International Company and Commercial Law Review

2016

CEO-chair duality in Nigerian corporate governance: an institutional theory perspective

Kenneth I. Ajibo[*]

Collins C. Ajibo[**]

Subject: Company law

Keywords: Chairman; Chief executive officers; Corporate governance; Nigeria;

*I.C.C.L.R. 277 Introduction

The issue of having the same individual holding both chief executive officer (CEO) and chair of the board positions (CEO duality) has been a topical debate for many decades in many jurisdictions.[1] The concept of CEO duality refers to "when a CEO also serves as the Chairman of the Board of Directors".[2] In the wake of the 2007–08 financial crisis, calls to separate the chair of the board and CEO roles in corporations have remained on the front burner among scholars.[3] The recommendation that the roles of chair and MD/CEO should be separated first came to prominence in the Code of Best Practice set out in the Cadbury Report in 1992[4] in the UK.[5] Since the Cadbury Commission Report of 1992, there has been a necessity for these positions to be held by different individuals to enhance governance and oversight.[6] In the US, the practice of separating the role of the CEO and chair has become a reality.[7] Unlike most common law jurisdictions with a unitary board system, in continental European countries such as Germany, companies would normally have a dual board structure (co-determination) such as the management board and the supervisory board.[8]

The management board, on one hand, is vested with the statutory powers to run the company, including managing its day-to-day businesses, and it is within the purview of the management board to strategise and formulate policies that will guide the company into its future.[9] On the other hand, the supervisory board is usually constituted by many stakeholders, including shareholders/creditors/banks, employees (union groups), suppliers, customers, and government appointees representing the broader segment of society.[10] In line with that, the German corporate governance system mandates the managing board to run the company in the best interests of all stakeholders, and this implies that the interest of the shareholders should only be pursued to the extent that they are not detrimental to the interests of the other stakeholders in the firm.[11]

The question of an optimal corporate governance model was manifested in the Nigerian economy in the 1990s, owing particularly to the crisis in the banking sector. However, no serious attention was given to sound corporate governance until 2003, when the Atedo Peterside Committee was constituted to review the corporate governance of the public companies. The review resulted in the adoption of a new code of corporate governance.[12] Similarly, the Bankers Committee set up a sub-committee on corporate governance for banks and other financial institutions in Nigeria—owing to recognition of the critical role of corporate governance *I.C.C.L.R. 278 in the success or failure of companies.[13] Nevertheless, the 2011 Revised Code of Corporate Governance of Securities and Exchange Commission (Revised SEC Code) was particularly important as it pioneered the way for the separation of powers between the chair of the board and the CEO of the same company.[14] The recommendation that the roles of chair and MD/CEO should be separated was guided and influenced by the Cadbury Report of 1992 in the UK. It was envisaged that the incorporation of such separated roles would entrench greater efficiency and better financial performance in the Nigerian corporate governance system.[15] However, the preceding argument on the efficiency and financial performance of firms has been criticised, given the fact that corporate governance is somewhat context-specific, entailing that the institutional environment has a huge role in determining the outcome.

This article therefore examines the contending views on the effectiveness or otherwise of the CEO–chair duality regime. It situates the Nigerian reform within the context by drawing attention to how the particularity of the country's institutional environment may affect the optimal outcome of the CEO–chair duality. The article continues the debate on how best to optimise the separation of the roles of the CEO and chair. It brings fresh perspective to the argument by drawing attention to the relevance of the institutional theory (institutional environment) on the performance of the CEO–chair duality generally and in particular the Nigerian context.

This article is divided into six main parts. After the introduction, the second part generally examines the case for or against the CEO–chair duality regime. The third part then applies agency theory and stewardship theory to further elucidate the argument. The fourth part deals briefly with the context-specific nature of CEO–chair duality regime. The fifth part discusses the theoretical aspect of the institutional environment to the operation of the CEO–chair duality regime and its practical implications. The sixth part then offers concluding remarks.

