A Functional Stakeholder Model of Corporate Governance for Banks in Challenging Institutional Contexts: A Case Study of Nigeria

Victor Ediagbonya

A thesis submitted for the degree of Doctor of Philosophy

The School of Law

University of Essex

January 2022

Abstract

This thesis seeks to address the limited stakeholders' recognition and protection under the Anglo-Saxon corporate governance model currently practised in Nigeria. The Anglo-Saxon corporate governance model originated from the UK and the US and focuses on profit maximisation for shareholders' benefit at the expense of other stakeholders, such as customers and employees. The thesis argued that the relative success of the Anglo-Saxon model in developed economies, such as the UK, is because of the availability of functional institutions, such as an efficient legal system which includes the state apparatus for making, interpreting and enforcing the law. The UK Anglo Saxon model is dependent on an active external market for corporate control and organised civil societies for its success. Nigeria inherited the UK corporate governance model because of its historical past. Despite the differences in their institutional environments, Nigeria has continued to model its corporate governance framework on that of the UK, despite its inefficient legal system resulting from the systemic corruption across the entire branches and tiers of government. Thus, implementing the UK's corporate governance model in Nigeria has deviated from what theories have envisaged. This is due to Nigeria's institutional environment, evidenced by its weak institutions, such as inadequate legal, regulatory and supervisory systems, insiders' ownership concentration, an underdeveloped capital market and systemic corruption across the entire branches and tiers of government. This has resulted in Nigeria's persistent banking failures because of the weak corporate governance framework, evidenced by inaccurate reporting and non-compliance with regulatory requirements, gross insider abuses resulting in substantial non-performing insider related loans, persistent illiquidity, and poor assets quality. Because of Nigeria's institutional voids, when banks fail, stakeholders, mostly customers and employees, suffer because the current framework does not offer them any protection. Therefore, given Nigeria's challenging institutional context, this thesis proposes an alternative corporate governance framework in the

Nigerian banking sector that will promote the recognition of stakeholders and protect stakeholders' interests. The thesis makes original contributions to the existing scholarship in comparative corporate governance and regulation, particularly as it relates to banking regulation and stakeholders.

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Dedication

To my loving wife, Blessing Obasuyi-Ediagbonya, for her unwavering support and our lovely children, Abiemwense, Eronmwon and Omoregbee, for their love, patience, understanding, and for being there always.

Acknowledgements

I am grateful to Almighty God for giving me the divine grace to complete this ultimate phase of my educational pursuit. I am eternally indebted to Prof. Onyeka Osuji, my supervisor, for his diligence, encouragement, guidance, and patience throughout this PhD program. His valuable direction and dedication in supervising this thesis enabled me to understand the field and see it through to completion. I am also grateful to Dr Anastasia Karatzia, formally my supervisory board chair, who later became my second supervisor for her arduous work and dedication. She has painstakingly assisted me by providing beneficial insight, which transformed the overall quality of the thesis. I am indeed grateful. I am also thankful to Dr Mohammed Alshaleel, the new supervisory board chair, for his arduous work during the supervisory board meetings. I owe my deepest gratitude to my mum, Mrs C. Ediagbonya, for her continuous prayers and all my siblings, especially Frank, Kingsley, Oghogho, Bernard and Ekundayo, for their encouragement.

I am very thankful to Dr Eghosa Ekhator, who constantly reminded me why I embarked on the PhD program. He was always available to discuss this thesis with me and provided valuable insights. He also assisted with sourcing relevant materials and consistently offered advice that kept me going throughout the entire PhD journey. I am also very thankful to Dr Folashade Adeyemo for her support. She was always there to give me that support whenever needed. I am also grateful to my friends, Princess Philomina Iheyen, Augustine Iremiran, Jude Imagwe, Jobson Ewelefoh, Kenneth Adodo, Austin Aibangbee, Rufus Aigbogun, Joseph Agie and Tracy Nkano Ekpe for their encouragement.

Finally, to my PhD colleagues and now lifetime friends, Dr Oluwafikayo Taiwo, Mr Godswill Agbaitoro, Ms Tioluwani Comfort Tioluwani, Mr Simon Malih and Ms Miracle Uche, without you guys, this entire journey would have been a very lonely mission.

Abbreviations

AMCON – Asset Management Corporation Nigeria

BCBS – Basel Committee on Banking Supervision

BOFIA – Banks and Other Financial Institutions Act

CAC – Corporate Affairs Commission

CAMA – Companies and Allied Matters Act

CBN – Central Bank of Nigeria

CCGTI – Code of Corporate Governance for the Telecommunications Industry

CEO – Chief Executive Officer

COB – Chairman of Board

CFRN – Constitution of Federal Republic of Nigeria

CIBN – Chartered Institute of Bankers of Nigeria

CSR – Corporate Social Responsibility

DMB – Deposit Money Bank

EFCC- Economic and Financial Crimes Commission

ESV – Enlightened Shareholder Value

FHC – Federal High Court

FRCN – Financial Reporting Council of Nigeria

FSM – Functional Stakeholder Model

ICPC – Independent Corrupt Practices Commission

LFN – Laws of the Federation of Nigeria

MSME – Micro Small and Medium Enterprise

NAICOM – National Insurance Commission

NCC – Nigerian Communications Commission

NCCG – National Code of Corporate Governance

NDIC – Nigeria Deposit Insurance Corporation

NPLs – Non-Performing Loans

NWLR – Nigerian Weekly Law Reports

OECD – Organisation for Economic Co-operation and Development

PENCOM – National Pension Commission

SC – Supreme Court

SEC – Securities Exchange Commission

SOGA – Statutes of General Application

UK – United Kingdom

UKHL – United Kingdom House of Lords

US – United States

Chapter One

Introduction

1.1 Background

There have been several corporate governance debates in the last decades, particularly related to the banking sector. Corporate governance became a point of discussion because it was the main reason for the global financial crisis of 2007–2009.[1] Its effect was devastating to several banks and other financial institutions globally because of their interconnectedness, resulting in the financial crisis that crumbled world economies.[2] For example, Lehman Brothers went into insolvency, Lloyds TSB acquired HBOS, JP Morgan Chase, and Bank of America acquired Washington Mutual Bank and Merrill Lynch, respectively, to avert insolvency.[3] Besides the mergers and acquisitions, various governments had injected public funds into the different systematically important banks globally at one point or the other. Governments of countries involved in the bailouts perceived the systematically important banks as 'too big to fail' because of their interconnectedness. For example, Benelux, the US and the UK governments bailed out Fortis, Citigroup and Northern Rock, respectively, using public funds to avert insolvencies in those banks and systemic breakdown of the entire financial system in those countries.[4] The waves of the financial crisis quickly spread across countries, and its effect was tough on those affected countries.[5] For example, the impact on the Nigerian banking sector was enormous because of its exposure to the capital market. Shares prices plummeted, and foreign

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[1] Martin Conyon, William Judge, Michael Useem, 'Corporate Governance and the 2008–09 Financial Crisis', Corporate Governance: An International Review, 2011, 19(5): 399–404

[2] Heather Stewart, 'We are in the worst financial crisis since Depression, says IMF', The Guardian, Thursday 10 April 2008, see < https://www.theguardian.com/business/2008/apr/10/useconomy.subprimecrisis> accessed 12 November 2021

[3] Van Deventer Donald, 'Case Studies in Liquidity Risk: Royal Bank of Scotland PLC New York Branch,' Kamakura Corporation Working Paper August 4, 2011

[4] Kirkpatrick Grant, 'The corporate governance lessons from the financial crisis,' OECD Journal: Financial Market Trends 1 (2009), pp 61-87

[5] Tony Dolphin, Laura Chappell, 'The Effect of the Global Financial Crisis on Emerging and Developing Economies' The Institute for Public Policy Research Report 2010, available at: < https://www.ippr.org/files/images/media/files/publication/2011/05/Financial%20crisis%20and%20developing%20economies%20Sep%202010_1798.pdf> accessed 13 November 2021

portfolio investors sold off their investments and repatriated all their funds, leading to a drop in banks' liquidity ratios.[6]

Before the global financial crisis, the Nigerian banking sector witnessed several banking failures between the late 1990s and early 2000s.[7] The reasons for these banking failures were due to poor corporate governance.[8] Most Nigerian banks were owned either by the state governments or private individuals and in most cases, directors and senior management appointments are based on political or tribal sentiments and not on merit as expected. Those directors and senior management staff awarded loans to themselves and their cronies, putting their banks, the banking sector, and the entire financial system in a difficult situation. In the event of banking failures in Nigeria, stakeholders, especially employees and customers, suffer the most, and the institutional environment does not offer them adequate protection.[9] Customers cannot access their funds; their savings disappear when the banks fail because they will lose some, if not all, of their money. Although deposit guarantee schemes may cover some of the customers' money, it could take several years to get reimbursed because of Nigeria's institutional environment. Similarly, employees also suffer from banking failures; their salaries are unpaid for several months if not years and, in certain instances, they are made redundant without adequate compensation.

