skill expected from a director will be tied to his knowledge and ability. This reasoning falls short of contemporary

¹⁸ (CAMA) Section 64

¹⁹Edward, O. E. Esq Op. Cit at. 142

principles of best practices in corporate governance and should be taken with caution. It should be noted however, that section 282 (1)²⁰ provides every director shall exercise that degree of care and diligence and skill which a reasonably prudent director would exercise in comparable circumstances has In *Dorchester Finance Co. V Stebbing*²¹ This is the position of FBNH. It should be noted also that Rommer J. also lay down that a director is not bound to give continues attention to the affairs of the company in other words, a director is not bound to attend every meeting of the company. See In *RE-Cardiff Savings Bank (MARQUIS OF BUTE'S CASE)*²²

In practice today, the articles of association usually provides for a minimum number of board meeting a director must attend in a financial year. Where a director acted negligently or maliciously, in the conduct of the affairs of the company, such director shall be held liable (personally) for any loss caused the company. The essence is to protect the interest of stakeholders in the company particularly shareholders. The duties or functions can be summaries as fellow the management of a company is the responsibility of Directors therefore their duties, to the company, are non-exhaustive. The Directors can be called upon at any time to represent the company and at such time, they are expected to reflect the duties required of them. The statutory duties of Directors are enumerated under CAMA. Section 305-309 of the new Act.

The general rule is that a company director shall not in the course of the management or in the utilization of the company's property, make any secret profit or achieve any unnecessary benefit. Secret profits include any financial or other advantage, which the Directors received that is above his proper remuneration and is not sanctioned by the beneficiary. Gift of money or collection of bribe also falls within the class of secret profit. In *Diab Nasr V. Berini Beirut-Ryad*

²⁰CAMA

²¹(1925) ch. 407

²²1902) 2 ch 407

*(Nig) Bank Ltd*²³ the plaintiff claimed that he was the owner of two plots of land in Lagos and had entrusted the original deed of title to the respondent bank for safe keeping. This action was for delivery of the original deed of lease. The bank counter claimed for \$40,719:19:4d as money paid to a contract or at instance of the plaintiff for the purpose of erecting flats on the plaintiff's land. The bank claimed that the plaintiff, who was one of its directors and deputy chairman of its board, has authorized its manager to cause it to finance the construction, payment was made by plaintiff to another person circumvent law, the supreme Court affirming the trial court's judgment held the plaintiff had unjustly enriched himself as the expense of the bank and was liable to restitution.

In FBNHoldings the following are some of the fiduciary duties a company owes its directors while acting in such capacity;

- i. The company is a separate legal entity from its directors, shareholders and employees. The best interests of the company are not always the same as the best interests of the shareholders. For example, it might be in the interests of the shareholders of the company to declare a large dividend. But if the company faced a cash shortage this would conflict with the interests of the company. A director must also consider the interests of other stakeholders such as creditors and employees in compliance with section 303²⁴ no Director had direct or indirect interests of contract or proposed contract
- ii. A director must give equal consideration to all shareholders. Even if a director holds most of the shares, or act as the nominee of the major shareholders, a director must consider the interests of shareholders as a whole. In practice, it is very difficult for minority shareholders to have a significant say in decisions made by holders of the majority of the

²³(1967)NCLR 414,(1968)1 ALL NLR 274

²⁴ CAMA cited in Premium Board listed FBN Holdings Plc Op. Cit 1 at 20

shares.²⁵ This position is now been taking care by the new Act²⁶ where the right of minority shareholders are protected on Chapter 13 against illegal and oppressive conduct.

- iii. A director must not use his position to make personal profits at the company's expense. If a director is found to have secretly profited from a contract he won because he is a director of the company, he might be forced to hand it over to the company.
- iv. A director is legally obliged to declare any potential conflict of interest. For example, if a director has interests in another company with which his company is planning to do business. A director should not vote on such a deal, and if he does, his vote should be disregarded.
- v. If a director personally plans to enter into substantial deals with the company, they must be approved by the shareholders in a general meeting. For example, if a director wants to sell property to or buy property from the company²⁷ according to register of Members as at 30 December 2020 there is no shareholder with upto 5% of the shares of FBNHoldings

A director must declare any dealings in the shares, within five days. This obligation extends to shares held by his spouse and any children under 18. The standard of care and diligence is set out by the law which provides that every director of a company shall exercise the powers and discharge the duties of his office honestly, in good faith and in the best interest of the company, and shall exercise these qualities which a reasonably prudent director would exercise in comparable circumstances. If he fails to observe them, he may be liable for negligence and breach of duty. The same standard of care is required for all directors unless there is justification for exception.