CEO–chair duality—a case for or against duality role

A case for CEO–chair duality

The main rationale behind the separation is to avoid over-concentration of powers in the hands of an individual, given the potential danger an extremely powerful CEO poses to a company.[16] Separation of the roles of the chair and CEO ensures that a system of checks and balances exists in the running of the affairs of the company and curtails possible abuse of power by an all-powerful CEO.[17] However, there seems to be some doubt about the efficacy of the separation roles given the contention that the benefits of separating the two roles are less certain.[18] By and large, empirical evidence on the impact of CEO–chair duality rule on: (1) financial performance; and (2) non-financial performance of firms, provides rather mixed results.[19] In Nigeria in particular, one study indicates that the CEO–chair duality regime improves financial performance, which gives the impression that those firms with CEO–chair duality ***I.C.C.L.R. 279** statistically perform much better than the ones with CEO duality.[20] However, another study seems to indicate that the regime has no significant effect on financial performance.[21]

Similar equivocation underpins the non-financial performance of firms.[22] This could have led some scholars to conclude that, except for compelling reasons such as financial distress and/or a weak board of directors, separation of the roles of the chair from the CEO "as a matter of policy for the purpose of institutionalising independence between the board of directors and firm management is likely to be a misdirected effort".[23]

In countries with a two-tier board structure, particularly in continental Europe, the separation of the function is commonplace since the chair of the supervisory board is not usually the head of the management board.[24] In particular, chair-CEO duality concerns principally arise in countries with a unitary board structure.[25] In such countries, there appears to be near unanimity in their corporate governance codes that the same person should not perform the same roles of the chair of the board of directors and MD/CEO.[26]

A primary function of the board monitoring the CEO is obstructed when the chair also serves as the CEO.[27] Epstein and Roy posit that many corporations have attempted to improve the independence of their boards through ensuring that the board leadership is independent, and this can be attained through either a separation of the role of the CEO and chair or by the appointment of a lead director.[28] In these cases, the aim remains to provide a board leader that is truly independent of all day-to-day corporate activities and is solely devoted to providing oversight and fulfilling a fiduciary duty to the shareholders.[29]

A case for CEO duality

It seems that the strongest advocates of the joint duality structure have been the CEOs themselves, who do not favour a separation of the CEO and chair roles. With respect to that, Ruigrok, Peck and Keller argue that such clear leadership eliminates any ambiguity of responsibility and accountability for firm processes and outcomes.[30] Nonetheless, the advantages of clear leadership might be most valuable in situations where a company has to overcome a crisis, as this situation demands immediate decisions and clear as well as strategic orientation,[31] though this has remained controversial among scholars.[32]

Another justification for the CEO duality regime is the increase in the transaction costs associated with CEO–chair duality, that is, the cost of monitoring and maintaining two positions.[33] The preceding would be unlikely in the CEO duality regime where one person handles such responsibilities, thereby eliminating monitoring cost[34] or additional cost.[35] Although the realisation that a CEO is being monitored oftentimes provides sufficient incentives for better running of the firms,[36] in that case additional monitoring costs might not lead to additional benefits and more monitoring costs would not lead to the desired behaviour of the CEO.[37] There is also the incentive cost associated with CEO–chair duality. For instance, where a CEO is promised the chair position on tenure expiration, the CEO might act in a manner indicative of enlightened self-interest (e.g. avoiding risks to ensure a realisation of such a position); this could cost the company in one way or another.[38]

It can be argued therefore that the overall impact of CEO–chair duality role on corporate performance varies with the industry context. In essence, there is perhaps no best board leadership structure; CEO duality could benefit some firms while separation of the roles would be more advantageous for others.[39] This argument finds support ***I.C.C.L.R. 280** from the conclusion of Finkelstein and D'Aveni that when corporate performance is low, the board of directors is more likely to prefer CEO duality as a means of improving corporate performance.[40] The argument on CEO–chair duality is further analysed using agency theory and stewardship theory hereunder.

Agency theory and stewardship theory

Agency theory

Agency theory postulates, inter alia, that there is a need for the separation of the roles of chair from the CEO for better and effective monitoring of the CEO, in order to protect shareholders.[41] Agency theory rests on the fact that shareholders (principals) are the owners of the company; and the managers act as their agents. In other words, the owners of the company are separate from the managers of the company. Thus, there is a need to curtail the managers from acting for their own interest instead of that of the shareholders by separating the position of the chair of the board from the CEO. In other words, separation eliminates possible managerial opportunism and rent-seeking. Such separation equally reduces CEO entrenchment (i.e. CEO duality could make such a person so powerful that removal becomes difficult when poor performance demands change)[42]; agency costs and/or problems[43]; and conflict of interest.