Following Chukwuemeka Soludo's appointment as the Central Bank of Nigeria (CBN) Governor in 2004, he conducted a stress test on the Nigerian banking sector. The examination

[6] Chuke Nwude, 'The Crash of the Nigerian Stock Market, what went wrong, the consequences and the Panacea', Journal of Developing Countries Studies, Vol. 2, No. 9, 2012, pp. 105 - 117.
[7] NDIC, 'Closed Financial Institutions' available at: <https://ndic.gov.ng/failure-resolution/closed-financial-institutions/> accessed 15 August 2021
[8] Lisa Cook, 'Were the Nigerian Banking Reforms of 2005 a Success … and for the Poor? In Sebastian Edwards, Simon Johnson, David Weil, (eds): African Successes, Volume III: Modernization and Development (University of Chicago Press, Illinois USA 2016) pp.157 -182
[9] Institutional environment refers to legal systems, economic, social and political factors influencing a country's formal and informal institutions.

revealed that over two-thirds of the 89 Deposit Money Banks (DMBs) were undercapitalised. Saludo argued that poor corporate governance was the primary reason for the Nigerian banking crisis. Poor corporate governance is evident in the level of high non-performing loans due to insider dealings, weak internal control mechanisms, negative capital adequacy ratios, weak capital base and too much dependence on public sector deposits, thereby neglecting the small and medium depositors.[10]

According to Soludo, the Nigerian banking sector's challenges were massive, and if adequate steps were not taken,[11] it would snowball into a systemic crisis; consequently, he proposed a 13-point reform agenda.[12] At the heart of the reform was the need to recapitalise the banking sector by increasing the minimum capital base for DMB from ₦2 billion ($15million) to ₦25 billion (approximately $164.64 million).[13] Therefore, the CBN mandated all DMBs to meet the ₦25 billion minimum paid-up capital by 31 December 2005. Apart from some banks engaging in mergers and acquisitions and group consolidation, almost all the banks went to the capital market to raise funds through initial public offerings and foreign equity participation.[14] This reform radically changed the Nigerian banking landscape by reducing the number of DMBs from 89 to 25. As part of the reform, CBN issued a Code of Corporate Governance for DMBs[15] to operate alongside the Security and Exchange Commission (SEC) code for publicly listed

[10] Chukwuemeka Soludo, Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century. Being An Address delivered to the Special Meeting of Bankers Committee held on 6th July 2004 at the CBN H/Q, Abuja, available at: <https://www.bis.org/review/r040727g.pdf> accessed 15 August 2021
[11] Soludo had embarked on massive reforms to ensure a safe and sound banking system by repositioning the banking sector to develop the requisite resilience needed to support Nigeria's economic development.
[12] Chukwuemeka Soludo, Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century. Being An Address delivered to the Special Meeting of Bankers Committee held on 6th July 2004 at the CBN H/Q, Abuja, available at: <https://www.bis.org/review/r040727g.pdf> accessed 15 August 2021
[13] Ibid
[14] Pat Donwa, James Odia, Effects of the Consolidation of the Banking Industry on the Nigerian Capital Market, Journal of Economics, Vol. 2, Issue (1), 2011, pp. 57-65
[15] CBN, 'Code for Corporate Governance for Banks in Nigeria Post Consolidation' 2006

companies.[16] As previously stated above, most DMBs are now listed on the Nigerian Stock Exchange, following the attempts to raise funds to meet the minimum paid-up capital of ₦25 billion (approximately $164.64 million); therefore, they must comply with the requirement of both the CBN code and the SEC code.

Despite the above reforms, the Nigerian banking sector witnessed another banking crisis in 2009. Following the appointment of Sanusi as the CBN Governor in June 2009, the CBN, in conjunction with Nigeria Deposit Insurance Corporation (NDIC), conducted a special joint examination of the DMBs in Nigeria. The finding revealed cases of poor corporate governance practice evidenced by illiquidity, poor assets quality, and high non-performing loans (NPLs) in nine out of the 24 DMBs examined.[17] As a result, the CBN intervened by dissolving the board of eight troubled DMBs, leaving one DMB intact because its board of directors was just constituted. Apart from dissolving the boards of the troubled banks, CBN injected the sum of ₦620 billion (approximately $4.27 billion) into the nine ailing banks to prevent a collapse of the entire financial system.[18] However, three out of nine DMBs that CBN bailed out in 2009 failed again in 2011 because of poor corporate governance, evidenced by their illiquidity and low capital base, which resulted in CBN revoking their licences.[19]

Further reforms were embarked upon by both CBN and SEC to address the poor corporate governance in the Nigerian banking sector; the SEC code and the CBN code were revised in 2011 and 2014, respectively. However, on 4 July 2016, the newly appointed CBN governor Godwin Emiefele dissolved the board of Skye Bank because of corporate governance failure,

[16] SEC, Code of Corporate Governance for Public Companies 2003
[17] Sanusi Lamido Sanusi, 'Banking reform and its impact on the Nigerian economy, CBN Journal of Applied Statistics, The Central Bank of Nigeria, Abuja, Vol. 02, Issue. 2, 2011, pp. 115-12
[18] Ibid
[19] Ibid

and to prevent the bank from causing a systemic failure, the CBN injected the sum of ₦350 billion (approximately $2.30 billion) into the bank.[20] Skye Bank failed for the second time in two years despite the above interventions due to poor corporate governance manifesting in falsification, financial misstatement of accounts, non-disclosure of directors' interests, unlawful loan and credit facilities beyond the single obligor limit.[21] Consequently, on 21 September 2018, CBN revoked Skye Bank's licence and floated a bridge bank known as Polaris Bank to take over the assets and liabilities of the defunct Skye Bank.[22] Furthermore, the sum of ₦786 billion (approximately $4.15 billion) was injected into Polaris Bank by the Asset Management Company of Nigeria (AMCON)[23] to prevent a systemic failure of the Nigerian financial system.[24]

From the above analysis, it could be argued that poor corporate governance practice is a curse that has besieged the Nigerian banking sector and is responsible for the various banking crises. Despite the interventions by the regulators, from increasing the minimum paid-up capital, revising the codes of corporate governance, dissolving the boards of DMBs, injecting public funds into banks to prevent systemic failure and prosecuting erring directors of banks, these interventions have had little or no effect. This brings to the fore the question of the adequacy of the corporate governance framework in the Nigerian banking sector. This thesis argues that the Nigerian banking sector's corporate governance framework, which is premised on the Anglo-Saxon model, failed to consider the challenging institutional context in Nigeria. The thesis further argues that for the corporate governance framework in the Nigerian banking

[20] Victor Ediagbonya, 'Revisiting corporate governance issues in Nigerian banking: A review of Skye Bank Nigeria Plc'. Financial Regulation International, Volume 21 Number 10 December 2018
[21] Ibid
[22] Ibid
[23] S.1 AMCON Act 2010, AMCON is not a regulator, but a Special Purpose Vehicle set up with the primary responsibility of acquiring the NPLs from banks and other financial institutions
[24] Ibid

sector to be effective, it must be designed based on the peculiarities of the challenging institutional environment in Nigeria.

1.2 Research Problems

The Anglo-Saxon corporate governance model, which originates from the UK and the US, is premised on the availability of functioning institutions, such as an active external market for corporate control, an efficient legal system comprising the state's machinery for making, interpreting and enforcing the law.[25] Despite the relative success of the Anglo-Saxon model in the UK and US, its implementation in Nigeria has failed to prevent banking failures.[26] This is due to the Anglo-Saxon model failing to acknowledge Nigeria's institutional arrangements, which are characterised by weak and non-functioning institutions, such as an undeveloped market for corporate control and an inefficient legal/judicial system.[27] In 1862 the British Government introduced the Anglo-Saxon corporate law and regulations in Nigeria to regulate the British companies in the Nigerian business environment.[28] As a result, Nigeria inherited a system of corporate governance framework based on the Anglo-Saxon model. Even after independence, Nigeria had designed her Companies Act 1968 based on the UK Companies Act 1948.[29]

The subsequent Companies and Allied Matters Act (CAMA), the principal legislation that presently governs corporate law in Nigeria, was introduced in 1990 and was modelled on the

[25] Onyeka Osuji, Franklin Ngwu, Frank Stephen, 'Corporate Governance in Developing and Emerging Markets' (Routledge, Abingdon and New York 2017) p4
[26] Ibid
[27] Emmanuel Adegbite, 'Good corporate governance in Nigeria: Antecedents, propositions and peculiarities', International Business Review, Vol. 24(2) 2015, pp. 319-330.
[28] Emmanuel Adegbite, Chizu Nakajima, Corporate governance and responsibility in Nigeria International Journal of Disclosure and Governance, 8 (3) (2011), pp. 252-271
[29] Elewechi Okike, 'Corporate Governance in Nigeria: The status quo,' Corporate Governance an International Review 15(2) 2007, pp.173-193

English Companies Act 1985.[30] It is argued that there was no significant amendment to the law for thirty years until 2020 when the Act was repealed and re-enacted.[31] Notwithstanding the legislative attempt to repeal and re-enact CAMA, the newly enacted CAMA 2020 is in *pari materia* with the UK Companies Act 2006 premised on the Anglo-Saxon corporate law model, which failed to consider the challenging institutional context in Nigeria. For example, in Nigeria, banks operate a system where ownership and management may be fused because Nigerian banks are owned by wealthy families and rich individuals, including few institutional ownerships, allowing them to control their businesses.[32] The institutional context in any country is fundamental in determining the corporate law model that the country should implement for its corporate governance to be effective. This argument is supported by Osuji, Ngwu and Stephen, who argued that the effectiveness of corporate governance models is context-dependent.[33]