²⁵ Ibid p .20

²⁶ Section 344-352 Companies and Allied Matters Act 2020

²⁷ Ibid p. 50

3.3 Relationship between the Company and its Directors

Directors occupy important and strategic position in the management of a company, a position of trust and confidence in relation to the company.²⁸ The director is therefore to act in good faith and with due diligence in discharging its corporate responsibilities. The board of directors often plays a key role in corporate governance, it is their responsibility to endorse the organization's strategy, develop directional policy, appoint, supervise and remunerate senior executives. Importantly also, the board is to ensure accountability (a key element in good corporate governance) of the organization to its owners. The duties of directors including the following:²⁹

The directors are obligated and bound to act with every reasonable degree of diligence, care, skill and judgement in their transactions for and on behalf of the company. According to Roemer J. in *Re-city Equitable Fire Insurance co*³⁰. A director needs not exhibit in the performance of his duties a greater degree of skills than is to be reasonably expected of a person of his knowledge and experience.

It is important to note here that FBNH. Is in compliance of the above principles based on appraisal evaluation report, it is strict penalty for any erring directors. Director is to act and observe the utmost good faith toward the company in any transaction with it or on its behalf.³¹ The flip side is that the directors have the duty to act on the basis of what they consider to be for the economic advantage of the corporate entity or are reasonably incidental to the carrying on of

²⁸ Section 87 CAMA

²⁹ Edward, O. E. Esq Op. Cit p. 142

³⁰ [1925] Ch 407

³¹ (CAMA) Section 279 (a).

the business of the company. The directors are to exercise their powers for the proper purpose and not, for collateral purposes.³²

In other words directors cannot use their powers to feather their nets or to preserve their own control. For instance, they cannot make calls on other shareholders and exempt themselves, where they hold shares in the company. Thus in *Percy V Mills & Co Ltd*³³ where the directors hurriedly transferred large preference shares to some of their friends and appointed two of them as directors in order to defeat a motion proposed by a majority shareholders asking that he be appointed a director. The court held the transfer and appointments were void not being bona fide.

Another fundamental aspect of the fiduciary responsibilities of directors to the company is in the conflict of interest and duty. Directors shall not in the course of management of the affairs of the company or in the utilization of company's property make any secret profit or achieve any other unnecessary benefits.³⁴ Where a director makes any secret profit he shall be accountable for it to the company³⁵ the important thing to note is that is the directors in carrying out their duties are expected not to make personal interest to conflict with the interest of the company. It is pertinent to note that in many instances, it is the directors that not only control the company but own it. In other words in many companies, the directors own majority of shares in the company thereby rendering other shareholders inconsequential in the decision making process of the company.

It is in this light that the concept of corporate governance is seen as the acceptance by management of the inalienable rights of shareholders as the true owners of the company and of

³² (CAMA) Section 279 (5).

³³ (1920) 1 ch. 77

³⁴ (CAMA) Section 280 (2).

³⁵ (CAMA) Section 280 (3)

the directors roles as agents or trustees of the shareholders. Corporate governance is all about transparency and accountability. It is about commitment to values, about ethical business and conduct and about making a distinction between personal and corporate funds in the management of a company.

On the part of the obligations of the Board and in compliance with the Central Bank of Nigeria (CBN) Code of Corporate Governance for Banks and Discount Houses in Nigeria and the Securities and Exchange Commission, Code of Corporate Governance, FBNHoldings Plc “FBNHoldings” or “the Company” engaged KPMG Advisory Services to carry out an appraisal of the Board of Directors “the Board” for the years ended 31 December 2017, 2018 and 2020 the CBN Code mandates an annual appraisal of the Board with specific focus on the Board’s structure and composition, responsibilities, processes and relationships, individual Director Competencies and respective roles in the performance of the Board³⁶.

The final analysis of KPMG Advisory Services, on the basis of it review, or the consecutive years, state, “except as noted below, the Company’s corporate governance practices are largely in compliance with the key provisions of the CBN and SEC Codes. Specific recommendations for further improving the Company’s governance practices have been articulated and included in our detailed report to the Board. The key areas identified include enhancement of the Company’s related party process”³⁷ The Report gave credit to the company for its corporate governance. This report has been consistent for almost three years. The question yet to be answer is why the sacking of the Board by the CBN Governor 2020.?

³⁶ Premium Board listed FBN Holdings Plc Op. Cit .1 at 40

³⁷ Ibid p 41

CHAPTER FOUR
DIRECTORS' STATUTORY RESPONSIBILITIES IN FIRST BANK NIGERIA
HOLDINGS COMPANY PLC

4.1 Introduction

There is no doubt the abstraction called a company (FBNH) acts through its "Members in General Meeting" or its "Board of Directors" or through officers or agents, appointed by, or under authority derived from, the members in a general meeting or the board of directors has been discussed in previous Chapter of this work. A company director is one of such officers or agents appointed by or under authority derived from the members in a general meeting, above is a company law based in compliance with section 87(1)¹

A Director is the alter ego of a company: *Yalaju Amaye v. AREC*². He is a corporate governor in charge of the affairs of a company. Directors of a company registered under the Companies and Allied Matters Act are persons duly appointed by the company to direct and manage the business of the company: section 269(1) of the Companies and Allied Matters Act. This also is the position in FBN Holdings Plc. Director formed the core in evaluating company performance. Their duties include promoting the success of the company for the benefit of its members, to exercise independent judgment, exercise reasonable care skill and diligence, to avoid conflict of interest and to declare an interest in proposed transaction.