Thus, the separation of the position of the CEO from the chair of the board could reduce the concentration of powers in one hand, which could weaken board control and monitoring, culminating in less efficient organisation of the firm.[44] In other words, if

"the same person holds the CEO and the chairman of the board position together, he or she could use his or her power as a board chair to choose the directors he or she prefers which are usually the people who are in favor of him or her and less likely to challenge his or her decisions".[45]

Stewardship theory

The assumption of the agency theory of the implied existence of managerial opportunism and rent-seeking in the CEO duality regime is countered by the stewardship theory.[46] Stewardship theory assumes that the managers might as well be motivated by other factors (aside from managerial opportunism and rent-seeking) such as, inter alia, selflessness, a sense of responsibility and a desire to leave a worthy legacy. This theory maintains that "there is no conflict of interest between managers and owners" and that the managers are altruistic and motivated enough "to find an organizational structure that allows co-ordination to be achieved most effectively".[47] As a result, "managers are team players" and they "act in the best interests of owners".[48] Unlike the agency theory, the stewardship theory argues that "managers are not opportunistic agents … but good stewards".[49]

Accordingly, managers could steer the company towards realising its mission, vision, philosophy and objectives.[50] Not surprisingly, stewardship theory does not object to CEO duality since it has the merit of a powerful, clear leadership structure evidenced in a unity of command of the firm, which could positively correlate with better financial performance.[51] On account of this leadership structure, decision making could be faster and better—with the resultant effect of improved performance of the company—than with the separation of the two positions.[52]

While we concur with the contention of the stewardship theory that managers are not always driven by opportunism and rent-seeking, as alluded to by agency theory, but in significant part are motivated by the need to leave a worthy legacy, we note that the particularity of Nigeria requires the separation of the two positions in line with the postulation of the agency theory. In other words, we contend that the CEO–chair duality regime is preferable because of the existence of checks and balances between the board of directors and the CEO. The relevance of such checks and balances becomes even more important in a country like Nigeria which has a predisposition and particularity for infraction and low enforcement of rules. Indeed, such monitoring responsibilities could ensure that decisions that do not ***I.C.C.L.R. 281** add value to the company are jettisoned, and possible (if any) managerial self-interest eschewed. We provide further justifications hereunder.

Performance context-driven

Indeed, the divergence regarding the relevance of CEO duality or otherwise is largely influenced by the competing perspectives of whether "a firm is best served by strong leadership or effective monitoring".[53] Finkelstein and D'Aveni provide illuminating competing perspectives on this:

"When a firm's chief executive officer is also the chair of its board, directors have opposing objectives. According to organization theory, such CEO duality establishes strong, unambiguous leadership. But according to agency theory, duality promotes CEO entrenchment by reducing board monitoring effectiveness." [54]

Moreover, since corporate governance could be context-specific, with a different context perhaps influenced by different variables, including the differences in the CEO-chair relationship, it is our contention that the institutional environment under which the CEO and chair operate equally has a crucial role to play in determining either an efficient outcome or otherwise. In Nigeria, such an institutional environment is critical to any successful application of any corporate governance model or principle. Though CEO–chair duality is preferred to CEO duality, it is relevant to draw attention to the fact that the institutional environment in Nigeria largely determines the performance of the CEO-chair regime. We now outline the basic principles of institutional theory that underline our argument and their relevance to the Nigerian corporate governance.

Relevance of institutional environment in duality arguments

Having noted the relevance of institutional environment in the corporate governance system generally and with specific reference to Nigeria, this section lays out the core principles of the new institutional economics (NIE) theory relied upon herein.[55] Indeed, the claim by the NIE theory of the relevance of institutional factors in determining organisational outcome is well acknowledged by theorists and scholars.[56] In summary, the postulate of NIE theorists is that institution constitutes[57]: (1) written rules and agreements that regulate contractual dealings and corporate governance; (2) constitutions, laws and regulations that govern society, politics and finance; and (3) generally unwritten codes, beliefs and norms of behaviour that underpin any structurally hierarchical organisation.

