

Regulatory and Institutional Challenges of Corporate Governance In Nigeria Post Banking Consolidation

By Inam Wilson¹

Extract

The clear lesson Enron, Parmalat, Worldcom, Barings Bank etc, taught the corporate world is that no company [or bank] can be too big [financially or otherwise] to fail.² A common thread that ran through these monumental corporate failures was their poor corporate governance culture, *to wit*, poor management, fraud and insider abuse by management and board members, poor asset and liability management, poor regulation and supervision.³ The implication for Nigeria post consolidation is that none of the 25 odd banks⁴ that scaled through the Central Bank of Nigeria's N25billion minimum capital hurdle is immune from failure if they operate in a poor corporate governance environment like Nigeria. A glance through the new Code of Corporate Governance for Banks issued by the Central Bank of Nigeria⁵ (CBN) will reveal why. According to the CBN:

- corporate governance in Nigeria is at a rudimentary stage and only 40% of companies [banks inclusive] quoted on the Nigerian Stock Exchange had recognised codes of corporate governance in place;
- poor corporate governance was one of the major factors in virtually all known instances of distress experienced by financial institutions;
- the on-going banking consolidation is likely to pose additional corporate governance challenges arising from integration of processes, IT and cultures; and
- most importantly, 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 stakeholder interests in a competitive environment.

It is interesting to observe that prior to the introduction by the CBN of the new Code of Corporate Governance there were in existence disparate codes⁶ of corporate governance regulating the activities of banks in Nigeria but as admitted by the CBN these codes were manifestly ineffective and inadequate. It cannot however be said that the new CBN Code of Corporate Governance is sufficient in itself or in combination with other existing codes to address the issues of corporate governance that will inevitably arise in the post consolidation

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² See www.vogon-intenational.com for details of these high profile corporate failures.

³ A positive and normative analysis of bank supervision in Nigeria by Adedoyin Soyibo *Department of Economics, University of Ibadan*, S.O. Alashi and M.K. Ahmad *Nigeria Deposit Insurance Corporation Lagos*, AERC Research Paper 145, African Economic Research Consortium (AERC), Nairobi, Kenya, November 2004.

⁴ The 25 banks emerged from a motley crowd of 89 banks existing as of December 31 2005. Visit www.cenbank.org for a list of the 25 banks.

⁵ The Code properly titled Code of Corporate Governance For Banks In Nigeria Post Consolidation became effective on April 3, 2006.

⁶ See the Companies and Allied Matters Act 1990 [for companies generally], the SEC Code of Best Practices on Corporate Governance 2003 [for public quoted companies], the Code of Corporate Governance for Banks and Other Financial Institutions 2003 issued by the Bankers' Committee [in a bid to self regulate], the Code of Conduct for Directors of Licensed Banks and Financial Institutions issued by the Central Bank of Nigeria in 2006, etc.

era. This is due mainly to the weak legal, regulatory and institutional framework of the banking sector.⁷

This paper will attempt to critically examine some of the regulatory and institutional factors that may affect the sustainable observation and practice of good corporate governance by Nigerian banks. This issue is relevant because it is recognized that while Nigeria has the basic legal framework for implementation of corporate governance, good corporate governance requires appropriate and effective legal, regulatory and institutional foundations.⁸

The Concept - Corporate Governance

Corporate governance is a nebulous concept but it is safe to say that it is all about the manner in which corporations are directed, controlled and held to account. It is concerned with effective leadership of corporations to ensure that they deliver on their promise as the wealth creating organ of society and that they do so in a sustainable manner.

Governance of corporations has become a matter of great concern worldwide⁹ and bodies like the Organisation for Economic Co-operation and Development (OECD) and the Bank for International Settlements (BIS) have developed core principles of corporate governance which are viewed as representing the moral consensus of the international community.