Contrary to the view in several corporate governance literature that there are many corporate governance models, only two types of corporate governance models exist in theory. These are the shareholder's model, which is characterised by the maximisation of profit for the benefit of shareholders alone and the stakeholders' model, which is to run the company for the benefit of stakeholders, including the shareholders.[34] However, despite the two corporate governance models, many variations exist in practice. The Anglo-Saxo model practised in the UK and the US is a typical shareholder's model with different variations. For example, there is the shareholder primacy model, which is designed solely to maximise shareholders' wealth, and

[30] Udo Udoma, Belo-Osagie, 'The Companies and Allied Matters Act 2020 – What You Need to Know' Part 9 Schemes of Arrangement, BusinessDay Newspaper, Tuesday 8 September 2020, p.14
[31] CAMA 2020
[32] Peterson Ozili, Olayinka Uadiale, 'Ownership concentration and bank profitability,' Future Business Journal, Volume 3, Issue 2, 2017, Pages 159-171
[33] Onyeka Osuji, Franklin Ngwu, Frank Stephen, 'Corporate Governance in Developing and Emerging Markets' (Routledge, Abingdon and New York 2017) p3
[34] Maria Maher, Thomas Andersson, 'Corporate Governance: Effects on Firm Performance and Economic Growth,' OECD Working Paper 1999, p.6 available at: <https://www.oecd.org/sti/ind/2090569.pdf> accessed 20 August 2021

the Enlightened Shareholder Value (ESV) model, which considers the interests of some stakeholders when pursuing shareholders' wealth maximisation.

In contrast, the stakeholder's model also varies in practice. The variations stem from a limited stakeholder recognition, where only a few stakeholders' interests are recognised and protected. Another variation of the stakeholder's model is to protect all stakeholders' interests. These variations are evident in the Continental European model and the Japanese *Keiretsu* model, both premised on the stakeholder's model. Notwithstanding the variations in the corporate governance model, it must be localised in line with the institutional environment for a corporate governance framework to be effective. Thus, the corporate governance model that will thrive in every country depends on its institutional arrangements and peculiar circumstances. For example, it is doubtful that the Japanese *Keiretsu* corporate governance model will work in the UK because of the UK's institutional arrangement.

Furthermore, the argument supporting the convergence of a global corporate governance model on the assumption of globalisation[35] is misleading and a total denial of the reality that every society is unique and has its institutional arrangement. As previously argued, the institutional arrangement is a core determinant for effective corporate governance.[36] Therefore, this thesis argues that to have an effective corporate governance framework in the Nigerian banking sector, the corporate governance model must factor in the challenging institutional context in Nigeria.

The emergence of modern corporations has spawned passionate debates between the shareholder model and the stakeholder model of corporate governance. According to the

[35] Henry Hansmann, Reinier Kraakman, 'The end of history for corporate law', Yale Law School Working Paper No. 235; NYU Working Paper No. 013; Harvard Law School Discussion Paper No. 280; Yale SOM Working Paper No. ICF-00-09, January 2000.

[36] Adegbite Emmanuel (n25), Adegbite Emmanuel, Chizu Nakajima (n26), Franklin Nakpodia, Emmanuel Adegbite, Corporate Governance and Elites,' Accounting Forum, Vol 42, (1) 2018, pp.17-31

shareholder primacy theorists, directors are to promote the interests of shareholders alone through the maximisation of profit. In contrast, the stakeholder theorists argue that directors must promote the interests of all stakeholders in the corporation rather than just the interests of shareholders. The Anglo-Saxon corporate governance model is a shareholders-oriented model primarily designed to protect shareholders' interests and shareholders' interest is to maximise profit for their benefit, which has been the traditional view of the corporation.[37]

Hansmann and Kraakman, arguing in favour of the shareholders' primacy model, suggested that corporate law should only promote shareholders' interests and that other stakeholders in the corporation, such as employees, depositors, host communities and the environment, should look beyond corporate law to seek ways of protecting their interests.[38] Hansmann and Kraakman opined that the board should only be accountable to shareholders because of their investment in the corporation. The interests of other stakeholders should not be the board's concern, as they argued that there are several legal mechanisms for protecting the interests of non-shareholder stakeholders other than through corporate law.[39] For example, they argued that employees could avail themselves of the protection offered by the employment law, contract law, pension law, and health and safety law.[40] Similarly, consumers can rely on product safety regulations, warranty, tort, and competition laws.[41] The host communities can avail themselves of environmental law and the law of nuisance and mass torts.[42] The above argument is correct to a certain extent, as other stakeholders can rely on different areas of law, particularly where there are functional institutions like in the UK. For example, host

[37] Henry Hansmann, Reinier Kraakman, 'The end of history for corporate law', Yale Law School Working Paper No. 235; NYU Working Paper No. 013; Harvard Law School Discussion Paper No. 280; Yale SOM Working Paper No. ICF-00-09, January 2000.
[38] Ibid p.9
[39] Ibid
[40] Ibid
[41] Ibid
[42] Ibid p.10

communities can bring an action against a corporation in tort regarding the issue of safety and environmental degradation.[43] Similarly, consumers in the UK are expected to take advantage of the protection offered by the consumer protection laws;[44] and bank customers could rely on the deposit guarantee scheme in case of banking failures.[45] However, due to the challenging institutional context in Nigeria, if non-shareholders stakeholders rely solely on other areas of law, it will not offer them the required protection.[46]

According to Williams, the argument that management should always protect shareholders' interests, which is the maximisation of profit for shareholders' benefit, is misleading and unimaginable in the increasingly global economy.[47] It is argued that due to globalisation, the legal mechanisms suggested by Hansmann and Kraakman to regulate the corporation's relationships with other stakeholders are insufficient to meet the issues arising from the corporate relationship.[48] There is a limit to which contract, employment, competition, and environmental laws protect stakeholders' interests, such as employees, consumers, and the host communities, in their relationship with corporate entities.[49] Therefore, corporate law should recognise stakeholders and protect stakeholders' interests.

[43] Okpabi v Royal Dutch Shell Plc [2021] UKSC 3, [2021] 1 WLR 1294
[44] Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; Consumer Protection from Unfair Trading Regulations 2008; Consumer Protection (Amendment) Regulations 2014; and Consumer Rights Act 2015
[45] Financial Services Compensation Scheme
[46] Given the challenging institutional context in Nigeria and corporate reality globally, corporate law has to do more to recognise and protect stakeholders. As some countries have taken steps to consider stakeholders' interest, the UK, for example, has designed its corporate law to recognise and protect some stakeholders by virtue of the provision of s.172 Companies Act 2006.
[47] Cynthia Williams, 'Corporate Social Responsibility in an Era of Globalisation,' University of California Davis Law Review Vol 35, 2002, pp.705-778
[48] Ibid p.720
[49] Ibid

Another high point of the stakeholders' debate is the conceptual confusion of the stakeholders' group.[50] The conceptual confusion stems from the multiple stakeholder definitions in management literature, leading to critics rejecting the stakeholders' theory.[51] Attempting to offer a more precise definition of the stakeholder concept, Freeman defined stakeholders in an organisation as any group or individual that can affect or is affected by the achievement of the organisational objectives.[52] However, some have argued that Freeman's definition of stakeholders is wholly unjustified and unworkable because it undermines private property, repudiates the duties agents owe to their principals and destroys wealth.[53]

Elaine Sternberg argued that given the increasing internationalisation of modern life and the global connections made possible by improved transportation, telecommunications, and computing power, those affected by any organisation include virtually everyone, everything, everywhere. According to her, terrorists, competitors, vegetation, nameless sea creatures, and unborn generations are among the many groups now seriously considered stakeholders.[54] She, therefore, argues that businesses cannot be accountable to all of them, as accountability to everyone is to be accountable to no one.[55]

Based on the above argument by Sternberg, one could argue that the stakeholder concept has generated much confusion. Therefore, defining and identifying stakeholders in any organisation is the first step toward ensuring that the corporate governance model protects key

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[50] Samantha Miles, 'Stakeholder: Essentially Contested or Just Confused? Journal of Business Ethics, Vol. 108, No. 3, July 2012, pp. 285-298, Roberts Phillips, Edward Freeman, Andrew Wicks. 'What Stakeholder Theory Is Not.' Business Ethics Quarterly Vol. 13, No. 4, Oct. 2003, pp. 479-502.
[51] Ibid
[52]Edward Freeman, 'Strategic Management: A Stakeholder Approach' (Cambridge University Press Cambridge England, 2010) p.46
[53] Elaine Sternberg, 'The Defects of Stakeholder Theor,' Corporate Governance: An International Review, Volume5, Issue1, January 1997, pp.3-10.
[54]Elaine Sternberg, 'Corporate Governance: Accountability in the Marketplace,' (2 edn Institute of Economic Affairs, London 2004) p.128
[55] Ibid

stakeholders' interests. Freeman's definition of stakeholders might seem too broad, particularly as it relates to large public corporations with multiple connections and supply chains; however, with banks, those who affect or are affected by the bank's objective are to a large extent identifiable.