In other words, NIE is simply concerned with how to design "effective and efficient institutions to structure behaviour in such a way that the system performs better".[58] The environment in which the institution is embedded matters equally.[59] The implication is that the nature of institutions enables as well as constrains outcome. Thus, the amalgam of these formal and informal factors shapes the performance outcome of any organisational arrangement.[60]

NIE is associated with transaction cost economics, property rights and the agency problem, each of which or a combination of them enables or constrains institutional efficiency.[61] Unlike the neoclassical economics theorists' assumption of the existence of a perfect market, the rationality of economic agents, and the cost-free nature of transaction costs, NIE claims the incompleteness of information and the cognitive limitation or bounded rationality of economic players.[62] In contrast to old institutional economics (OIE), NIE does not jettison neoclassical economic theory or attempt to proffer new answers to the "traditional questions of economics—resource allocation and the degree of utilisation".[63] Instead, NIE attempts to answer new questions—why institutions act the way they do[64] —asserting that institutions matter.

The upshot of the NIE theory can roughly be said to postulate that an efficient and well-ordered institution has a greater probability of efficient outcomes than a misaligned institution; and this conclusion straddles all institutions—economic, legal, political and any other hierarchically organised arrangement. The fallout of the NIE theory is that differences in institutions could lead to differences in outcome. Although we are pro-CEO–chair duality, we contend that institutional challenges may affect its optimal performance. In consequence, we set out how institutional environment may affect CEO–chair duality as it specifically applies to Nigeria—and proffer options to follow to optimise performance. ***I.C.C.L.R. 282***

Monitoring responsibilities

As already noted above, the rationale for the separation of the chair position from the CEO is to ensure better monitoring and control of the CEO. Nevertheless, many pitfalls underlie the preceding argument or separation of CEO argument based on the principles of NIE. This is particularly so in a country like Nigeria that falls short of a very strong institution. Certainly, there are transaction costs involved in monitoring and control. The chair, in an effort to monitor or control the CEO, might request certain explanations or clarifications from the latter. This process involves some costs (monitoring cost). The CEO would invariably provide the explanation or clarification, or better still share information with the chair, resulting in an additional cost, otherwise known as an information sharing cost. This is particularly so where the CEO wishes to outsource the services of expert(s) in preparing the contents of the information. Additionally, where the CEO is promised the chair position, on expiration of tenure, based on certain performance benchmarks, he/she could take action reminiscent of enlightened self-interest but which covertly might be detrimental to the company interests.

We contend that the board and the external monitors such as the SEC and Financial Reporting Council (FRC) are in a unique position to help check such transaction costs and self-interested decisions of the CEO.[65] Although there is a cost involved in running every organisation, the role of the board and external monitors becomes particularly important if company performance is being affected by the monitoring role. The board is encouraged to limit avoidable costs or wasteful expenses that can affect the overall company performance. If it is becoming increasingly challenging to discharge such role, a whistle-blowing approach embedded in the Nigerian Corporate Governance Code should be employed to tackle any unethical conduct or practices affecting company performance.[66]

Another challenge presented by the CEO–chair duality regime is the possibility of the problem of information asymmetry characterising the relationship between the chair and CEO.[67] The CEO might decide to withhold certain adverse information from the chair. Since he/she is involved in the day-to-day running of the company, he/she possesses more information regarding the performance of the company than the chair. But he/she might be less incentivised to disclose all the information to the chair, particularly that which is adverse to his/her position and/or power. On the flip side, however, things might be a total reverse of the preceding. That is, the CEO might be incentivised enough to disclose all the information, including that which is adverse. On the balance of probabilities, either of the two situations could prevail. If the former situation prevails, however, it could constitute a serious drawback to the efficiency envisaged in importing the CEO–chair duality regime.