¹CAMA. 2020

² (1978) All NLR, 124.

Under section 868 of the Companies and Allied Matters Act, it has been observed "Director" includes any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act. By the same token, section 270 thereof states that without prejudice to the provisions of sections 269 and 276, and for the purposes of sections 279, 301 and 307 of the Companies and Allied Matters Act, "director" shall include any person on whose instructions and directions the directors are accustomed to act. It is clear that this provision restrains the meaning of a shadow director and makes it subject to sections 301, 306 and 307 of the Companies and Allied Matters Act.

Section 270(3) of the Companies and Allied Matters Act, further elucidates the point by providing that for the avoidance of doubt, the fact that a person in his professional capacity gives advice and a director acts on it shall not be construed to make such a person under the Companies and Allied Matters Act a person in accordance with whose directions or instructions the director of a company is accustomed to act.

The law regards the directors' position as a sacred one and makes provisions safeguarding it. Indeed, acting as a director without being appointed as one has certain offensive implications. Thus, where a person not duly appointed as director acts or holds himself out as having been duly appointed without the concurrence of the company, he shall be guilty of an offence and on conviction be liable to imprisonment for 2 years or to a fine of N100 for each day he so acts or holds out himself as a director, or to both such imprisonment or fine and shall be restrained by the company: section 269(3) of the CAMA.

The law further states that the actions of such a person acting as a company director without being duly appointed shall not bind the company and he shall be personally liable for such action; provided that where it is the company which holds him out as director the company shall be bound by his acts: section 276 of the CAMA.

4.2 Governance Structure of First Bank Nigeria Holdings Plc

The FBNHoldings Board is a considered blend of diversity, experience and knowledge. The Board continuously seeks to review and refresh its composition to ensure that new ideas and experience are added to its decision-making processes. In 2018 Annually Report it stated, since the last Annual General Meeting of the company, there have been no changes to the Board's composition and also there has no induction programme during the financial year.³ In the course of these studies it was discover then the Board remains composed of 10 Directors, seven Non-Executive Directors, two Independent Non-Executive Directors and one Executive Director, who is also the Group Managing Director (GMD). With the sacking of the above Board and to comply with the new Act⁴ the Company now have 12 Directors 8 Non Executive Directors, 3 Independent Directors and 1 Executive Director⁵ This composition is in alignment with best international practices, which encourages a higher percentage of Non-Executive Directors to Executives. With 90% of the Board's composition independent of the Company's Management, the FBNHoldings' Board is structured to be significantly independent and devoid of executive influence in decision-making. Ultimately, the Board is well-structured to ensure that the interests of stakeholders are protected and shareholder value is enhanced. The profiles of the members of the Board are

³ FBN Holdings Plc Op Cit 1 at 11

⁴ Section 275 (1) CAMA 2020

⁵ Premium Board listed FBN Holdings Plc Op. Cit . 1 at 9

Detailed below:

Non-Executive Directors are appointed for an initial term of four years and can be re-elected for a maximum of two subsequent terms of four years each, subject to satisfactory performance and approval of the members. Executive Directors are appointed for an initial term of three years and their tenure can be renewed for another three years, subject to a satisfactory annual performance evaluation. Hence, the maximum tenure of an Executive Director is six years. The Board may grant a waiver of the tenure limit in the case of an Executive Director whose performance is deemed exceptional. This will, however, require formal justification and unanimous approval of the Board. Executive Directors are discouraged from holding directorships external to any Group, (Multiple Directorship) though allow directors' comply to Independent Professional advice

The Board's principal responsibility is to promote the long-term success of the Group by creating and delivering sustainable shareholder value. The Board leads and provides direction for the Management by setting policy directions and strategy, and overseeing its implementation. The Board seeks to ensure that Management delivers on both its long-term growth and short-term objectives, striking the right balance between both goals. In setting and monitoring the execution of our strategy, consideration is given to the impact that those decisions will have on the Group's obligations to various stakeholders, such as shareholders, employees, suppliers and the community in which the Group operates.

It is important to note that external standards of corporate governance in Nigeria, as in any other country lie outside the internal machineries for the management and control of corporations. Many of these standards are statutory, while some are directives of regulatory

agencies that have institutional oversight in particular sectors, and others are industry-induced standards, which may be voluntary, but have wide appeal within the various sectors.