Given the various banking failures in Nigeria occasioned by poor corporate governance, further research is needed on promoting effective corporate governance in the Nigerian banking sector, considering its challenging institutional environment. There have been several contributions to Nigerian corporate governance academic debate by scholars such as Ahunwan,[56] Okike,[57] Ogbechie,[58] and Adegbite.[59] The objectives have been to accentuate the effectiveness of the shareholder's corporate governance model practised in Nigeria. While most of these studies have focused on the Anglo-Saxon corporate governance model in Nigerian companies, a more recent study by Fabian Ajogwu[60] examined Nigeria's corporate governance model based on the governance structure, systems, and economic development.[61] However, no research has focused on recognising stakeholders and protecting stakeholder interests in the Nigerian banking sector. This study is necessary because of the losses non-shareholder stakeholders suffer, particularly customers and employees, when banks fail due to poor corporate governance. This research attempts to bridge this gap in the literature on corporate governance.

[56] Boniface Ahunwan, 'Corporate Governance in Nigeria,' Journal of Business Ethics 37 (3): (2002), pp.269 - 287
[57] Elewechi Okike, 'Corporate Governance in Nigeria: The status quo,' Corporate Governance an International Review 15(2) 2007, pp.173-193
[58] Chris Ogbechie, Corporate Governance Practices and Leadership in Nigeria,' June 7, 2019, available at: < https://ssrn.com/abstract=3400913> accessed 30 August 2021
[59] Adegbite (n 25) (n 26)
[60] Fabian Ajogwu, Corporate Governance in Nigeria; Law and Practice (2nd edn, Thomson Reuters London UK 2020)
[61] Ibid

1.3 Research Questions

Against the above background, this thesis investigates the extent of stakeholders' recognition and protection of stakeholders' interests in the Nigerian banking sector and recommends an alternative corporate governance model, the functional stakeholder model,[62] which will improve stakeholders' recognition and protection of stakeholders' interests in the Nigerian banking sector. In this context, the thesis addresses the two overarching research questions, the first of which is:

1. Are persistent banking failures in Nigeria linked to corporate governance?

In order to answer this question, the thesis examines the justification for banking regulation, the link between corporate governance and banking regulation, and the different corporate governance models in the banking sector. It argues that based on the Anglo-Saxon model as practised in Nigeria, it is connected with the banking failures because of its limited stakeholders' recognition and protection of stakeholders' interests.

In answering the above research question, the thesis examines four subsidiary questions, which are:

a) What is the relationship between banking regulation and corporate governance?
b) Why does corporate governance matter?
c) What are the determinants of effective corporate governance in the banking sector?
d) To what extent are stakeholders recognised and their interests protected under Nigeria's corporate governance regulatory framework?

In order to answer the first subsidiary question, the thesis examines the meaning of banks and banking in society and whether banks should be regulated differently because of their function

[62] The functional stakeholder model is an alternative corporate governance model designed by this thesis. It is a refined and upgraded form of the general stakeholders' model. Functional stakeholders in the context of this thesis refer to those who share common interests with the bank.

in society. Furthermore, the thesis explores how banking regulation should be approached by establishing a nexus between banking regulation and corporate governance.

The second subsidiary question helps understand what is meant by corporate governance and the theories underpinning the various corporate governance models. It enables the thesis to examine the core theories of corporate governance and how these theories generally inform the different corporate governance models.

The third subsidiary question deals explicitly with corporate governance in the banking sector. It enables the thesis to explore the question of the stakeholders in the banking sector and how their interests can be protected. The various corporate governance models in the banking sector are examined. It argued that one way of ensuring that stakeholders' interests are recognised and protected is by embedding corporate social responsibility in the corporate governance framework of banks.

The fourth subsidiary question helps examine the nature of Nigeria's corporate governance, which generally applies to companies. It helps understand the extent to which the corporate governance model allows for the recognition of stakeholders and protection of stakeholders' interests. It argues that while several specific codes apply to different sectors, a common objective underpins these sectoral codes; the majority of these codes are predominantly designed to promote shareholders' interests.

The second primary research question is:

2. How can the functional stakeholder model help promote effective corporate governance in the Nigerian banking sector?

This question allows the thesis to explore the challenges of implementing an effective corporate governance framework in the Nigerian banking sector and recommend ways to improve the

corporate governance framework in the Nigerian banking sector. In answering the above research question, the thesis examines two subsidiary questions, which are:

e) What are the challenges of implementing an effective corporate governance framework in the Nigerian banking sector?

f) How can effective corporate governance be undertaken in the Nigerian banking sector?

The first subsidiary question here helps understand the institutional environment in Nigeria by exploring the corporate governance model in the Nigerian banking sector. In investigating CAMA, the SEC code and the CBN code, many issues were discovered, such as, apart from shareholders, there is the limited stakeholder recognition and protection. There are enormous disparities between CAMA, SEC, and CBN codes regarding their various requirements, such as the board composition provisions. Despite both codes stating that compliance with the requirements of the codes is mandatory, a detailed look at the provisions of the codes reveals a high level of non-compliance by most DMBs.

The second subsidiary research question helps to examine ways of improving the limited stakeholder recognition and protection of stakeholders' interests in the Nigerian banking sector, given the challenging institutional environment in Nigeria. Therefore, in answering the question, the thesis proposes an alternative corporate governance model, the Functional Stakeholder Model (FSM), that would benefit key stakeholders, not just shareholders, and improve the corporate governance regulatory framework in the Nigerian banking sector if implemented.

1.4 Research Objectives

Given the unique nature of banks and their role in ensuring financial stability and economic growth, the fundamental objective of this thesis is to investigate the corporate governance

framework of banks in challenging institutional contexts using the Nigerian Deposit Money Banks (DMBs) as a case study. This study explicitly examines the Anglo-Saxon corporate governance model practised by DMBs in Nigeria to determine the extent it allows for the recognition of stakeholders and protection of stakeholders' interests. The Nigerian banking sector has witnessed various waves of banking failures in recent times, which have prompted the CBN and SEC to issue corporate governance codes to ensure the financial soundness of the Nigerian banking sector. This study examines whether there is a link between banking failures and corporate governance framework; even though the CBN and the SEC have revised the corporate governance codes in the banking sector, banking failures are still persistent in Nigeria. It is argued that the primary reason for these banking failures is the adoption of the Anglo-Saxon corporate governance model in the Nigerian banking sector without the availability of functional institutions; the Anglo-Saxon model failed to take into account the challenging institutional environment in Nigeria. Therefore, the study acknowledges the Nigerian institutional voids as a significant factor that hinders the successful implementation of the Anglo-Saxon corporate governance model in the Nigerian banking sector, which is premised on the assumption of functioning institutions.

The central part of this study explores ways of identifying the stakeholders in the Nigerian banking sector and how their interests can be protected through an inclusive corporate governance framework in Nigerian banks. It also examines Corporate Social Responsibility (CSR) as a corporate governance mechanism used to protect stakeholders' interests in the banking sector and explores the approaches taken by the Nigerian banks in implementing CSR to balance the interests of stakeholders. This study contributes to the existing literature by highlighting the relevance of recognising stakeholders and protecting stakeholder interests in the corporate governance of banks in challenging institutional contexts. It also highlights the

importance of having an appropriate enforcement mechanism to promote effective corporate governance in the Nigerian banking sector. Based on the challenges in ensuring compliance with the codes and other corporate governance legislation, the study explores the loopholes in the corporate governance framework that allows DMBs to circumvent the codes and other regulations to the detriment of stakeholders. Finally, based on the challenges militating against effective corporate governance in the Nigerian banking sector, this study re-theorises the stakeholders' theory of corporate governance by proposing an alternative corporate governance framework, the 'functional stakeholder model' for the Nigerian banking sector, taking into account Nigeria's institutional voids.

1.5 Research Methodology

The research methodologies adopted in this thesis are the doctrinal, socio-legal, comparative and case study methodologies. The doctrinal methodology allows the researcher to examine legal doctrines through a critical analysis of existing legal rules.[63] The doctrinal methodology involves rigorous analysis and creative synthesis, making connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials.[64] The doctrinal research methodology comprises two parts; the first part involves locating the sources of the materials, while the last part involves interpreting, analysing and drawing conclusions.[65] However, the doctrinal research methodology is much more than scholarship; it is the location, analysis, interpretation of primary documents, and presentation of the findings without prejudice.[66] Therefore, the doctrinal methodology enabled the researcher to examine the existing literature on Nigerian banking law in order to provide a holistic account of the corporate governance framework in the Nigerian banking sector.

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[63] Terry Hutchnison, Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research,' Deakin Law Review, Vol.17 Issue (1) 2012, pp. 83-119.
[64] Ibid
[65] Ibid
[66] Ibid

The thesis also adopted a socio-legal methodology that has enabled the researcher to investigate the research problem, answer the research questions, and offer lasting legal reforms. The socio-legal methodology differs from the doctrinal research methodology, which focuses on legal resources and views law within itself.[67] The doctrinal research methodology cannot consider the effect of the law on society.[68] The socio-legal methodology believes that law does not exist in isolation.[69] It is an interdisciplinary methodology that allows for objectivity in investigating any linkage between the persistent banking failures in Nigeria and the corporate governance framework and examining the idiosyncrasy of the problem of legal phenomena within the local population.[70] The thesis utilises the sociological theory of functionalism,[71] an evaluative method that helps address societal problems by looking at the various components of society to search for better solutions. This sociological theory of functionalism helps propose reforms to the corporate governance model in the Nigerian banking sector by taking into account the challenging institutional context in Nigeria. Therefore, the proposed functional stakeholder model addresses the limited recognition and protection of stakeholders and their interests under the Anglo Saxon corporate governance paradigm practised in the Nigerian banking sector.