Moreover, assuming that the CEO is substantially incentivised to disclose the necessary information to the chair, the challenges of bounded rationality and/or cognitive limitation arise.[68] The processing of information disclosed or shared, and the consequential decision or judgement arising therefrom, could be liable to error of judgement, given the bounded rationality and cognitive limitation of the board members. Conversely, absent error of judgement from the board members, the CEO could also be susceptible to bounded rationality either in preparing information to share with the chair or subsequently acting on the advice of the chair. Thus, bounded rationality could constrain the optimal performance of the CEO–chair duality regime.

Furthermore, both the members of the board and the CEO could be susceptible to herding in decision making.[69] Accordingly, the chair and/or the CEO might take certain decisions, primarily on the basis of imitation, that hardly add value to the company. This could affect the overall company performance, thereby diminishing the returns for shareholders. In extreme cases of corporate failures, the Government might wish to step in with a bailout fund, if the company is regarded as "too big to fail",[70] resulting in free-riding and moral hazard caused by the use of taxpayers' money. Alternatively, the Government might allow the company to follow the Schumpeterian principle of creative destruction.[71] Thus, the benefits envisaged ex ante in separating the roles of chair from the CEO may not materialise ex post.

To tackle the foregoing, we contend that the following steps should be taken. First, in respect of asymmetric information, we note that there should be greater disclosure. Incentives to encourage disclosure together with sanctions for both the breach and wilful refusal to disclose should continue to constitute a part of code of practice of companies. Additionally, the board should be alive to their monitoring role to avoid the hoarding of information, particularly that which can affect company performance. It is equally contended that there is a need to shore up the social capital of both the CEO and the chair.[72] Informal values of social capital critical to enhanced service delivery include, inter alia, the qualities ***I.C.C.L.R. 283** of honesty, openness, diligence, civility, patriotism, efficiency, being result-oriented, enthusiasm, trustworthiness, altruism and selflessness. These qualities might not have been comprehensively codified into legal rules; however, accretion of these qualities into a virtual habit engenders functional efficiency and qualitative outcomes. Where these social capital attributes (qualities) exist, the incentive to disclose and/or be honest is high. Similarly, the possibility of inflation of costs is highly minimised.

Although cognitive limitation is an inherent part of human existence, it can still be tackled if certain steps are observed.[73] Arguably, selection of the members of the board and progression to the position of CEO should be rigorously scrutinised, and only persons with the highest distinction in their relevant areas of expertise and proven experience should be selected. The implication is that even if mistakes are committed, they would be reduced to the barest minimum. Most importantly, the means of checking and filtering documents before official approval should be central to company operations in order to limit decisions that do not add value to the company. Such responsibilities of checking and filtering documents should primarily rest with the board members, and only if they fail will the SEC take over in their stead.[74] Apart from the monitoring responsibilities, jurisdictional particularity constitutes another challenging factor to the CEO–chair duality regime.

Jurisdictional particularity

North draws attention to the difficulty of restructuring institutions, and how belief systems and norms affect institutional output in emerging economies.[75] The chair (board) and the shareholders constitute the main internal group that monitors and/or controls the CEO (internal control and/or monitor). Externally, the SEC and FRC act as the watchdog to ensure compliance with the Nigerian Corporate Governance Code (external control and/or monitor).[76] The internal monitor and external monitor are enabled and constrained by the belief system and norms in Nigeria.[77]

In respect of the internal monitor, the main responsibility rests with the board. Shareholders, particularly institutional shareholders and other shareholders with large holdings, are required to familiarise themselves with the letter and spirit of the Code, and, where necessary, demand compliance with the Code from the companies they invest in, or seek explanation for non-compliance.[78] Thus, where a "cosy" relationship prevails between the chair and the CEO, effective control and monitoring might be challenged.[79] The cosy relationship might equally be influenced by other factors, such as affiliation and affinity—still very strong in the country, which could dampen the stringent oversight responsibilities of the chair. However, it can be argued that, in such situations, the external monitors—the SEC and FRC—would step in to tackle the situation.[80]