The Board is also responsible for ensuring that effective systems of internal controls are maintained and the Management maintains an effective risk management and oversight process across the Group, to ensure that growth is delivered in a controlled and sustainable way. In addition, the Board is responsible for determining and promoting the collective vision of the Group's purpose, values, culture and behaviours. Specific key decisions and matters have been reserved for approval by the Board. These include decisions on the Group's strategy, approval of risk appetite, capital and liquidity matters, major acquisitions, mergers or disposals, Board membership, financial results and governance issues, including the approval of the corporate Governance framework. More specifically, some of the Board's responsibilities as enumerated in the Board Charter are:

- a. Building long-term shareholder value by ensuring that adequate systems, policies and procedures are in place to safeguard the assets of the Group.
- b. Appointing and developing members and refreshing the overall competency of the Board as necessary from time to time.
- c. Articulating and approving the Group's strategy and financial objectives, and monitoring the implementation of those strategies and objectives.
- d. Approving the appointment, retention and removal of the Group Managing Director (GMD) and any other Executive Directors (ED) in the Group.
- e. Approving the criteria for assessing the performance of the GMD and the EDs.
- f. Monitoring and evaluating the performance of the GMD against agreed key performance objectives and targets, and ratifying the evaluation of EDs as prepared by the GMD.

- g. Reviewing, on a regular and continuing basis, the succession planning for the Board and Senior Management staff, and recommending changes where necessary.
- h. Reviewing and approving the appointment, promotion and termination of Senior Management staff (Assistant General Manager (AGM) and above) on the recommendation of the relevant Board Committee.
- i. Overseeing the implementation of corporate governance principles and guidelines.
- j. Reviewing and approving the recommendations of the Governance Committee in relation to the remuneration of Directors.
- k. Overseeing the establishment, implementation and monitoring of a Group-wide risk management framework to identify, access and manage business risks facing the Group.
- l. Articulating and approving the Group's risk management strategies, philosophy, risk appetite and initiatives.⁶

Therefore FBNHoldings Directors in the Board are the life wire of the company its performance is base on directors at this point is clear that the directors in performing their duty comply with principles of good corporate governance but the question what is standard for measurement of performance. One may say productivity or when things are going well with company all is said to be corporate governance compliance.

4.3 Operational Responsibilities of Directors in First Bank Nigeria Holdings PLC

Corporate governance has succeeded in attracting a good deal of public interest because of its apparent importance for the economic health of companies and the society in general. The importance of corporate governance cannot be over emphasized. It has positive link with national growth and development, and can effectively lure into an economy foreign investors and

⁶ Premium Board listed FBN Holdings Plc Op. Cit .1 at 11

international capital⁷ The ultimate goal of good corporate governance on different stakeholders is a strengthened economy and hence good corporate governance is a tool for socio economic development.⁸ In other for corporate governance to make any significant impact in the economy, all the stakeholders must be willing to partner will each other towards meeting the strategic objectives and corporate values of the company.

There is no gainsaying that corporate governance in Nigeria has indeed come a long way as corporations in Nigeria are fine tuning their internal mechanisms towards institutionalizing good corporate governance. First bank of Nigeria Plc. for instance stated in its statutory general information⁹ is a tool for socio – economic development.¹⁰ In other for corporate governance to make any significant impact in the economy, all the stakeholders must be willing to partner with each other towards meeting the strategies objectives and corporate values of the company. The bank therefore is in full compliance with the code of corporate governance of Nigeria. Has stated earlier now he Company is composed of 12 directors, 8 of whom are non executive directors and 3 are independent Executive directors and 1 Chief Executive Director.

This is in compliance with the provision of the code which is to the effect that the number non – executive directors should exceed that of executive directors. To enhance corporate governance, the banks board's sub-committees are constituted to help the board to properly assess management reports, proposals and oversight functions and make recommendation to the main board. The company currently has 8 standing board committees namely, executive committee, (general exec). Executive committee credit (exec, credit) board credit committee, board tenders committee, audit committee board audit and risk assessment committee and board

⁷ Section 374 CAMA

⁸ Gower, L.C.B(1992). *Principles of Modern Company Law*. 3rd Ed. (Stevens) . p. 449

⁹ Agom A.R.(1998) Lessons from the Burst of ENRON and the challenges for securities, regulation in *Ahmadu Bello University Law Journal* p.46

¹⁰Orojo, J.O. (2008).Op. Cit .13 at 17.

nomination and remuneration committee¹¹. The responsibility at the top of the company are well defined and the board is not dominated by one individual the position of the chairman is separate from that of the chief executive. The chairman is not involved on the day – to – day operation of the company and is not a member of any subcommittee of the board. The board meets regularly at least once in a quarter.

