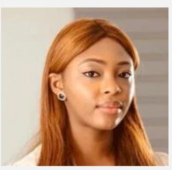
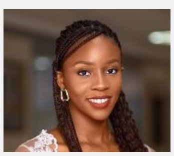
Key contacts

Sadiq Ilegieuno
Partner,
Dispute Resolution
sadiku.ilegieuno@templars-law.com



Ifeoluwa Ibiyemi
Associate,
Corporate & Commercial
ifeoluwa.ibiyemi@templars-law.com



Olivia Agunyego
Associate,
Corporate & Commercial
olivia.agunyego@templars-law.com

TEMPLARS ThoughtLab

Effective Corporate Governance: *A Key to Preventing White-Collar Crimes*

Introduction

There is empirical evidence to suggest that the absence of effective corporate governance is a breeding ground for white collar crimes to thrive without restraint. Unsurprisingly, there is a welter of laws and/or regulations in Nigeria, just like other jurisdictions around the world, aimed at strengthening corporate governance within corporate entities. The increasing incidence of mismanagement, lack of due process, deceit, fraud and other forms of non-violent misconduct in the corporate landscape, particularly within companies led by seemingly qualified and experienced professionals, despite the avalanche of the laws and regulations, raises critical questions about the efficacy of corporate governance as a safeguard against white-collar crimes in the corporate ecosystem.

This publication seeks to examine the inextricable link between the prevalence of misconduct, unethical behaviour, and other forms of non-violent corporate crimes and the absence of, or decline in, effective corporate governance in corporate organizations. Ultimately, the publication will demonstrate that a robust corporate governance framework underpinned by effective compliance can either prevent or significantly reduce the incidence of white-collar crimes in corporate entities including those established or operating in Nigeria.

Corporate Governance in Brief

Corporate governance refers to a set of rules, practices, and processes, that guide how corporations and companies are directed and controlled. It defines the relationships between a company's management, board of directors, shareholders and other stakeholders. By providing a structured framework for decision-making, resource allocation, and performance monitoring, corporate governance plays a critical role in promoting transparency, accountability, corporate responsibility and ethical conduct. For Nigerian companies, compliance with corporate governance principles not only serves as a safeguard against misconduct but also enhances the value and attractiveness of the companies to investors.

The Concept of White-Collar Crimes

From experience, the absence of corporate governance and/or strong and efficient corporate governance structure in a corporate environment portends far-reaching negative consequences for companies, including the opportunity for white collar crimes to thrive. White collar crimes generally refer to illegal acts that use deceit and concealment - rather than the application or threat of physical force or violence - to obtain money, property, or services[1]. In simple terms, white collar crimes are non-violent crimes whose commission is often, but not always, motivated by financial gains. They include money laundering, mortgage fraud, tax fraud, bribery and corruption, obtaining by false pretense, insider trading, false trading and market rigging transactions and many more. In Nigeria, many legislations have been enacted at various times to combat white collar crimes, and they include the Economic and Financial Crimes Commission Act 2004, the Money Laundering (Prohibition and Prevention) Act, 2022, Investment and Securities Act 2025, the Advance Fee Fraud and other Fraud Related Offences Act[2] and many others[3].