Another research methodology adopted in this thesis is the comparative research methodology. This enables the research to identify, analyse, and explain the similarities and differences between the UK and Nigeria's corporate governance frameworks. A comparative research methodology studies countries, societies, cultures, social structures, systems, institutions, and changes over time to use the same research tools to systematically compare the manifestation

[67]Terry Hutchinson, Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 Deakin Law Review 83.
[68] Ibid
[69]Reza Banakar and Max Travers 'Law, Sociology and Method' in Theory and Method in Socio-Legal Research (Hart Publishing, Oxford 2005) p. 9
[70] Reza Banakar, 'On Socio-Legal Design, in Om rättssociologisk tillämpning, Ida Nafstad & Isabel Schoultz (eds) Lund University Press 2019, p.8
[71] Whitney Pope, 'Durkheim as a Functionalist,' The Sociological Quarterly, Vol. 16, No. 3, 1975, pp. 361–379.

of phenomena in more than one temporal or spatial sociocultural setting.[72] Therefore, the comparative methodology requires the researcher to compare specific issues or phenomena in two or more countries, cultures or societies without expressly excluding the possibility of comparison over time.[73]

The comparative methodology helps provide a deeper understanding of existing legal systems to draw concise conclusions that are impossible using a single legal system.[74] The comparative research methodology can lead to fresh, exciting insights and a deeper understanding of central concern issues in different countries.[75] The comparative methodology can help identify gaps in knowledge and point to possible directions that could be followed that the researcher may not previously have been aware of.[76] The comparative research methodology may also help to sharpen the focus of analysis of the subject under study by suggesting new perspectives.[77] Engaging in comparative research between the Nigerian corporate governance model and the UK model is an excellent match because of the historical connection between the two countries. Nigeria has inherited the English laws and the English legal system being a former British colony. Most Nigerian legislation emanates from the UK.[78] For example, the revised CAMA 2020 replicates the UK Companies Act 2006.[79]

The Nigerian corporate governance codes are modelled on the UK code as both countries practice the Anglo-Saxon model despite the differences in their institutional arrangements.

[72] Linda Hantrais, 'International Comparative Research: Theory, Method and Practice' (Palgrave Macmillan England 2009) p.2
[73] Ibid
[74] Ibid p.10
[75] Ibid
[76] Ibid
[77] Ibid
[78] Statute of General Application 1900
[79] Udo Udoma, Belo-Osagie, 'The Companies and Allied Matters Act 2020 – What You Need to Know' Part 9 Schemes of Arrangement, BusinessDay Newspaper, Tuesday 8 September 2020, p.14

Therefore, the UK serves as a suitable comparator because it enables the researcher to propose an alternative corporate governance framework, the functional stakeholder model for the Nigerian banking sector, given Nigeria's challenging institutional environment. In addition, the thesis referred to the US, Germany, and Japanese corporate governance regulatory initiatives where appropriate. This enables the researcher to have a deeper understanding of the central issue, the extent to which the corporate governance models practised in those countries allow for the recognition of stakeholders and protection of stakeholders' interests.

The thesis also adopted a case study methodology. The case study is an ideal research methodology when a thorough investigation is required. The case study methodology is grounded in the in-depth investigation of one or more phenomena to explore the arrangement of each case and to interpret features of a larger class of related phenomena.[80] This interpretive case study utilises theoretical frameworks to explain specific situations that can lead to an appraisal and modification of theories.[81] This thesis is premised on the interpretive case study, which uses the stakeholder and the institutional theories to address the research problem by investigating the poor corporate governance in the Nigerian banking sector. The case study research methodology is particularly suited where the research questions focused on the 'how' and 'why' of an ongoing set of events, over which the researcher has little or no control.'[82] Due to the unbiased nature of the case study methodology, adopting the interpretive approach enables the researcher to develop an open mind, promoting a deeper understanding of the examined phenomena.[83] Therefore, the Nigerian DMBs were selected as a case study of the

[80]Donatella della Porta, Michael Keating, 'Approaches and Methodologies in the Social Sciences A Pluralist Perspective' (Cambridge University Press, 28 Aug 2008) p.226
[81] Ibid
[82] Robert Yin, 'Case Study Research: Design and Methods' (Sage Publication Ltd, London, UK, 6th edn 2018). P.2
[83] Linda Mabry, 'Case Study in Social Research.' in (ed) Pertti Alasuutari, Leonard Bickman, Julia Brannen, 'The SAGE Handbook for Social Research Methods.' (SAGE Publications Ltd London, 2008) p. 221

major phenomena to represent a broader phenomenon of DMBs operating in challenging institutional contexts. Nigeria was selected based on its banking sector's total assets of ₦46.6 trillion (approximately $127.6 billion), the second-largest in sub-Saharan Africa after the South African banking sector, with total assets of $422.8 billion.[84]

Research Method

The thesis adopts multiple qualitative research methods to provide an informative and comprehensive account of corporate governance practice in the Nigerian banking sector and establish the extent to which the corporate governance model allows for the recognition of stakeholders and the protection of stakeholders' interests. Flick argues that good research practice obligates the researcher to triangulate, which means taking different perspectives on an issue under study or, more generally, adopting different perspectives in answering research questions.[85] These perspectives can be substantiated by using multiple methods and/or several theoretical approaches to enhance the validity of research findings.[86] The triangulation system adopted in this thesis is designed to investigate the same phenomenon and validate or provide convincing answers to the research questions.[87] Data triangulation is essential for the quality and reliability of qualitative research because it helps produce that confirmability and helps negate the chances of the researcher's prejudice affecting the quality of the research.

[84] Ayokunle Olubunmi, 'Effective Credit Risk Management Key to Impaired Loans' Reduction,' Thisday Newspaper 12 August 2020, available at: < https://www.thisdaylive.com/index.php/2020/08/12/olubunmi-effective-credit-risk-management-key-to-impaired-loans-reduction/> accessed 15 September 2021
[85] Uwe Flick, 'The SAGE Handbook of Qualitative Data Collection,' (London, SAGE Publications Ltd, 2018), p529
[86] Ibid p532
[87] Karsten Jonsen, Karen Jehn, 'Using triangulation to validate themes in qualitative studies,' Qualitative Research in Organizations and Management, Vol. 4 No. 2, 2009, pp. 123-150.

Furthermore, triangulation helps the researcher draw conclusions and provide generalised findings,[88] and it also helps the researcher define and illuminate complex phenomena from several perspectives.[89] It is argued that adopting multiple qualitative research methods increases the reliability, validity, acceptability, and confirmability of the research findings.[90]

Research Tools

For this research, the researcher used primary and secondary sources. These include legislation, cases, journal articles, law reports, annual reports, newspapers, corporate governance codes, banking regulatory policies, directives, and guidelines. It is also important to mention that the researcher obtained data from the DMBs' financial statements and annual reports after the post-consolidation exercise to analyse the extent to which the corporate governance practice has allowed for stakeholders' recognition and the protection of stakeholders' interests. This timeframe is relevant because SEC issued its first corporate governance code in 2003, and all DMBs listed on the Nigerian Stock Exchange were expected to comply with the code.[91] This thesis utilises post-2006 data as CBN issued the first corporate governance code in 2006.[92] Therefore, to interpret and analyse data on the corporate governance practices in the Nigerian banking sector correctly, the thesis examines the Corporate Governance Reports and the Statement of Compliance in the Annual Reports of all the DMBs operating in Nigeria between 1 January 2007 and 31 December 2018. Data were obtained and analysed to establish compliance with CAMA, SEC and CBN codes. Another reason for collecting and analysing

[88] Eric Jack, Amitabh Raturi, 'Lessons learned from methodological triangulation in management research,' Management Research News, Vol. 29 No. 6, 2006 pp. 345-357

[89] Henk Bogt, Jan Helden, 'The practical relevance of management accounting research and the role of qualitative methods therein: The debate continues,' Qualitative Research in Accounting & Management, Vol. 9 Issue (3), August 2012, pp. 265-273,

[90] Uwe Flick, 'The SAGE Handbook of Qualitative Data Collection,' (London, SAGE Publications Ltd, 2018), p529

[91] Olabisi Daodu, Franklin Nakpodia, Emmanuel Adegbite 'Institutional perspectives on corporate governance reforms in Nigeria' in Franklin N. Ngwu, Onyeka K. Osuji and Frank H. Stephen (ed) 'Corporate governance in developing and emerging markets' (Taylor & Francis 2017) p. 177

[92] CBN, 'Code for Corporate Governance for Banks in Nigeria Post Consolidation' 2006 p.4

these data was to determine the extent to which the corporate governance framework for banks allows for the recognition of stakeholders and protection of stakeholders' interests. For example, the thesis obtained and analysed data relating to board gender diversity from 2015 to 2018 because CBN had given DMBs until 31 December 2014 to comply with the directive requiring them to have at least 30/40 percent female representation in their board/management, respectively.[93]

1.6 Structure of the Thesis

The thesis comprises eight chapters, each dealing with a different aspect of the study. This current chapter introduces the thesis. The second, third and fourth chapters provided the theoretical and conceptual framework for the research. The fifth chapter deals with the corporate governance practice in Nigerian companies, while the sixth chapter explores the corporate governance paradigm in the Nigerian banking sector. The seventh chapter proposes an alternative corporate governance model for the Nigerian banking sector. Finally, the last chapter provides a conclusion for the thesis. The chapters are structured as follows.