From a banking industry perspective, good corporate governance demands that banks will operate in a safe and sound manner, and will comply with applicable laws and regulations and will protect the interests of depositors. Interestingly, not many Nigerian banks are noted for their strict observance of corporate governance, best practices and high ethical standards in their operations.¹⁰

Legal & Regulatory Framework

In Nigeria, as in most developed countries, observance of the principles of corporate governance has been secured through a combination voluntary and mandatory mechanism. In 2003, the Atedo Peterside committee set up by the Securities and Exchange Commission (SEC), developed a Code of Best Practice for Public Companies in Nigeria. The code is voluntary and is designed to entrench good business practices and standards for boards and directors, CEOs, auditors, etc., of listed companies, including banks.

Mandatory corporate governance provisions relating to banks are contained in the Companies and Allied Matters Act (CAMA) 1990, the Banks and Other Financial Institutions Act (BOFIA) 1991, the Investments and Securities Act 1999, the Securities and Exchange Commission Act (SECA) 1988 (and its accompanying Rules and Regulation), etc. And only recently the CBN

⁷ See Enhancing Nigeria's Economic Development: A case for institutional and regulatory reforms in the Banking Sector by Inam Wilson at www.nesgroup.org/publications/content; www.mondaq.com; www.icfaipress.org.

⁸ Professor Mancur Olson, founder of Institutional Reform and the Informal Sector (IRIS) in his groundbreaking research noted that economically successful countries have systematically different institutions – different legal and organizational arrangements than the economies that have failed. Thus, the working hypothesis of IRIS is that “*the quality of a country's institutions is a principal determinant of its economic performance.*”

⁹ James Wolfehanson, President of the World Bank says that in the future, the governance of corporations is going to become as critical as the government of nations. Arthur Levitt, Former Chairman, US SEC said that if a country does not have a reputation for strong corporate governance practices, capital will flow elsewhere. Source: Corporate Governance and Disclosure Standards for Attracting Investments by Karugor Gatamah, CEO, Centre for Corporate Governance. Sourced at Pan African Consultative Forum @ www.corporategovernanceafrica.org.

¹⁰ See Good Corporate Governance In The Banking System By Uche Aniemena, Legal Manager, Hallmark Bank Plc, Nigeria on behalf of the West African Bankers' Association (WABA) being Paper delivered at the 3rd Pan African Forum On Corporate Governance, 8-10 November 2005, at Dakar, Senegal.

issued a Code of Conduct for Directors of Licensed Banks and Financial Institutions issued by the Central Bank of Nigeria and a Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006. Compliance with the provisions of these codes is compulsory.

It is a credit to Nigeria that these extant laws¹¹ and codes¹² [which place responsibility for regulating corporate governance on the CAC, SEC and CBN] reflect some of the OECD and Basel principles.¹³ The Key highlights of the SEC and CBN codes include:

- Separating the roles of the CEO and the board chairman;
- Prescription of non-executive and executive directors on the board;
- Improving the quality and performance of board membership;
- Introducing merit as criteria to hold top management positions;
- Introducing transparency, due process and disclosure requirements;
- Transparency on financial and non-financial reporting;
- Protection of Shareholder rights and privileges; and
- Defining the composition, role and duties of the audit committee, etc.¹⁴

Why Corporate Governance For Banks?

Generally banks occupy a delicate position in the economic equation of any country such that its [good or bad] performance invariably affects the economy of the country. Poor corporate governance may contribute to bank failures, which can pose significant public costs and consequences due to their potential impact on any applicable deposit insurance systems and the possibility of broader macroeconomic implications, such as contagion risk and impact on payment systems. In addition, poor corporate governance can lead markets to lose confidence in the ability of a bank to properly manage its assets and liabilities, including deposits, which could in turn trigger a bank run or liquidity crisis.

Post Consolidation Challenges

In the context of Nigeria it is difficult to overlook the circumstances under which the 25 banks emerged at the close of the consolidation exercise. The fact that a good measure of the mergers consummated was forced and the time available limited poses great challenges for the banks going forward. The CBN has acknowledged these challenges in its Code of Corporate Governance¹⁵ and they include:

- Technical Incompetence of Board and Management;
- Boardroom squabbles among directors;
- Squabbles among staff and management;
- Very few banks have a robust risk management system;
- Malpractices and sharp practices may resurface;
- Insider abuses;

¹¹ The Companies and Allied Matters Act 1990 can be assessed at www.nigeria-law.org. Also visit www.secngr.org for SEC Act, Rules and other regulations.