By a similar vein, judicial interventions through court decisions reveal how the absence or failure of corporate governance mechanisms has enabled white collar crimes with the attendant impairment of businesses across various sectors. A clear example is the case of ***Akinwunmi O. Alade v Alic (Nigeria) Limited and Anor***[4]**,** where the Nigerian Supreme Court underscores the importance of adherence to ethical corporate governance policies in conducting the affairs of corporate entities, including the need to avoid fraudulent practices while dealing or transacting with members of the public by the officers in charge of those entities. This is because such fraudulent practices erode public trust and confidence in such entities which may, ultimately, lead to business failure. The Court also demonstrated the readiness of the courts to intervene in such cases and hold the principal officers involved in such crimes directly culpable by lifting the veil of incorporation. In that case, the appellant who was a retired civil servant entered into a partnership with the 1st respondent - a company trading in agricultural produce. In furtherance of the partnership, the appellant obtained a loan from the International Bank for West Africa Ltd (IBWA) to whom the 1st respondent was already indebted. The agreement the appellant had with IBWA was that the loan would be deposited in the 1st respondent's bank account. The managing director of the 1st respondent, despite being aware of this plan, failed to disclose the company's prior indebtedness to IBWA. As a result, a substantial portion of the loan obtained was deducted upfront to settle the existing indebtedness, with only the remaining balance deposited into the 1st respondent's bank account. In addition, there was further diversion of the funds into the managing director's personal account and non-disclosure of some funds received from a purchaser/customer. The Supreme Court, in rejecting the defence that the company's corporate personality is distinct from its directors, held the managing director jointly and severally liable for damages, which was caused by the fraudulent breach of partnership. This outcome highlights the critical need for transparency, accountability, and adherence to fiduciary duties in corporate leadership.

The case of ***Oyebanji v State***[5] also serves as a significant judicial illustration of how absence or weak corporate governance may assist misbehaviour in the corporate environment. In this case, it was reported that the appellant, a managing director of Baminco Nigeria Ltd received funds from Associated Commodities and Foodstuffs Nigeria Ltd with the instruction to import specific goods, namely tyres, tubes, and granulated sugar. However, the appellant not only defaulted in depositing the funds into Baminco Nigeria Ltd's corporate account, he also failed to import the goods as contracted. Instead, the funds were fraudulently converted and used for the appellant's personal

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[1] Ellen S. Podgor, Jerold H. Isreal, Miriam H. Baer and Gregory M. Gilchrist, *White Collar Crime in a nutshell* (6th Edition, West Academic Publishing, 2022),
[2] 1995.
[3] Including the Independent Corrupt Practices and other Related Offences Act, 2000 (as amended), Miscellaneous Offences Act, 1985; the Criminal Code Act, and the Penal Code Act.
[4] (2010) 19 NWLR (Pt 1226) at 111.
[5] (2015) All FWLR (Pt. 800) 1256

benefit. The Supreme Court, in its decision, upheld the conviction, affirming the appellant's criminal liability for the misappropriation. This ruling reinforces the imperative for robust transparency, accountability, ethical conduct in corporate management to safeguard stakeholder interests and maintain public trust in corporate entities.

On the foreign scene, the ***Wirecard scandal***[6]**,** often referred to as "Germany's biggest corporate fraud" readily comes to mind. Following lack of transparency typified by a series of corrupt business practices and fraudulent financial reporting, the German payments processor, once the darling of the tech world, declared insolvency after admitting that €1.9 billion listed as cash on its balance sheet did not exist. Wirecard's downfall was driven by a lack of transparency and widespread fraudulent financial reporting – issues that a robust corporate governance structure could have mitigated. More recently is the ***Tesla Case***[7], where a Delaware court's decision voided a $56 billion compensation package purported to be given by Tesla to Elon Musk. This Tesla case underscores the effect of overbearing or excessive executive-influenced decisions, approved without adequate oversight, could potentially undermine the strength of a company's corporate governance.

The foregoing scenarios illustrate how poor corporate governance can pave the way for white-collar crimes to thrive, leading to severe financial and reputational consequences or even total collapse of the corporate entities affected.

Corporate Governance Regulatory Framework

Nigeria's corporate governance framework is structured around a combination of statutory regulations, industry-specific codes, and universally accepted governance principles. These measures are aimed at fostering ethical conduct, transparency, and accountability in corporate operations. A few statutory and regulatory corporate governance regimes in Nigeria include the following:

- **Companies and Allied Matters Act (CAMA) 2020**[8] (including its subsidiary regulations and guidelines). CAMA is the primary legislation regulating the operation of companies in Nigeria and serves as the foundation for corporate governance in our jurisdiction. It provides a legal framework for corporate governance, the appointment of directors, dual/multiple authorization rules (e.g., a board resolution [except a written one which is signed by all the directors] is signed by 2 directors, or a director and the secretary), establishment of committees, and the adoption of practices to ensure accountability and transparency.