Sufficient notice with clear agenda is given ahead of such meetings. All directors have access to the company's secretary who can only be appointed or removed by the board and is also responsible by the board. Finally, the directors ensure that shareholders statutory on general rights are protected at all times. Shareholders are responsible for electing the directors at annual general meetings for which at least notice of 21 days have been given before the meetings.

In Oceanic Bank Plc, now Eko Bank the managing director/chief executive officer¹² has this to say The bank is committed to the principles of corporate governance and code of best practice. Oceanic bank has institutionalized ethic practice and professionalism in its corporate culture, as reflected in our choice of directors, our bank is regulation compliance in all ramifications. Consequently, our board ensures long term health and prosperity of the bank through various board committees as our bank continue to expand its business rapidly it is based on an enduring structure already institutionalized with occasioned fine tuning to handle regulatory reforms and emerging economic issues.

To be fully geared towards post consolidation challenges, especially in corporate governance compliance, Oceanic Bank has already designed its post consolidation governance with the aim of creating a robust corporate governance platform and effectively maximizing the

¹¹ Premium Board listed FBN Holdings Plc Op. Cit . 1 at 14

¹² Rights Circular dated may 7th 2007

potentials and returns at both the institution and the shareholders. Because of its adherence to corporate governance the bank posted a profit of about 20 billion naira in 2007 and rewarded shareholders with a bonus of one for four, a good achievement by all standards.

Intercontinental Bank (now Access Bank) is another bank that has fully complied with the tenant of principle of corporate governance the bank has put in place enduring structures and systems to ensure that its business decisions are only taken in the best interest of the organization but also in accordance with the Companies and Allied Matters Act 2004 and the code of corporate governance for banks set by the Central Bank of Nigeria. The board of the bank is composed of a majority of non – management directors. This has the effect of removing potentials friction between management and shareholders. The board ensures transparency, equity, and fair conduct in the management of the bank. In doing so the board constituted committee which work independent of each other but meet regularly to review policies and strategies to ensure compliance and sustain value creation for the stakeholders. The committees are credited committee, finance, establishment and shareholders audit committees. As required by the code of corporate governance, the chairman of the board is not a member of any of these committees. The internal control and inspection control departments assist the boards in ensuring compliance with the rules and procedure of the bank and regulatory authorities.

One important factor in corporate control is statutory control of corporate governance, they are enforceable and subject to judicial review. Many a times, in countries like Nigeria, the problem has always been that the existence of these standards does not necessarily guarantee that they would be enforced. The most important statutory standards in this work mentioned are contained in the CAMA, the BOFIA, the ISA, the CBN Act, the CBA, the NDIC Act and the IA. As indicated earlier, the CAMA standards apply generally to all companies while provisions of

the BOFIA etc. represent specific reactions to Banks the perceived problems in those industries or sectors are many but that is for another discussion.

Above all, there exists separation of powers and responsibilities between the board head and the management head as both positions are held by different individuals. Besides, no more members of the same extended family occupy the position of chairman and chief executive officer. We have noticed corporate governance has to do with processes, customs, policies, and laws institutions affecting the way a corporation is directed, managed, administered or controlled. The importance of corporate governance cannot be over emphasized as it cuts across every spectrum in the corporate structure.

4.4 Fiducial Responsibilities of Directors' in First Bank Nigeria Holding Plc

A Director is a member of the board of people that manages and oversees the affairs of a business. A Director is entrusted with the responsibility of determining and implementing a company's policy. For the purposes of good corporate governance in FBNHoldings, Fiducial duties of the directors' can be seen from two different ways statutory and conventional even though the latter is all most coded.

The management of a company is the responsibility of Directors therefore their duties, to the company, are non-exhaustive. The Directors can be called upon at any time to represent the company and at such time, they are expected to reflect the duties required of them.

The statutory duties of Directors are enumerated under CAMA. Section 305, 306 -308 for the purposes of this research, these responsibilities includes Duty to promote the success of the company, Fiduciary duty/relationship, Duty of care and skill, Duty not to accept secret benefits, and Conflict of interest. Etc.

A Director is required to always carry out this duty in good faith. It is the mandate of a Director to promote the success of the company he/she represents. In so doing, the Director needs to take into consideration the relationship the company has with its shareholders, employees, suppliers and clients. The Board and Management are both aligned in the quest to provide the investing market with timely and quality information. To this end, transparency and disclosure is demonstrated in the Company's financial reports, through detailed and comprehensive reporting, thereby providing shareholders with sufficient context and a clear picture of the workings of the institution. The focus on transparency also aids existing business relationships with foreign correspondent banks, multilateral organizations and international investors who require detailed information to make decisions about the Group¹³. Base on this responsibilities accrue to the directors includes.