¹² The Code of Conduct for Directors of Licensed Banks and Financial Institutions and the Code of Corporate Governance for Banks 2006 can be assessed at www.cenbank.org.

¹³ The Paper was issued in 1999 by the Basel Committee on Banking Supervision, Bank of International Settlement, Switzerland. The Paper which drew from the OECD principles of corporate governance is intended to assist governments in their efforts to evaluate and improve their frameworks for corporate governance and to provide guidance for financial market regulators and participants in financial markets. The Paper has been reviewed severally the latest of which was issued February 2006. Sourced at www.bis.org.

¹⁴ See *Code of Corporate Governance For Banks In Nigeria Post Consolidation - New Era Of Corporate Management?* at www.templars-law.com

¹⁵ The Code of Corporate Governance for Banks 2006 can be assessed at www.cenbank.org.

- Rendering false returns and concealment of information from Examiners;
- Ineffectiveness of Board/Statutory Audit Committee;
- Inadequate Operational and Financial Controls, etc.

The new Code of Corporate Governance for Banks seeks to correct and address these challenges in order to create a sound banking system in Nigeria.¹⁶ It is submitted that the Code may be unable to accomplish this if the underlying legal, institutional and regulatory framework for corporate governance in Nigeria are weak, inefficient and inadequate. In this regard questions have been raised in certain quarters whether the CBN is not overburdened being solely responsible for policy formulation, banking supervision and at the same time acting as bankers' bank etc. It has been argued that the result is inadequate supervision of banks.¹⁷

Balance of Power between the Members and Board

Abuse of corporate power is made possible by the weakness or strength of the members in General Meeting and the Board of Directors through whom the company's powers are exercised. Although CAMA contains provisions aimed at balancing the power equation between these two organs the fortune of the company is inevitably determined by their relative strength or weakness.¹⁸

CAMA provides that "the business of the company shall be managed by the board of directors", and concludes by vesting all powers of the company upon the Board, save those expressly reserved for the members in general meeting.¹⁹

However, as a check on the directors' powers, directors owe each and every shareholder a fiduciary duty.²⁰ Therefore, in carrying out its duty, the Board shall at all times act in the interests of the company as a whole, so as to preserve its assets, further its business and promote the purpose for which the company was formed.²¹

In addition, the general meeting considers and approves the election and reports of directors, appointment and remuneration of auditors, as well as financial statements and dividend proposals. Similarly, alteration of the memorandum and articles of association, alteration of share capital, the removal of directors and winding up of the company, cannot be given effect unless sanctioned by members in general meeting. Further, the General Meeting may be vested with the residual powers of the company where there is a deadlock or disqualification of the board.²²

Thus, the intendment of CAMA is that the members exercise control and direct the affairs of the company. To strengthen their power, CAMA further avails the members with the following judicial remedies for breach of directors' duties:

- action in restitution to recover secret profits;²³

¹⁶ The Code of Conduct for Directors of Licensed Banks and Financial Institutions and the Code of Corporate Governance for Banks 2006 can be assessed at www.cenbank.org.

¹⁷ See Inam Wilson, *op.cit.*

¹⁸ See S. 63(2) of CAMA.

¹⁹ S. 63(3) of CAMA. These powers are spelt out in Ss. 166, 283 (1) among other sections of CAMA.

²⁰ S. 279 (2) of CAMA.

²¹ S. 279 (3) of CAMA.

²² S. 63 (5) of CAMA. See *Eboni Finance & Securities v. Wole Ojo Technical Services* (1996) 7 NWLR (Pt. 461) 464.

²³ S. 280 (4) of CAMA.

- action in damages and compensation;²⁴
- action in the name and on behalf of the company if the board of directors refuse or neglect to do so;²⁵
- restoration of the company's property;²⁶
- winding up proceedings on just and equitable grounds;²⁷
- relief on the grounds that the affairs of the company are being conducted in an illegal or oppressive manner;²⁸
- apply to CAC to investigate the company's affairs.²⁹

In reality, the members hardly ever exercises its powers as they should because of a combination of many factors such as the cost of attending meetings, ignorance of the powers available to them, lack of understanding of reports given at these meetings and the lack of any willingness of even the majority shareholders to press the Board of Directors on issues, etc. The result in many cases is that the general meeting becomes merely an approval or confirmatory body of the Board.