- **Securities and Exchange Commission (SEC) Code of Corporate Governance for Public Companies**[9]**:** This code specifically addresses governance requirements for publicly listed companies in Nigeria. It complements the NCCG by focusing on issues such as shareholder protection, transparency, and compliance in securities transactions.

- **Central Bank of Nigeria (CBN) Corporate Governance Guidelines**[10]. The CBN, as the apex regulator for banks and financial institutions, has established comprehensive corporate governance guidelines to ensure accountability, transparency, and ethical conduct within the financial sector. The CBN issued the **Corporate Governance Guidelines for Commercial,**

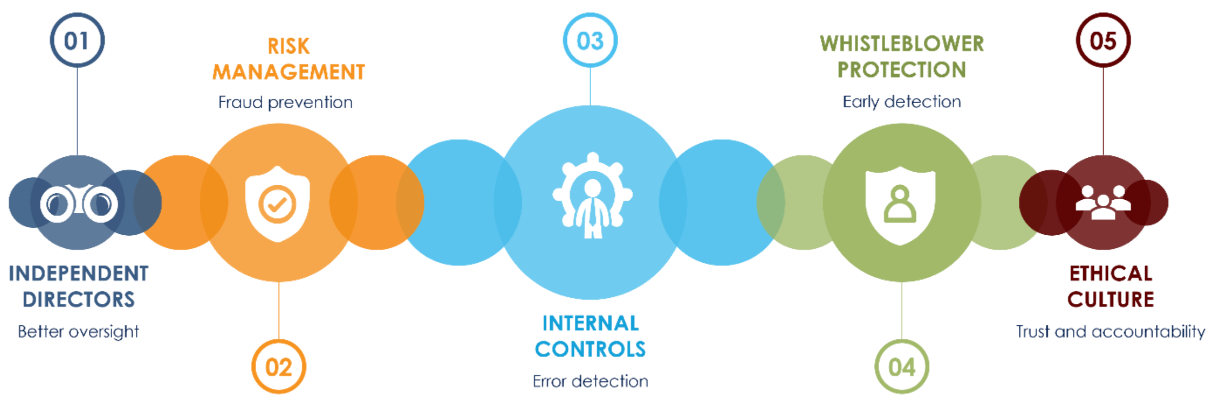
[6] The Enron of Germany': Wirecard scandal casts a shadow on corporate governance https://www.cnbc.com/2020/06/29/enron-of-germany-wirecard-scandal-casts-a-shadow-on-governance.html
[7] "Elon Musk's more than $50 billion pay deal at Tesla rejected again" https://www.npr.org/2024/12/03/nx-s1-5214484/elon-musk-tesla-compensation
[8] https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMA-NOTE-BOOK-FULL-VERSION.pdf
[9] https://sec.gov.ng/code-of-corporate-governance-for-public-companies_may-12-2014/
[10] https://www.cbn.gov.ng/Out/2023/FPRD/Circular%20and%20Guidelines%20for%20Corporate%20Governance.pdf

Merchant, Non-Interest, and Payment Service Banks, and Financial Holding Companies in Nigeria 2023[11], (the "**Guidelines**"). These Guidelines incorporate relevant principles and recommended practices from the NCCG while tailoring them to the unique operational dynamics of the banking and financial services sector.

- **SME Corporate Governance Guidelines, 2023**[12]: In recognition of the unique challenges faced by Small and Medium Enterprises (SMEs), the Financial Reporting Council of Nigeria issued the SME Corporate Governance Guidelines, 2023. These guidelines aim to promote good governance practices among SMEs by providing practical advice tailored to their specific needs. These guidelines also incorporate the relevant principles and recommended practices from the NCCG.