Nevertheless, the capacity of these institutions to live up to their responsibility remains debatable. The Nigerian SEC continues to be bedeviled by, inter alia, institutional weakness as well as poor supervisory and regulatory oversight undermining its position as a regulator. It has been stated that the downward spiral of market capitalisation from NGN 12.6 trillion in March 2008 to NGN 3.99 trillion in February 2009 in the Nigerian equity market was attributed both to abuses perpetrated in the capital market and to failure of institutional oversight by SEC.[81] While a public hearing was organised by the Committee on Capital Market and Other Institutions in the House of Representatives (the Lower House in the Nigerian National Assembly) to reduce these seeming institutional weaknesses, the indication was that the investigation by the National Assembly (MPs) ended without yielding any known meaningful result.[82] Furthermore, a report on the Nigerian SEC equally indicted poor human capital as undermining the capacity of the agency to deliver on its strategic responsibility of protecting the investor as a market regulator.[83]

It is our contention, therefore, that there is a need to strengthen the institutional capacity building of these two establishments through improved human capital; infrastructural upgrade; adequate incentives to enhance motivation to deliver; and most importantly a means of measuring performance of these institutions to ensure more commitment. Indeed, the preceding would invariably make both the SEC and FRC more alive and more proactive in their institutional responsibility of external monitoring. This would make it easier for the external monitors to correct prevailing anomalies if the board were in some way failing to live up to its *I.C.C.L.R. 284 responsibilities. We submit that these suggestions, if implemented, would engender greater optimisation of the CEO–chair duality regime in Nigeria.

Conclusion

The question of whether CEO duality or CEO–chair duality should prevail continues to be characterised by divergences. On one hand, agency theory argues, inter alia, that such a separation of the CEO and chair positions is necessary to curtail possible managerial opportunism and rent-seeking. On the other hand, stewardship theory counters by asserting that managers are team players and good stewards who do their best to discharge their duties responsibly and selflessly; therefore, they are not always amenable to opportunism and rent-seeking. Empirical evidence on the financial performance of companies with CEO duality or CEO–chair duality is rather mixed, possibly indicating that neither one is better than the other. Nevertheless, we contend that the CEO–chair duality regime is preferable because of the existence of checks and balances between the board of directors and the CEO. Such monitoring responsibilities can ensure that decisions that do not add value to the company are jettisoned and possible managerial self-interest eschewed. However, the CEO–chair duality regime does not operate in isolation but rather is embedded in an institutional environment which both enables and constrains the outcomes, particularly in respect of the monitoring responsibilities and jurisdictional particularity. Consequently, we proffer certain practical and applicable steps that should be observed to optimise CEO-chair performance: (1) disclosure between the board/chair and CEO should be enhanced; (2) membership of the board and progression to the CEO position should be characterised by person(s) of unimpeachable character and proven expertise and experience; (3) the monitoring capacities of monitors should be strengthened; and (4) the institutional capacity building of the external monitors should also be strengthened. It is our contention that the observance of the foregoing would foster greater optimisation of the CEO–chair performance in Nigeria.

Kenneth I. Ajibo

Collins C. Ajibo

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*. Kenneth I. Ajibo LLB, BL (Barrister and Solicitor of the Supreme Court of Nigeria), LLM (Hull) PhD (Hull), Lecturer at Law, University of Hull, UK.

**. Collins C. Ajibo, LLB, LLM Manchester (Distinction), PhD Manchester, Lecturer in Law, Faculty of Law, University of Nigeria.

1. Several international jurisdictions, including the UK and South Africa, encourage separating the roles in their best practice codes and guidelines. Concerned shareholders often urge that a unified role leads to a lack of oversight and diminishes the independence of the board. Executives and other corporate associations advise that a unified role ensures strong, central leadership and increases efficiency. Prior to the financial crisis, several failed banks such as Lehman Brothers and Bear Stearns employed a unified chair and CEO, a fact which has led to criticism of the unified role in the US. See D. Walker, "Reclaiming Public Trust in the Wake of Recent Corporate Accountability Failures" (2005) 2(1) International Journal of Disclosure and Governance 264.

2. P.B. Abels and J.T. Martelli, "Corporate Governance and Transparency: A Research Study Investigating CEO Duality in Fortune Ranked Companies" (2013) 7(1) Journal of the North American Management Society 1.

3. Walker, "Reclaiming Public Trust in the Wake of Recent Corporate Accountability Failures" (2005) 2(1) International Journal of Disclosure and Governance 264.