The Limitation of Judicial Remedy

Again it is important to observe that the key avenue prescribed by CAMA for enforcing the shareholders rights discussed above is still the courts. Nigerian courts remain slow and expensive and not effective in resolving commercial disputes. As the courts remain slow,³⁰ inefficient and expensive³¹, shareholders are hesitant to use the courts and as a result the directors continue to rule with impunity.

A lot of factors are responsible for this pathetic situation regarding delays in trials in Nigeria. Most of these factors are already well known and well discussed by stakeholders in the judicial process but unfortunately, as with most other problems in the polity actions on providing remedies have been slow. Some of the factors include:

- *Corruption*
- *Inadequate Judicial Personnel*
- *Weak Rules of Procedure*
- *Poor Facilities*
- *Undue Regard for Technicalities*³²
- *Ineffective Use of ADR Processes*
- *Poor Case Flow Management*

²⁴ See **Georgewill V. Ekinne** (1998) 8 NWLR Part 562, pg. 454 where a director was held liable in damages for diverting and misappropriating company funds for her personal benefit.

²⁵ This would be pursuant to S. 63 (5) of CAMA. In **Ladejobi V. Odotola Holdings Ltd** (2003) 3 NWLR Part 753, pg. 121 the respondents sought amongst other things, a declaration against the convening of a meeting by the directors of the respondent company, which adversely affected their respective rights in the company.

²⁶ The Act prohibits substantial property transactions involving directors or persons connected to him (S. 284 of CAMA) and such transactions entered into shall be regarded as voidable at the instance of the company (S. 286 of CAMA).

²⁷ S. 408 of CAMA. Members may also pursuant to S. 507 of CAMA institute misfeasance proceedings in a winding up proceeding against directors who have misapplied company funds or are in breach of duty in relation of the company .

²⁸ S. 311 of CAMA.

²⁹ Ss. 314 and 315 of CAMA.

³⁰ See the observations of the then Chief Justice of Nigeria Hon. Justice Mohammed Bello, CJN., in **Rossek & Ors vs. African Continental Bank Ltd & Ors** (1993) 8 NWLR (Pt. 312) p.382 at p. 481 expressing dissatisfaction over the case which had lasted 18years and was being sent back to the trial court for retrial.

³¹ See paper titled "*Litigation Time and Cost vis – a- vis Award of Costs*" by Kevin N. Nwosu, published in The Proceedings of the 2002 National Seminar on Banking and Allied Matters for Judges (CIBN Press 2003) at page 109.

³² Hon Justice Oputa, JSC (as he then was) in **Bello v. Attorney General of Oyo State** (1987) 2 NWLR 381.

The Limitation of Regulatory Oversight by SEC

Given the above scenario, it is obvious that good corporate governance in the present banking milieu will be best guaranteed by external institutions having regulatory oversight over the banks.

Many countries have recognized that the abuse of corporate power cannot be adequately constrained by leaving it to the company's members to ensure that the controllers behave and to take action in the courts if they do not. There is some evidence that in countries with weak judicial systems a regulatory approach to enforcement laws by an independent and motivated securities commission can be more effective than judicial enforcement.³³

Accordingly, agencies such as the US SEC, the Secretary of State in the UK, and in Nigeria, the SEC, CAC, CBN exercise supervisory role. Few countries have however gone so far as the UK in empowering these agencies to launch inquisitorial raids on corporate bodies.³⁴

The Nigerian SEC is vested with power not only to regulate essentially through its registration requirements but also to discipline listed companies through its power of suspension and revocation of such registration. The ISA 1999 enabled SEC to set up independent mechanism for dispute resolution in the capital market through the Administrative Proceedings Committee³⁵ (APC) and the Investment and Securities Tribunal (IST) from where appeals go to the Court of Appeal.³⁶ The IST and APC enforcement procedures ensure speedy hearing which the regular courts were found not to provide.³⁷

Though the APC and IST have heard and determined several important cases involving banks and other listed companies³⁸ the fact that appeals from their decisions will eventually lie at the courts implies that such matters will inevitably be hampered by the problems in the courts already discussed.