- **The Nigerian Code of Corporate Governance (NCCG) 2018**[13]**:** Perhaps**,** the most defining moment for corporate governance in Nigeria was, the introduction of the NCCG 2018, which sought to unify corporate governance practices in Nigeria under a single regulatory umbrella. The NCCG aims to institutionalize corporate governance best practices across Nigerian companies and promote public awareness of core corporate values and ethical standards that enhance business integrity. It sets out a range of recommended principles and practices, some of which include the separation of the positions of the Chief Executive Officer ("**CEO**") and the Chairman of the board/company, the creation of independent boards, regular performance evaluations, and transparent decision-making processes.

Corporate Governance Tools That Prevent Crime



Impact of Effective Corporate Governance on White-Collar Crimes

White collar crimes within corporations often thrive in environments where corporate governance structures are weak, oversight is limited, and where checks and balances or compliance mechanisms are inadequate. Consequently, adherence to corporate governance principles remains one of the most effective ways corporations or companies can shield themselves from the occurrence of white-collar crimes. Key aspects of effective corporate governance include:

Corporate Structuring: Putting in place certain corporate structures as provided for under the CAMA, NCCG and other corporate governance frameworks e.g., the dual/multiple authentication rule, separating the positions of the Chairman and CEO and ensuring it is not occupied by one person, putting in place certain control measures, such as having a two-tier approval process, requiring certain decisions to be voted on before proceeding with actions, etc.

[11] https://www.cbn.gov.ng/Out/2023/FPRD/Circular%20and%20Guidelines%20for%20Corporate%20Governance.pdf
[12] https://frcnigeria.gov.ng/wp-content/uploads/2024/07/SMECorporateGovernanceGuidelines2024-3_compressed-2-1.pdf
[13] https://pwcnigeria.typepad.com/files/nigerian-code-of-corporate-governance-2018-1.pdf

Inclusion of Independent Directors in the Composition of the Board: Having non-executive/independent directors in the composition of the board provides a layer of oversight management, ensuring that management decisions align with corporate objectives, and reducing the likelihood of conflicts of interest or unethical conducts.

Risk Management Strategies: Proactive identification and mitigation of potential risks, such as fraud or embezzlement, are central to corporate governance. To achieve this, Companies must regularly review their financial operations and implement policies to minimize exposure to fraudulent activities. Also, having a robust risk management plan can help organizations respond effectively to incidents of fraud and corruption or white-collar crimes generally.

Internal Control Mechanisms: Robust internal controls, such as segregation of duties, regular audits, real-time monitoring of transactions, and financial reporting standards, minimize opportunities for fraud and error. These mechanisms help detect and prevent unauthorized activities, ensuring compliance with financial and operational standards.

Transparency and Disclosure Requirements: Clear and timely reporting of financial activities and governance practices. This builds stakeholder trust and minimizes opportunities for illicit conduct.

Ethical Culture: A strong ethical culture fosters a workplace where integrity and honesty are valued. Also encouraging employees to report suspected wrongdoing through effective whistleblower protection mechanisms. Whistleblower protection is necessary and there are laws that provide for the protection of whistleblowers.

Conclusion

As discussed above, white collar crimes serve as a cautionary tale, underscoring the risks companies face when corporate governance frameworks are either non-existent, weak or ignored, and where checks and balances are not effectively implemented. This thought piece is, therefore, a wake-up call for Nigerian companies seeking to reduce white-collar crimes and foster a culture of transparency and accountability. By upholding sound governance principles, Nigerian companies can safeguard against misconduct, protect their reputation, and enhance their attractiveness to investors.

Conversely, the absence of mechanisms to monitor and correct errors or excesses, can create a culture of complacency where mistakes are overlooked, and inefficiencies become the norm. Over time, this erodes transparency, as decisions are made without proper scrutiny thereby creating an environment in which white collar crimes can flourish. Accordingly, effective compliance with corporate governance principles for Nigerian companies is not merely desirable but a desideratum for their survival.