Chapter One

Introduction

This chapter starts by exploring the research background and the research problem in the corporate governance framework in the Nigerian banking sector to lay a justification for this thesis. The thesis argues that there seems to be a gap in the literature. Though the thesis acknowledged the literature on Nigerian corporate governance, it argued that none of the

[93] CBN, 'Nigerian Sustainable Banking Principles,' Central Bank of Nigeria July 2012 available at:< https://www.cbn.gov.ng/out/2012/ccd/circular-nsbp.pdf> accessed 15 May 2021

research dealt with stakeholders' recognition and protection of stakeholders' interests in the Nigerian banking sector. The thesis formulated two key research questions and six subsidiary questions to address the research problem and ensure that the thesis realised the research objectives. The thesis adopted the doctrinal, socio-legal, comparative, and case study methodologies. This resulted in various data being obtained and analysed. The thesis also compared the Nigerian corporate governance model with the UK model. The chapter concludes by providing an outline of the thesis.

Chapter Two

The Relationship between Banking Regulation and Corporate Governance

This chapter examines the relationship between banking regulation and corporate governance. It began by exploring banking regulation theories: the public interest theory, and the private interest theory, to justify the need for banking regulation. Both theories offer different justifications for banking regulation; however, the thesis favoured the public interest theory arguments because it serves the interest of all stakeholders. In addition, the chapter examined the three types of banking regulation approaches, prudential, systemic, and conduct regulations. The thesis argued that corporate governance is a fundamental part of prudential regulation. The thesis also examined the strategies for banking regulation, namely the command-and-control strategy and self-regulatory strategy. Given its advantages and disadvantages, the thesis adopted a hybrid strategy that combines command-and-control and self-regulation strategies to ensure that banks are adequately regulated.

Chapter Three

Corporate Governance Concepts, Theories and Models

This chapter addressed the theoretical issues underpinning corporate governance discourse in recent times. It began by exploring the nature of corporate governance and why corporate governance matters. The chapter further examined the various theoretical perspectives on corporate governance. It argued that several theories underpin corporate governance discourse; however, the chapter discussed the six most dominant theories: agency theory, stewardship theory, shareholder primacy theory, enlightened shareholder value theory (ESV), institutional theory, and stakeholder theory. The ESV theory codified under s.172 Companies Act, 2006 mandates directors to have regard to employees'[94] and customers'[95] interests: however, this thesis argued that both the shareholder primacy and the ESV theories are designed to maximise profit for shareholders' benefit in the long run. The thesis adopted the stakeholders and institutional theories in its overall analysis and in designing the functional stakeholders' model for banks in challenging institutional contexts.

Chapter Four

Determinants of Effective Corporate Governance in the Banking Sector

This chapter examined the corporate governance framework for banks. This chapter aimed to establish if the corporate governance framework that applies to other non-financial institutions will be suitable for banks considering its unique nature. The chapter argued that, because of the significant risks faced by the banks, including credit risk, operational risk, market risk, and liquidity risk, an all-encompassing form of corporate governance framework is required in the banking sector. First, the chapter examined the international standard for corporate governance, the OECD Principles of corporate governance, and the Basel Committee on Bank Supervision principles. The chapter argues that these principles are not a one size fits all. It must take the

[94] S.172 (b) Companies Act 2006
[95] S.172 (c) Companies Act 2006

institutional environment where the principles or guidelines are to be implemented must be taken into consideration; therefore, it argued that the issue of how to implement corporate governance in banks is context-dependent. Subsequently, the chapter examined the stakeholders in the banking sector and the various corporate governance models applicable to the banking sector.

Furthermore, the chapter explored the Anglo-Saxon corporate governance model, underpinned by the shareholder's theory, the Continental European and the Japanese *Keiretsu* corporate governance models, both underpinned by the stakeholder's theory. The chapter argued that the one way of ensuring that stakeholders' interests are recognised and protected is by embedding corporate social responsibility in the bank's corporate governance framework. This chapter completed the theoretical and conceptual framework of the thesis.

Chapter Five

Stakeholders and Corporate Governance Regulation in Nigeria

This chapter explored the corporate governance model applicable to companies in Nigeria. The chapter began by exploring the historical development of corporate governance in Nigeria. The chapter argues that the Nigerian corporate governance framework is in *pari materia* with the English Company Law. The pioneer companies that operated in Nigeria in 1862, after Lagos became a colony, were British companies registered in England and regulated under the English Companies Law. However, following the Statue of General Application (SOGA) implementation on 1 January 1900, Nigeria inherited all the laws applicable in England. The chapter argued that the Companies and Allied Matters Act (CAMA), the principal corporate law legislation in Nigeria, is premised on shareholder primacy. Furthermore, the National Corporate Governance Code (NCGC) and other sector-specific codes applicable to companies

operating in different sectors in Nigeria were identified and analysed. The findings revealed that although there is limited stakeholder recognition under CAMA, CAMA and other corporate governance codes in Nigeria are underpinned by the Anglo Saxon corporate governance framework, which puts shareholders' interests over the interests of key stakeholders such as employees and customers.

Chapter Six

Stakeholders and Corporate Governance of DMBs in Nigeria

This chapter examined the corporate governance model in Nigerian DMBs. Besides CAMA, the SEC and the CBN codes were examined. As in the previous chapter, both SEC and CBN codes showed limited stakeholders' recognition and protection of stakeholders' interests in the banking sector. Both codes are designed in furtherance of shareholders' primacy which is the maximising profits for the benefit of shareholders. Furthermore, the findings revealed several attempts to have a legislated form of CSR to help mitigate the limited stakeholders' recognition and protection of stakeholders' interests; however, all the attempts failed to materialise.

Chapter Seven

Towards a Functional Stakeholder Model of Corporate Governance for the Nigerian Banking Sector

This chapter provided an alternative corporate governance model for the Nigerian banking sector, predicated upon the institutional and stakeholders' theoretical standpoints. The primary concern of this chapter is improving the limited stakeholders' recognition and protection of stakeholders' interests that have undermined the corporate governance framework in the Nigerian banking sector.

Chapter Eight

Conclusions, Recommendations and Directions

The chapter summarised the aims, central arguments, research problems, research questions, and objectives of the thesis. In addition, the chapter presented a summary of the findings and recommendations. The chapter also highlighted this thesis' contributions to existing scholarship on comparative corporate governance, corporate social responsibility, and banking regulation.

Chapter Two

THE RELATIONSHIP BETWEEN BANKING REGULATION AND CORPORATE GOVERNANCE

2.1 Introduction

This chapter addresses the first subsidiary question of the thesis, 'What is the relationship between banking regulation and corporate governance?' In furtherance of this chapter's objective, it examines the theories behind banking regulation to evidence the nexus between corporate governance and banking regulation. It argues that corporate governance is a core component of prudential regulation and conduct regulation. The chapter begins by exploring the notion of banks and banking in society. It argues that banks are unique because of their role in society and should be subject to strict regulation compared to other companies. It further justifies the need for government regulation of banks because of its functions. For example, besides the banks' traditional roles of providing payments and portfolio services, they transform illiquidity assets into liquid liabilities. In performing the above and other related functions, the banks become volatile and susceptible to runs.

The second section presents an overview of banking regulation theories, providing further justifications for banking regulation. It discusses the underlining economic theories of banking regulation: the public interest theory and the private interest theory. It provides the basis for addressing the question: for whose interests does banking regulation serve? The aim is to lay the foundation for identifying relevant stakeholders in the banking sector.

The third section of this chapter distinguishes between the two primary banking regulation techniques: prudential regulation and conduct regulation. It argues that corporate governance is a fundamental component of prudential and conduct regulations.

While the fourth section addresses the approaches to banking regulation, it identifies two broad approaches: the command-and-control approach and the self-regulatory approach. It argues that the command-and-control approach is geared toward the public interest theory, while self-regulation is more tuned to the private interest theory. The last section summarises all the key points discussed in this chapter. The theoretical and conceptual frameworks considered in this chapter, for example, the banking institution, the definition of banking regulation, the justification of banking regulation and the measure of banking regulation, will underpin the discussion and analysis in the rest of this thesis.

2.2 Regulation of Banks and Banking in Society

Bank's origin is traceable to the Italian word 'Banca' or the French word 'Banque,' both meaning bench in English.[96] In the past, bankers had benches in the market centre, which they exchanged for traders' money; however, the mere acceptance/collection of money does not translate to banking operations. Therefore, distinguishing between the mere acceptance of deposits and the granting of loans in bank credits to customers will clarify the misconceptions about what makes up banking and the banking business. For example, accepting deposits from customers would not usually qualify as banking even though the collector uses such monies for trading. These interactions are mere transfers of purchasing power from one person to another, regardless of whether the deposits attract interest.[97] However, banking begins when the collector (bank) grants loans from the collected deposits to customers (borrowers), and the granting of loans will usually depend on the borrowers' creditworthiness.[98] Banking began when merchants lent part of the deposits they collected to traders, believing that they would

[96] History of Banking, available at: < http://dailytools.in/BankingKnowledge/BankingHistory> accessed 31 August 2021
[97] Abbott Payson Usher, 'The Origins of Banking: The Primitive Bank of Deposit, 1200 – 1600, The Economic History Review, Volume A4, Issue 4, April 1934, p 399
[98] Ibid

repay the principal sum and the interest accrued on the due date.[99] However, when depositors demanded their deposits and the merchants could not honour their demands, the depositors would break the benches on which the merchants sat, indicating that they could no longer conduct business in the marketplace.[100] The above practice is described in Latin as *'bancum est ruptum'*, which means bankruptcy in English. The above practice also marks the beginning of regulation as depositors doubled as regulators. Although depositors applied unconventional means in dealing with the merchants, they ensured that there were consequences for banking crises, which seems appropriate in dealing with merchants experiencing financial distress at that time. Since then, banking regulation has continued to evolve as a reactive response to banking failure[101] resulting from excessive risk-taking and interconnectedness between banks and other financial and non-financial institutions.