A fiduciary duty is the highest standard of care. It is an obligation of one party to act in the best interest of another. The obligated party is typically a fiduciary i.e. a person who has been charged with the care of money or property. In this regard, a Director has a fiduciary duty towards the company in the dispensation of his/her duties. A fiduciary relationship exists between a Director and the company causing a Director to always act in the best interest of the company.

In Section 279 of CAMA, it is stated that, *Director of a company stands in a fiduciary relationship towards the company and shall observe the utmost good faith towards the company in any transaction with it or on its behalf* given the continued interest by current and potential shareholders in the performance of the Group, the Board and Management, has adopted a policy of continuous engagement and extensive consultation with shareholders and shareholder groups.

¹³ FBNHoldings Plc. Op. Cit P.1 at 53

This has assisted in helping shareholders have a better understanding of the group's governance mechanism, performance and outlook. It has also provided useful feedback to the Board and Management¹⁴. This duty emanates from the manner in which a Director is expected to execute his obligations. Every Director must exercise a degree of care, diligence and skill which a reasonably prudent Director would exercise in comparable circumstances.

In determining the reasonableness of a Director, CAMA presupposes the reasonable man test wherein it is implied that every Director should owe a duty to behave as a reasonable person would or higher given their status. Failure to take reasonable care in accordance with the above may be grounds for an action for negligence and breach of duty. This is a potential liability for Directors and we will discuss same in further detail below.

Where Director of two or more competing companies; or Uses property, opportunity or confidential information contained in the course of the management of one company for the benefit of the other company or to his own or other person's advantage; Will receive a personal benefit/profit i.e. has significant shareholdings in the company that they are directors or a competing company; The Code of Corporate Governance, 2016 outlines further duties and responsibilities of Board of Directors of a company. It reemphasizes the provisions of CAMA and it also highlights that it is the primary task of Directors to ensure good corporate governance within a company after all said and done at the conclusion of this work in chapter five findings and recommendations were made.

¹⁴ Ibid p 53

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

Corporate governance in summary is a system by which business corporations are directed and controlled. Fiduciary relationship of Directors are core in company management also relationship between a parent and its subsidiaries should remain that of a shareholder of the subsidiaries, with powers to appoint, as well as remove the Directors of the subsidiary provided due process is observed. Once appointed, the principle of separation of ownership from management should be given effect to, and the shareholder must allow the Board of Directors of the subsidiary to discharge their statutory duties of managing the affairs of the company.

The instruments used for the study includes Applicable laws, Corporate Best practices worldwide, output in management, Finance, compliances and directives to management team. The need for corporate governance in Nigeria extends far beyond resolving problems stemming from the separation of ownership and control. Corporate governance is no longer a new concept worldwide but a norm of corporate behaviour and performance expectations. Nigeria cannot be differ in ensuring compliance.

Until recently, Corporate Scandals were unheard of in Nigeria and even where they were reported, no deterrent sanctions have been meted out on the culprits. This may be because Nigeria lacks the necessary political and institutional framework to enforce good corporate governance.

However, if Nigerian investors and shareholders are to be assured of protection against the malfeasance of corporate managers under the limited liability companies and public institutions, governance must be compulsory and compliance enforced. FBNHoldings corporate culture is influenced by the Board, in other words the Directors responsibilities brought to life by Management and distilled group-wide to drive the Company's long-term business model. Recognition is given to the value of diversity in the Company's employee base. Internal initiatives are promoted to support diversity and inclusion within the Group and there is a realisation that strategic objectives are achieved by building a sound reputation founded on the highest standards of responsible behaviour.

From the above in FBNHoldings An Executive Director in carrying out day-to-day tasks is answerable to the Managing Director/Chief Executive Office as the Lead Employee, but whilst carrying out statutory responsibilities of the office of a Director, such a Director has a duty not to fetter his discretion in order to maintain the fiduciary relationship with the company. The expression Group Managing Director is really more of a title rather than as a position of fact or law , because the subsidiaries are separate legal entities with separate officers and Board of Directors. Group issues relate more to accounting and Financial Statements Consolidation. The subsidiaries within the group should be properly governed by their boards with management being accountable to their own Boards. An advisory group does not have any formal or legal authority.

The Board of Directors is the body charged with the statutory responsibility of managing the company. It is important to avoid an overlap in the scope of authority and boundary between the advisory board and the Board of Directors. The advisory group should be lead by a chairman who should be the point of contact between the advisory group and the Board of Directors.

Where the advisory group provides non-binding but informed guidance it can be a tremendously ally in the quest for superior corporate governance.

Corporate governance is a system by which business corporations are directed and controlled. It has also been defined as a set of processes, customs, policies, laws, institutions affecting the way a corporation is directed, managed, administrated or controlled.¹ The structure of corporate governance specifies the distribution of rights and responsibilities among different participation in the corporation such as the board of directors, managers, shareholders and other stakeholders.