4. The Corporate Governance Committee was set up in May 1991 by the Financial Reporting Council, the Stock Exchange and the accountancy profession in response to continuing concern about standards of financial reporting and accountability. The Cadbury Report 1992, entitled the *Financial Aspects of Corporate Governance*, is a report issued by the Committee on the Financial Aspects of Corporate Governance chaired by Adrian Cadbury that sets out recommendations on the arrangement of company boards and accounting systems to mitigate corporate governance risks and failures. The final report the *Financial Aspects of Corporate Governance* (usually known as the Cadbury Report) was published in December 1992 and contained a number of recommendations to raise standards in corporate governance in the UK.

5. *Financial Reporting Council, Comply or Explain: 20th Anniversary of the UK Corporate Governance Code (London:*

FRC, 2012).

6. See Walker, "Reclaiming Public Trust in the Wake of Recent Corporate Accountability Failures" (2005) 2(1) International Journal of Disclosure and Governance 264.

7. Abels and Martelli, "Corporate Governance and Transparency" (2013) 7(1) Journal of the North American Management Society 1.

8. One of the most fundamental features of the German corporate governance model, in contrast with some common law jurisdictions, is that the company law is federal in nature and regulates the internal organisation of companies, with provision for dual board structure consisting of a management board (*Vorstand*) and a supervisory board (*Aufsichstrat*). This particular system is known as "codetermination" and is sustained by both corporate and labour statutes at the federal level. See generally F. Schilling, "Corporate Governance in Germany: The Move to Shareholder Value" (2001) 9(3) Corporate Governance: An International Review 148.

9. *C. Mallin, Corporate Governance, 2nd edn (Oxford: Oxford University Press, 2007)*.

10. *Mallin, Corporate Governance (2007)*.

11. The German model has not been without criticism, given that the Commission that drafted the Code had to deal with two board systems; the reason has been that many international investors were neither used to nor familiar with the idea of two boards in the governance of a company. Similarly, there is a potential for inadequate independence of the supervisory board because they are appointed by both the shareholders and employees, who may have competing or opposing interests in the firm. The German supervisory board has no power to direct the management board, as its power is only advisory. By way of contrast, non-executive directors in the UK and other common law jurisdictions have directors who can attend board meetings and take part in meaningful decision-making. See generally G. Gorton and F. Schmid, "Capital, Labour and the Firm: A Study of German Codetermination" (2004) 2(3) Journal of European Economic Association 863; S. Turnbull, "Corporate Governance" (1995) 73 Harvard Business Review 169; S. Turnbull, "Stakeholder Governance: Redesigning the Governance of Firms and Bureaucracies" (1994) 23 Journal of Socio-Economics 321.

12. See *SEC, Code of Corporate Governance for Public Companies (2003)*; and *SEC, Code of Corporate Governance for Public Companies (2011) (Revised SEC Code 2011)*, both available at: http://www.sec.gov.ng/files/CODE%20OF%20CORPORATE%20GOVERNANCE%20FOR%20PUBLIC%20COMPANIES.pdf [Accessed 30 May 2016].

13. See *CBN, Code of Corporate Governance for Banks and Other Financial Institutions (2006)*, available at: http://www.cenbank.org/documents/ [Accessed 23 June 2016].

14. See SEC Principle 5.1(b). Note that the 2011 Corporate Governance Code came about through a national committee set up by SEC in 2008, chaired by Mr A.B. Mahmoud, to review the Code to address existing weaknesses and ensure better enforceability. See *SEC, Code of Corporate Governance for Public Companies in Nigeria (2011)*, available at: http://www.sec.gov.ng/files/CODE%20OF%20CORPORATE%20GOVERNANCE_web%20optimized.pdf [Accessed 30 May 2016]. Note equally the drive to harmonise corporate governance in Nigeria through the Public Sector Code, Private Sector Code and Not-for-Profit Sector Code 2015.