Banking regulation refers to laws, rules, and procedural requirements enacted by the government, regulatory authorities, or banks themselves to reduce or absorb the risks associated with the banking business.[102] There have been many debates about financial regulation in the last decade, particularly in the banking sector following the global financial crisis of 2007–2009, which affected most world economies. The debate's high points were whether the government, through its regulatory and supervisory agencies, failed in its responsibilities to superintend over the banking sector, thus contributing to the financial

[99] Ibid
[100] Bruce Davis, 'A brief history of banking: the link between money and society' The Guardian (London 21 August 2013) see < https://www.theguardian.com/sustainable-business/history-banking-money-society> accessed 5th November 2021.
[101] Freixas, Xavier, Santomero, Anthony, An Overall Perspective on Banking Regulation (March 10, 2003). UPF, Economics and Business Working Paper No. 664, p 2.
[102] Oladapo Olanipekun, 'Banking Regulation and Supervision: Concept, Theory and Rationale in Oladapo Olanipekun (ed) *Banking: Theory, Regulation, Law and Practice* (Au Courant, 2016) p.4

crisis.[103] Therefore, to understand and appreciate the dynamics of banking sector regulation, the thesis explores the concept of regulation.[104]

Defining the concept of regulation is not a straightforward task. Regulation is the targeted rules by which the government interferes in its citizens' economic affairs.[105] This definition seems narrow; it only covers one aspect of regulation, the making of rules or the enactment of laws, as regulation has other aspects than just the process of rulemaking. One could also define regulation as the 'promulgation of an authoritative set of rules, accompanied by some mechanisms, such as establishing public agencies for monitoring and promoting compliance with these rules.'[106] This definition of regulation is more comprehensive because it viewed regulation as the process of rulemaking and also integrated other regulatory components into the definition, such as enforcement, which is a core component of effective regulation. However, making rules that create avenues for an ongoing enforcement regime is fundamental for effective regulation.

Regulation could also mean all government efforts through its agencies to steer the economy.[107] This third definition of regulation also adopted a relatively broad approach, as it suggests that regulation encompasses all mechanisms of social control, including unintentional and non-state processes.[108] The above definition of regulation is the most comprehensive of the three definitions examined because it includes other mechanisms beyond government

[103] Philip Booth et al, 'Verdict on the Crash: Causes and Policy Implications' (Institute of Economic Affairs London, 2009) p.37.
[104] Robert Baldwin, Colin Scott, Christopher Hood, A Reader on Regulation (Oxford University Press 1998)
[105] Ibid
[106] Jacint Jordana, David Levi-Faur 'The Politics of Regulation Institutions and Regulatory Reforms for the Age of Governance,' (Edward Elgar Publishing Cheltenham UK, 2004) p.3
[107] Ibid
[108] Augustine Ogu, 'Regulation: Legal Form and Economic Theory,' (Hart Publishing, Oxford, 2004) p.3

involvement.[109] An excellent example of such mechanisms is the development of social norms and markets' effect in modifying behaviour.[110] Social norms and values systems influence institutions' behaviour, which is informed by the institutional theory discussed in chapter three of this thesis under the institutional theory of corporate governance. Therefore, for regulation to achieve its intended objectives, the country's institutional arrangements should form the basis for formulating the legislation, rules, policies, procedures, and enforcement frameworks. One could also define regulation as any control system, whether formal or informal or both, that sets standards and ensures the monitoring and enforcement of those standards with the overall aim of shaping behaviour.[111] This includes all forms of control, whether originating from the government, the banking sector, or the individual bank, covering rulemaking, monitoring, and enforcement.[112]

Kenneth Spong provides a more specific definition of banking regulation by suggesting that banking regulation is the framework of laws and rules under which banks operate.[113] Considering Spong's definition, one could argue that banking regulation encompasses rules, processes, and procedures that govern banking operations. The cardinal objectives of banking regulation are to protect the depositors, promote economic growth, promote the market's integrity, and prevent systemic financial risk because of its fragility.[114] To further support the above objectives of banking regulation, the next section addresses the justifications for banking regulation.

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[109] Andrea Bianculli, Xavier Fernández-i-Marín, Jacint Jordana, 'Accountability and Regulatory Governance: Audiences, Controls and Responsibilities in the Politics of Regulation,' (Palgrave Macmillian, UK, 2015) pp.7-8

[110] Ibid

[111] Philip Rawlings, Andromachi Georgosouli, Costanza Russo, 'Regulation of financial services: Aims and methods' Centre for Commercial Law Studies, Queen Mary University of London (April 2014) p.4

[112] Ibid

[113] Kenneth Spong, 'Banking Regulation: Its Purposes, Implementation and Effects (5th Edn, USA Division of Supervision and Risk Management, Federal Reserve Bank of Kansas City, USA 2000) p.6

[114] Philip Rawlings, Andromachi Georgosouli, Costanza Russo, 'Regulation of financial services: Aims and methods' Centre for Commercial Law Studies, Queen Mary University of London (April 2014) p.24

2.3 Justifications for Banking Regulation

The need to regulate banks, particularly in the wake of the global financial crisis of 2007–2009, has generated debates amongst academics, policymakers, politicians, and various governments because of the economic implication resulting from the banks' failure, which suggests that the justifications for banking regulation are principally for economic reasons. Unregulated markets are susceptible to failure because of financial market imperfections, such as information asymmetry, resulting in negative externalities.[115] Therefore, banking regulation can minimise negative externalities by making adequate information disclosure frameworks available. The economic rationale for banking regulation falls into two broad categories, public and private interests theories.[116] Exploring both theories enables one to understand whether banking regulation should serve the public or private interests or both.

2.4.1 Public Interest Theory

The proponents of the public interest theory contend that regulatory interventions are necessary to prevent negative externalities arising from market distortion in the public's interest.[117] They argued that government regulatory interventions allocate scarce resources for individuals and shared interests.[118] They believed that private law might not offer the required solution in the presence of market failure.[119] However, government regulation can efficiently overcome the disadvantages of imperfect competition, unbalanced market operations, missing markets, and undesirable market results.[120] The proponents of the public interest theory further argued that government regulation occurs because of market failures and unhealthy practices.[121] This

[115] Freixas, Xavier, Santomero, Anthony, An Overall Perspective on Banking Regulation (March 10, 2003). UPF, Economics and Business Working Paper No. 664, p 4.
[116] Anthony Ogus, 'Regulation: Legal Form and Economic Theory' (Hart Publishing Oxford 2004) p 3
[117] Paul Joskow, Roger Noll, "Regulation in Theory and Practice: An Overview," Working Papers 213, California Institute of Technology, Division of the Humanities and Social Sciences.
[118] Johan den Hertog 'General Theories of Regulation' Economic Institute / CLAV, Utrecht University 1999 p 225
[119] Ibid
[120] Ibid
[121] Ibid

position seems correct because, in the aftermath of the global financial crisis of 2007-2009, most of the affected economies reviewed their existing banking laws to determine if they required strict banking regulation. For example, in the UK, the US, and even at the regional level, the European Union addressed the problems that caused the financial crisis.[122] It, therefore, means that as a response to the global financial crisis, many countries introduced several laws to correct the inadequacies within their banking regulatory frameworks. The UK, for example, made several regulatory interventions relating to executive compensation to mitigate the excessive risk-taking appetite of directors who were rewarded for short-term performance.[123] Most banks' directors took unreasonable risks because of what they stood to benefit based on their short-term performance. This unbridled risk-taking eventually made the banks susceptible to failure, which was one reason for the global financial crisis of 2007-2009.[124]

The proponents of the public interest theory believed that regulators possess adequate information on all aspects of organisational behaviour and have the requisite enforcement mechanisms to promote the public interest.[125] Johan den Hertog argued that government regulation is needed to help prevent market failure. Without active government involvement in controlling the activities of banks, they may not act in the interest of all stakeholders, which becomes evident after exploring the private interest theory in the next section. Public interest in the banking sector might focus on alleviating poverty by granting Micro, Small and Medium Enterprises (MSME) loans to support their businesses. However, the banks might be interested

[122] Stephen Bell, Andrew Hindmoor, 'Are the major global banks now safer? Structural continuities and change in banking and finance since the 2008 crisis', Review of International Political Economy, 2018, 25:1, 1-27, DOI: 10.1080/09692290.2017.1414070

[123]Victor Ediagbonya, 'The Various Changes in the Remuneration Practices in Banks and Other Financial Institutions in the United Kingdom after the Global Financial Crisis,' SSRN March 28, 2017, available at: <http://dx.doi.org/10.2139/ssrn.2942472>

[124] William Forbes, Lynn Hodgkinson, 'Corporate Governance in the UK: Past, Present and Future' (Basingstoke, Palgrave Macmillan, 2015) p.34

[125] Ibid

in advancing loans to a different sector, such as companies in the oil and gas sector, because of the interest they stand to get in the short term. While the public interest theorists argued that it would be in the public interest for government regulatory intervention to ensure banks grant loans to MSME as this will alleviate poverty, thereby promoting financial inclusion and overall economic growth of the country.