The importance of corporate governance cannot be over emphasized as it cuts across every spectrum in the corporate structure. Indeed as mentioned earlier good corporate governance is all about efficiency, effectiveness, accountability, honesty and transparency. Directors on the other hand occupy an important and strategic position in the management of the company, a position of trust and confidence in relation to the company. In modern times, and in the light of global good principles, the law places a myriad of obligations on the directors, as the directing mind and will of the company, to act at all times, in the best interest of the company in all their transactions on behalf of the company² the articles of association of the company usually provide for the board of directors and states what powers are to be performed by the board.

Generally, the board of directors will be answerable to the general meeting however in practice, the research provide and confer on the directors the right to exercise all the company's powers, except such as the general law expressly provides must be exercised at a general meeting³ the responsibility of the board include setting the company's strategic aims, providing

¹[http://en.Nigeria.Orgi/corporate %5 of governance](http://en.Nigeria.Orgi/corporate%5of%20governance). Retrieved on 19 Nov., 2015

²Edward, E.O.A. Op. Cit 34 at17

³Section 214 CAMA

leadership to put them effect, supervising the management of the business and reporting to the shareholders their stewardship, this is what is obtainable in FBNHoldings there is no doubt the company is performing well to comply with best practices in corporate governance. The directors become fulcrum of the operation.

In other to retain shareholders confidence through institutionalized the principles of good corporate governance, the management of companies and government institutions saddled with the responsibilities of monitoring the capital market, there should be certain mechanisms put in place to ensure that the principles of good corporate governance are implemented by the companies.

Well defined corporate governance principles will go a long way in helping the organization to provide its stakeholders a superior assurance on the quality of governance. It must be noted however, that where the principles of good corporate governance are effectively implemented, the company will be able to create a robust platform for maximizing the potentials and returns for both the institution and the shareholders.

Corporate governance mechanisms and controls are designed to reduce the inefficiencies that arise from moral hazards and moral selection to monitor the managers' behaviour, an independent third party (the auditor) attests the accuracy of information provided by the management to investors, arising from the position above the following findings and proffered solutions are made.

5.2 Findings

- a. Mr. Godwin Emefiele cited insider abuse, insider credit and breakdown of Corporate Governance as the reasons behind the sacking of the Board of Directors of FBNHoldings

and also PwC appraisal report revealed that FBNHoldings corporate governance practice is largely in compliance with the key provisions of Code of Corporate Governance of the Central Bank of Nigeria, Financial Reporting Council of Nigeria and guidelines of Securities and Exchange Commission with specific recommendations for further improvement of the corporate governing principles this show no adequate adherence to the Principles of Corporate Governance.

- b. Statutory standards application of Corporate Governance envisages compliance and enforcement of statutory laws, subjected to judicial review. The problem is always despite existence of these standards it does not necessarily guarantee their applications and enforcement. The most important statutory standards discussed are contained in, CAMA, BOFIA, ISA, CBN, CBA, and also the various Codes. In excess no enforcement and application of relevant laws and Codes as one of the challenges of corporate governance.
- c. One of the major challenges facing the concept of good corporate governance in FBNHoldings Company Plc is no provisions for adequate system of checks and balances between various organs of the company. It must be noted however. That the divisions and functions between separate organs are one of the features which distinguish a company from partnership and which enable the public companies to fulfil their economic role.

5.3 Recommendations

Based on the above findings the following recommendations are proffered.

- a. It is our recommendation that despite what is obtainable, there is room for improvement, awareness, seminars been conducted in other to educate directors on the need for full implementation of the principles of good corporate governance.

- b. It is recommended that in view of the immense benefits to be derived by the observance of good corporate governance the laws and the codes of corporate governance, must be made functional where some of the codes have been upgraded to laws which must be complied with and Regulatory bodies like, the Securities and Exchange Commission (SEC) should have a committee saddled with the responsibility of monitoring companies to ensure that the provisions of the laws and the codes are complied with.

In the same vein the government should establish an institute of Corporate Governance for the teaching and promoting of good corporate governance to all stakeholders, just as we have the Institute of Administrative College in Nigeria for the training of Administrative Officers.

- c. Governance in any country requires transparency so that the people can effectively judge whether their interests are being served. Good corporate governance must also act in a transparent manner so that owners of companies and investors can make informed decisions about their investments. In order for good corporate governance to have a meaningful impact in Nigeria shareholders must be educated as to their rights over the Directors same goes to institutional framework, including a legal system to enforce compliance. In a more and better perspective that is to say proper encouragement on application and administration of principles of check and balances in company administration.