Furthermore, apart from the fact that companies not quoted on the stock exchange are outside the purview of SEC, the penalties usually meted out to listed companies who are found liable by the APC and IST can at best be described as a tap on the wrist as a result companies can afford to risk non – compliance with relevant laws. This is in sharp contrast with the US SEC which has demonstrated in recent high profile FCPA enforcement actions a zero-tolerance policy in the enforcement and punishment of unethical behavior. Penalties issued by the US SEC for violators are increasing to underscore the enormous business and financial risks of non-compliance.³⁹ This should be emulated by Nigeria's SEC especially when it is considered that the CBN Code of Corporate Governance is lenient in its penalty provisions.

Power of CAC to Investigate the Affairs of Companies

It will be recalled that one of the remedies available to a member wishing to check the excesses of the directors under CAMA is to apply to the Corporate Affairs Commission (CAC) to

³³ OECD Development Centre Working Paper No. 180, (Formerly Technical Paper No. 180), Corporate Governance and National Development by Charles P. Oman, Research Programme On: Corporate Governance In Developing Countries And Emerging Economies.

³⁴ Gower & Davies' Principles of Modern Company Law, 7th Ed, Sweet & Maxwell 2003 at page 467.

³⁵ S. 259 of the ISA 1999.

³⁶ S. 224 of the ISA 1999.

³⁷ "Adjudication In The Capital Market" being Paper Delivered at the African Regional Capital Markets Training Program by Anthony I. Idigbe SAN.

³⁸ Visit www.secng.org to view such cases.

³⁹ See recent US SEC enforcements in the National Defense Industrial Association Newsletter at www.ndia.org.

investigate the company's affairs. Regrettably, this right has been very much overlooked or neglected by the members.

The CAC is empowered to appoint investigators to investigate the affairs of the company if an application supported by evidence showing good reasons is made by the company or members holding not less than one-quarter of the shares issued.⁴⁰

Furthermore, the Commission may appointment investigators to investigate the affairs of a company if a court by order declares that the affairs of the company ought to be so investigated⁴¹ on grounds, among others that:

- the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to some part of its members; or
- persons concerned with the company's formation or the management of its affairs have been guilty of fraud, misfeasance or other misconduct towards the company or its members; or
- the company's members have not been given all the information with respect to its affairs which they might reasonably expect.⁴²

It is the duty of all past, as well as present officers and agents⁴³ of the company and the company's subsidiary or holding company and other affiliates⁴⁴ whose affairs are investigated to produce all books and documents in their custody or power and to give the inspector all assistance in connection with the investigation.⁴⁵

Based on the report of the investigators the Commission or the Attorney General of the Federation may institute civil and criminal proceedings as appropriate against any person or body corporate found liable.⁴⁶ If it is expedient in the public interest that the company should be wound up, the Commission may present a petition to the court for it to be wound up on the just and equitable principle.⁴⁷

Without doubt, the provisions of Sections 314 – 330 of CAMA is a potent weapon available to members of the company which unfortunately is seldom used. While the real reason for this situation has not been verified, it may well be because it will prove most ineffective if put to use. The reason will become obvious in a moment.

In the UK originally, the only power available to the Secretary of State was the appointment of outside inspectors as it is now the case in Nigeria. In practice, the Department of Trade and Industry (DTI) was reluctant to appoint outside inspectors because the process did not guarantee secrecy which enabled the board of the affected company to take remedial action or destroy or fabricate evidence.⁴⁸

⁴⁰ Section 314 (1) (3) of CAMA.

⁴¹ Section 315(1) CAMA.

⁴² Section 315(2) CAMA.

⁴³ "Agents" in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate. See Section 317(4) CAMA.

⁴⁴ Section 316 CAMA.

⁴⁵ Section 317(1) CAMA. Failure to comply or cooperate may amount to contempt of the court (Section 319(3) & (4) CAMA) and any answer given may be used in evidence against the person (Section 317(5) CAMA).