15. P. Akhalumeh, F. Ohiokha and G. Ohiokha, "Board Composition and Corporate Performance: An Analysis of Evidence from Nigeria" (2011) 2(4) Research Journal of Finance and Accounting 64. The banking sector among other sectors has also witnessed several cases of collapses owing to poor corporate governance practices leading to the depletion of investors' funds and job losses among the general public. Some of these corporate failures included the Alpha Merchant Bank Ltd, Savannah Bank Plc, Société Générale Bank Ltd, All States Trust Bank Plc, Oceanic Bank Plc and Intercontinental Bank Plc (all in Nigeria); Continental Bank of Kenya Ltd, Capital Finance Ltd, Consolidated Bank of Kenya Ltd and Trust Bank of Kenya, among others. See M. Akpofurere, "Corporate Governance and Bank Sector Crisis in Nigeria: Rescue Intervention or a Macabre Dance with the Economy?" (2013) 3(1) African Journal of Law and Criminology 83.

16. *G. Thornton, The Chemistry of Governance: A Catalyst for Change: Corporate Governance Review 2012 (London: Grant Thornton, 2012)*. See also E. Kang and A. Zardhoohi, "Board Leadership Structure and Firm Performance" (2005) 13(6) Corporate Governance 785; and C. Daily, "The Relationship between Board and Composition and Leadership Structure and Bankruptcy Reorganization Outcomes" (1995) 21(6) Journal of Management 1041.

17. The positives of separating the chair and CEO roles are appealing. The board is directly responsible for the hiring and firing of the CEO, and is charged with general oversight of the corporation's affairs and its management. As a result, installing the CEO as chair could indicate a conflict of interest. An independent chair of the board can create an independent source of authority with tangible authority to address the concerns of the board. This independence creates an opportunity for the board to effectively address any abuses that may occur as well as addressing any concerns about the performance of the CEO, but subject to an independent chair of the board having enough company information, authority or respect of the management, otherwise effective feedback and oversight would be impaired. While the advantages of an independent CEO and chair of the board appear obvious, the advantages of the unified position are just as obvious when considering the day-to-day operations of a corporation. The CEO, as the manager of the corporation, has a superior knowledge of the operations of the business. When that role is unified with the role of chair of the board, better and more able leadership may be provided. Thus a unified leadership structure can create efficiency by allowing the unified executive to operate in both capacities at once. The other board members can have confidence that their chair/CEO is fully aware of the corporation's strengths and weaknesses, along with the issues that need to be addressed in order to move forward. On the other hand, the potential conflicts of interest described above can create opportunities for abuse, as the chair in the CEO role may abuse the position and conceal from the board

potential problems and any issues created by his or her management. Certainly, whether a corporation chooses to unify or separate the chair and CEO roles, it remains essential to have an independent, engaged and inquisitive board that actively involves itself in the business in order to safeguard shareholders' interests. The needs of every corporation at different stages of development vary. Some corporations may require a strong, unified executive able to effectively combine the roles and provide dynamic leadership to the organisation. However, shareholders, wary of combining power in one individual, may feel it is necessary to separate the roles and create two complementary power centres. As with many questions, there is no bright-line rule dictating an answer. See generally F. Bekiris, "Ownership Structure and Board Structure: Are Corporate Governance Mechanisms Interrelated?" (2013) 13(4) International Journal of Business in Society 352; Nirosha Hewa Wellalage and Stuart Locke, "Does CEO Duality Really Matter? Evidence from an Emerging Market" (2011) 8(4) Corporate Ownership & Control 112; M. Saibaba, "Do Board Independence and CEO Duality Matter in Firm Valuation?—An Empirical Study of Indian Companies" (2013) 12(1) IUP Journal of Corporate Governance 50; C. Goh and A. Rasli, "CEO Duality, Board Independence, Corporate Governance and Firm Performance in Family Firms: Evidence from the Manufacturing Industry in Malaysia" (2014) 13(4) Asian Business & Management 333; and T. Yang and S. Zhao, "CEO Duality and Firm Performance: Evidence from an Exogenous Shock to the Competitive Environment" (2014) 49 Journal of Banking & Finance 534.

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27. Code of Best Practice of Corporate Governance 2009 (Brazil) s.2.10; Corporate Governance Principles and Recommendations 2010 (Australia), Recommendation 2.3; Principles and Guidelines of Corporate Governance 2004 (New Zealand) s.2.5; and Corporate Governance Voluntary Guidelines 2009 (India) s.A.2.

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