BIBLIOGRAPHY

BOOKS

- Anthony O. N, (2020) Comparative Company Law, Malthouse Press Lagos
- Brian C. (2010) Corporate Governance, ICSA Study text, London; ICSA Publishing.
- Chianu E. (2012) Company law, Law lords Publication 1st Edition Abuja 504
- Fabian A.(2000) The Relationship between a Parent Company and its Subsidiaries Pan-Africa University
- Gower and Davies (1990) Principles of Modern Company Law 8th edition, Sweet & Maxwell, London
- Gower, L.C.B (1992) Principles of Modern Company Law. 3rd Ed. (Stevens)
- Irokalibe G. I. J. (2007) Law of Banking in Nigeria, Malthouse Press Limited, Surulere Lagos
- Junaidu B. (2015)Corporate Governance in Nigeria. Mashall Mathouse Press, Nigeria
- Kachikwu E.I, (1988) Nigerian Foreign Investment Law and Policy, Mikzek Law Publications, Lagos,
- Orojo, J.O. (2008).Company Law and Practice in Nigeria.5th edition, LexisNexis Butterworks, Durban, South Africa.

JOURNALS

- Ahunwon B, (2002) Corporate Governance in Nigeria, J Bus. Ethics 1(37): Dependence of the Post Colonial Nigeria.

Adeyemi K.S.(2006) Banking Sector Consolidation in Nigeria: Issues and Challenges for a Full Discussion on the Pre-and Post Consolidation Issues in Nigeria Banking Industry.

Agom A.R.(2003-2005) Lessons from the Burst of ENRON and the Challenges for Securities, Regulation in Ahmadu Bello University Law Journal

Asomugbe, E.M.(2006) The Division and Exercise of Powers between the Corporate Organs

Edward, E.O.A (2007) Critical Overview of Fiduciary duties of Directors in the Management of a Company in the Pith of Legal Erudition from the Bar, Bench and the Academia. The Legal Aid Community Development Service Yobe State, Nigeria

Oso, I and Semiu, B (2012) The Concept and Practice of Corporate Governance in Nigeria: the need for Public Relations and Effective Corporate Communication. J Communication, 3 (1)

Premium Board (2017) FBNHoldings PLC Corporate Governance Annual Report, (Study surefooted)

Premium Board (2018) FBNHoldings PLC Corporate Governance Annual Report, (Timeless)

Premium Board Listed (2020) FBNHoldings PLC Corporate Governance Annual Report, (Committed)

INTERNET MATERIALS

<http://en Nigeria. Org/corporate %5 of governance>. Retrieved on 19 Nov., 2015

Www.nigerialaw.org. Monks RA (1996). Corporate Governance in the Twenty First Century” <http://www.corp.gov.org>. retrieved 4th August, 2019

<http://en Nigeria Org//corporate %5f governance>. Retrieved on 19 Nov., 2018

<http://www economist. Com/node retrieve> on 10th Nov. 2018

FirstBankNigeriaHoldingsAnnualReport(2013)www.fbnholdings.com/annual/report/retrieved 17th June, 2013.

SEMINARS/ WORKSHOP PAPERS

- Ahmad M. K. (2008). “Corporate Governance in the Pension Industry”, A paper presented at the Adebayo Akerele Distinguished Lecture Series at the Faculty of Management Science, University of Benin, May 25th , 2008. Benin City. Corporate Affairs Commission (CAC).
- Akanki O. (1975) “Abuse of Power and Breach of Duty by Company Directors. 6 Nigerian Journal of Contemporary law.
- Cadbury, Adrian, (1992) Report of the Committee on the Financial Aspects of Corporate Governance Gee, London, December.
- Imoukhuede A, 2009, Nigerian Banks in Sub-Saharan Africa Frontier Markets Keynote Address at the Nigerian Development & Finance Forum 2009 at Gusman Sunderland Hotel, London
- Oman C. P (2001). “Corporate Governance and National Development” OECD Development Centre’s Experts Workshop, Lagos. Organization for Economic Corporation and Development.
- Osaze B. E. (2007). “The Imperative of Corporate governance and Post-Merger Acquisition/Consolidation for sustainable growth”,

Okeaholam C. and Akinbode O. (2003). “A Review of Corporate governance in African: Literature, Issues and challenges” A paper on Global Corporate Governance forum, June 15, Lagos.

Sir Adrian Cadbury’s speech on the 20th Anniversary of the Corporate Governance Code Event – October 2012.

Sanusi J. O. (2003) “Embracing Good Corporate Governance Practices in Nigeria” A keynote address at the 19th Annual Bank Directors seminar organized by the Financial Institute Training Centre, June 19, Abuja.

OECD Principles of Corporate Governance” OECD publication service, (2007)

NEWS PAPERS

Nkemhule Ruben. Icon of corporate Governance This Day Newspaper P. 50 Wednesday July 28th, 2008.

TELEVISION DOCUMENTARY

TVCNEWS Television recorded programme aired 23rd Dec 2018 10 am .Lagos

NTA Television broadcast aired in the early evening of Thursday, April 29, 2020