⁴⁶ Sections 321(1), 322(1) & (2), 322(3) CAMA.

⁴⁷ Section 323 CAMA.

⁴⁸ Gower & Davies, *op.cit.*, at page 467.

This situation has been remedied by an amendment of the UK Company Act⁴⁹ which now gives the Secretary of State power to direct any company to produce to an officer of his any books and documents prior to the formal appointment of inspectors which appointment will be made if the facts elicited show that a full investigation is needed. This enables an officer authorized by the Secretary of State to arrive without warning at the company's office or wherever else the document is believed to be held and demand for the documents.⁵⁰

The UK position is clearly an improvement on the provisions of CAMA which requires an application to be made to the CAC and the CAC will in turn appoint an inspector who will then demand for the relevant documents from the company. This procedure is fraught with problems and does not guarantee secrecy and surprise which are necessary elements for the power of the CAC to be effective. An amendment of Sections 314 – 330 of CAMA is therefore imperative.

Quality of Financial Reporting

The point has been made that the general meeting considers and approves the appointment and remuneration of auditors as well as the financial statements of the company. This ensures that the board observes financial discipline in the management of the company. However in practice, the shareholders usually rubber stamp the financial statements presented to it, sometimes assuming that the financial statements having gone through internal audit controls ought to be in order.

Limitations and Shortcomings of Internal Control

All systems of internal control are subject to limitations and weakness and no matter how good the planning of the system, no matter how strict and consistent its application, it can never give perfect protection and safety due to human factors e.g. proneness to errors, and deceit, collusion between members of staff, etc.⁵¹

The burden then falls on the regulatory organs such as the CBN, CAC, SEC, etc., to properly scrutinize the financial statements of the company. These institutions regrettably are not as efficient as should be as evidenced in the recent Report on the Observance of Standards and Codes, Nigeria Accounting and Auditing, (ROSC A&A).⁵² The ROSC A&A made the following findings which are relevant to the issue discussed herein:

- there is a multiplicity of laws and bodies for the regulation of accounting, financial reporting, and auditing requirements of companies. However, accounting and auditing practices in Nigeria suffer from institutional weaknesses in regulation, compliance, and enforcement of standards and rules;

⁴⁹ S.447(2)-(3) of the UK Company Act 1967, as amended by the 1989 Act (s.63(1)-(7)). Following this development, the Department receives about 3,000 complaints a year and an average of 180 investigations were completed in each of the years 1997/98 to 2001/02. See Gower & Davies, *op.cit.*, at page 468.

⁵⁰ Failure to comply is an offence punishable by a fine and criminal sanctions are imposed on any officer of the company who is privy to the falsification or destruction of a document relating to the company's affairs or who furnishes false information. See Gower & Davies *op.cit.*, at page 469.

⁵¹ Source: Pan African Consultative Forum @ www.corporategovernanceafrica.org

⁵² Report on the Observance of Standards and Codes, Nigeria Accounting and Auditing, (ROSC A&A) of June 17, 2004. The ROSC Accounting and Auditing (ROSC A&A) review is a joint initiative of the World Bank and the IMF to assess the degree to which an economy observes internationally recognized standards and codes. An overview of the ROSC A&A program and a detailed presentation of the methodology are available at www.worldbank.org/ifa/rosc_aa.html.

- The Nigerian Accounting Standards Board (NASB)⁵³ which sets local accounting standards lacks adequate resources to fulfil its mandate;
- The Institute of Chartered Accountants of Nigeria (ICAN)⁵⁴ is mandated to issue Nigerian Auditing Standards, but no auditing standards have been issued due to lack of capacity, although some guidelines have been issued.⁵⁵ In addition, none of the 15 International Auditing Practice Statements issued by IFAC has been adopted in Nigeria;
- The Registrar of Companies at the Corporate Affairs Commission (CAC) lack capacity to monitor and enforce requirements for accounting and financial reporting provided for in CAMA; empowers the to regulate compliance with its financial reporting requirements;
- The SEC is not yet effective in monitoring compliance with financial reporting requirements and enforcing actions against violators. SEC's administrative sanctions and civil penalties are not adequate to deter non-compliance.

Conclusions and Policy Recommendations

All considered, it is common ground that observance of good corporate governance by Nigerian banks will make them efficient, effective, responsive and accountable corporations that contribute to the welfare of society by creating sustainable wealth, employment with integrity, probity and transparency. Voluntary and wholehearted compliance with the new CBN Code of Corporate Governance for Banks is imperative.

The banks will do well if they adopt the following practices set out in the Basel Paper⁵⁶ as critical elements of their corporate governance process:

- establishing strategic objectives and a set of corporate values that are communicated throughout the banking organisation;
- setting and enforcing clear lines of responsibility and accountability throughout the organisation;
- ensuring that board members are qualified for their positions, have a clear understanding of their role in corporate governance and are not subject to undue influence from management or outside concerns;
- ensuring that there is appropriate oversight by senior management;
- Effectively utilising internal and external auditors, in recognition of the important control function they provide;

⁵³ Established under the Nigerian Accounting Standards Board Act of 2003.

⁵⁴ Established by the Institute of Chartered Accountants of Nigeria Act of 1965.

⁵⁵ About 3 decades ago, ICAN issued two audit guidelines: "Guidelines on Engagement Letters" and "Guideline for Prospectus and Reporting Accounts." Recently, ICAN established the Public Practice Section to develop auditing guidelines for practitioners. The Section has so far issued two sets of guidelines, "Guidelines on Audit Working Papers" and "Guidelines on Planning and Performance."

⁵⁶ The Paper was issued in 1999 by the Basel Committee on Banking Supervision, Bank of International Settlement, Switzerland. The Paper which drew from the OECD principles of corporate governance is intended to assist governments in their efforts to evaluate and improve their frameworks for corporate governance and to provide guidance for financial market regulators and participants in financial markets. The Paper has been reviewed severally the latest of which was issued February 2006. Sourced at www.bis.org.

- ensuring that compensation approaches are consistent with the bank's ethical values, objectives, strategy and control environment;
- Conducting corporate governance in a transparent manner.

It is however posited that unless accompanied by institutional and regulatory reforms the Code of Corporate Governance for banks will be rendered useless and the aim of the consolidation exercise⁵⁷ which is to engender the emergence of a strong, competitive and reliable banking system that is part of the global change as well as a banking system which depositors can trust and investors can rely upon, will sadly be defeated. This is because institutions are key and the quality of a country's legal regimes, its business regulations and its institutions have a direct bearing on its economic performance.

Though such institutional impediments to sound corporate governance are often outside the scope of banking supervision, bank regulators are nevertheless encouraged to be aware of them and the government is encouraged to take steps to address these issues as it is the best way to build effective foundations for corporate governance.⁵⁸

The following measures are recommended to overcome the limitations and shortcomings observed in this paper:

- Banks are encouraged in the ordinary course of their business to demand that their customers/clients who are incorporated companies observe good corporate governance.
- NASB should immediately issue:
 - all IAS/IFRS of which there are no SAS equivalents; and
 - all IAS that have been revised after the equivalent SAS were issued
- Improve the statutory framework of accounting and auditing to protect the public interest which of necessity would require amending the Nigerian Accounting Standards Board Act, the Companies and Allied Matters Act 1990, the Banks and Other Financial Institutions Act 1991, the Nigerian Stock Exchanges Act 1961, the Investments and Securities Act 1999, the Securities and Exchange Commission Rules and Regulation, etc.
- The APC and IST should be strengthened to function effectively especially as regards increasing substantially the penalty for non - compliance.
- Substantial judicial reforms to enable speedy determination of commercial cases.
- Amend the provisions of Sections 314 – 330 of CAMA and strengthen the capacity of CAC to enable it improve its power of investigation into the affairs of companies.
- The capacity of the CBN to offer regulatory oversight of the banking and financial sector should be strengthened or alternatively, its banking supervisory functions should be transferred to another agency.

⁵⁷ See address delivered by the Governor of the Central Bank of Nigeria, Prof. Charles Soludo during the meeting with stakeholders under the aegis of the Banking Committee on July 6 2005.

⁵⁸ Basel Committee on Banking Supervision, Enhancing corporate governance for banking organizations, February 2006.