Where the banks' interests do not align with the public interest, the government's responsibility is to intervene to find a middle ground. For example, the government can intervene by setting out the ratio of loans to deposits which banks could grant to MSME and companies in the oil and gas sector. Public interest theory argues that banking regulation must serve the public's interest by guaranteeing individual depositors' interests like micro and small businesses and corporate customers' interests like multinational oil companies when engaging in transactions with the banks. It is argued that distributing financial resources to all sectors of the economy enhances citizens' welfare. This view supports the public interest theory, which aligns regulation with welfare economics.[126]

Regulation of banks in the public interest means that the government must intervene in directing banking regulation to ensure a fair allocation of its financial resources to various parts of its economy. This regulatory intervention is necessary as banks are susceptible to failure because of the risky nature of the banking business. In the absence of government intervention, banks are likely to take excessive risks, eventually leading to the breakdown of the entire financial system.[127]

[126]Sophie Harnay, Laurence Scialom. 'The influence of the economic approaches to regulation on banking regulations: a short history of banking regulations.' *Cambridge Journal of Economics* 40 (2015): 401-426. p 403
[127] Ibid p 413

One major criticism of the public interest theory is the assumption that government regulation is always effective and can be implemented without the high cost of market imperfection. This implies that information cost and transaction cost underlining market failure are absent in government regulation, but no empirical or theoretical evidence supports their claim.[128] The efficacy of government regulation in the banking sector is its ability to prevent individual bank crises and prevent systemic failure involving the entire financial system. One must consider several factors for government intervention to yield the desired result of preventing a total collapse of the whole financial system. For example, the institutional environment where the banking regulation is to be applied is of the essence because public interest differs from one jurisdiction to another and could mean different things in different social systems. One of the major factors responsible for these inherent variations depends mostly on various countries' value systems. Despite these criticisms, government regulatory interventions in the banking sector promote the public's interest by providing corrective measures against market imperfections, including imperfect competition, unbalanced market operations, negative externalities, and information asymmetry.[129]

2.4.2 Private Interest Theory

Posner argues that the private interest theory assumes that a particular stakeholder group may seek to advance their self-interest by influencing regulation.[130] The private interest theorists believed that government might enact regulations to serve the interest of a specific stakeholder group rather than the public interest.[131] The private interest theorists argued that the most

[128] Richard Posner 'Theories of Economic Regulation' the Bell Journal of Economics and Management Science, Vol. 5, No. 2. (1974), pp. 335-358.
[129]Sophie Harnay, Laurence Scialom. 'The influence of the economic approaches to regulation on banking regulations: a short history of banking regulations.' *Cambridge Journal of Economics* 40 (2015): 401-426. p 403
[130] Richard Posner, 'Theories of Economic Regulation' (Autumn, 1974) 5, No. 2 The Bell Journal of Economics and Management Science 335, 343.
[131]Anthony Ogus, 'Regulation: Legal Form and Economic Theory' (Hart Publishing Oxford 2004) p 72

influential stakeholder group determines regulation.[132] This will depend on how well they can lobby for the government to enact laws that will be of economic benefit to them.[133] The private interest theory suggests that different institutions have interest groups that may seek to protect their interests by using their influence and resource to lobby the government to make laws that will benefit them. Since there are various interest groups with divergent interests, there will be conflicts amongst those who lobby the government to make laws that will favour their group. When the government makes laws, it is likely to favour a powerful interest group, thereby neglecting the interests of the other groups. Politicians are interested in winning elections; apart from getting votes from a particular group of stakeholders, they also require funding from interest groups like banks' shareholders' groups before or after the elections.

The private interest theory suggests that politicians are vote seekers and that bank shareholders' groups are profit seekers. The politicians would do anything to return to power, and their regulatory capacity would decline because of donations and support from the shareholders' groups. It suggests that banks' shareholders drive regulation by lobbying the government to make laws that would promote their profit-making agenda.[134] Consequently, in return for information and donations, politicians would make laws that could protect and help to maximise profits, promote monopoly, and even eliminate competition for those already in the banking business.[135] For example, the government could enact laws that make it difficult for entrepreneurs to enter the banking sector by introducing stringent entry requirements for obtaining a banking licence.[136] Therefore, one could argue that the regulatory outcome reflects

[132] Ibid
[133] Ibid p71
[134]Sophie Harnay, Laurence Scialom. 'The influence of the economic approaches to regulation on banking regulations: a short history of banking regulations.' *Cambridge Journal of Economics* 40 (2015): 401-426. p 403
[135] Richard Posner, 'Theories of Economic Regulation', [1974] 5(2) Bell Journal of Economics and Management Science 336, 335-358.
[136] Anthony Ogus, 'Regulation: Legal Form and Economic Theory' (Hart Publishing Oxford 2004) p 72

the interest of the most influential stakeholders' groups. Politicians may attempt to balance the interests of two or more conflicting stakeholder groups by implementing the most pressing interest amongst various stakeholder groups. To disregard the interest of a particular stakeholder group will be counterproductive for the politician seeking re-election, as they are unlikely to receive votes or donations from the affected group.

Like every other theory, the private interest theory is not without criticism. One main criticism is that empirical research shows that the capture theory's underlying hypothesis, suggesting that regulation promotes only private interest, is unfounded because it cannot explain how the interest groups subsequently take over a law-making process.[137] Interest groups can lobby the legislature to make a specific law that will favour them, as seen in the developed economies, for example, in the UK and the US. However, it is misleading to equate lobbying politicians to make laws and taking over the entire law-making process. Therefore, the private interest theory is incomplete because vital details and analysis are missing concerning the interactions between political actors and other actors in the regulatory process.[138]

Notwithstanding the public interest theory's criticisms, banking regulation should serve the public's interest rather than private interest because of the primary objectives of banking regulation, which are stakeholders' protection, prevention of financial crime, financial system stability, and market integrity.[139] The private interest theory of banking regulation leads to high negative externalities by undermining financial stability. Profit maximisation entails taking substantial risks, which may seem desirable from the point of view of banks' shareholders; however, it may still be excessive from the other stakeholders' standpoint because of the

[137] Ibid p74
[138] Johan den Hertog 'General Theories of Regulation' Economic Institute /CLAV, Utrecht University 1999 p235
[139] Stuart Greenbaum, Anjan Thakor, Arnoud Boot, 'Contemporary Financial Intermediation' (4th edn, Academic Press London, UK, 2020) p.356

systemic consequences of banks' crises.[140] Profit maximisation is a short-term approach to running a bank, leading to an unsafe banking environment in the long term. The public interest theory should override banks' shareholders' interest in maximising profits because they must operate in a safe banking environment to ensure the financial system's stability.[141] The public interest theory will promote stakeholders' recognition and protection of stakeholders' interests, including recognising shareholders and protecting their interests. Therefore, the thesis adopts the public interest theory as the basis for banking regulation.

The banking regulation theories discussed above underpin the regulatory design adopted by the various regulatory and supervisory agencies. The private and public interests theories influence the strategies and approaches to banking regulation. The remaining sections of this chapter examine the strategies and approaches to banking regulation.

2.5 Strategies for Banking Regulation

The banking regulation strategies fall into three major categories: prudential, systemic, and conduct regulations.[142] Regarding prudential regulation, Llewelyn defines it as a body of specific rules or agreed behaviour, imposed by the government, regulatory and supervisory agencies or self-imposed by explicit or implied agreement within the banking sector that constrains the activities in the sector to achieve a defined goal or act prudently.[143] Llewelyn argues that prudential regulation is either preventive, protective, or supportive. Preventive regulations limit the risk incurred, protective regulations offer protection during banking

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[140] Kokkinis, Andreas, *'A primer on corporate governance in banks and financial institutions: are banks special?* In: Chiu, Iris H. -Y. et al, (eds.) The Law on corporate governance in banks. (2015 Elgar financial law and practice. Cheltenham, UK) p.2

[141] Michael Jensen 'Value Maximisation and Stakeholders Theory', Harvard Business School Working Knowledge, Business Research for Business Leaders, 24 July 2000. Available at: https://hbswk.hbs.edu/item/value-maximization-and-stakeholder-theory accessed 8 August 2021.

[142] Charles Goodhart, Philipp Hartmann, David T. Llewellyn, Liliana Rojas-Suarez, Steven Weisbrod, 'Financial Regulation: Why, How and Where Now? (Routledge, Abingdon, Oxon UK, 1998) p.5

[143] David Llewellyn, The Regulation and Supervision of Financial Institutions, The Institute of Bankers London 1986

failure, and the supportive regulations are the lender of last resort.[144] He suggested that banking regulation and supervision may take the following form, provision of a safety net for depositors, restrictions on bank assets holdings, capital requirements and prompt corrective action.[145] This view supports the public interest theory, which justifies government intervention in banking regulation and the need for a regulatory approach to deal with corporate governance problems in banks.

The regulation of systemic risk, which can cripple the whole financial system, is known as systemic regulation. Because of banks' interconnectedness, a failure in one bank can affect multiple banks if the government does not intervene timeously, resulting in the collapse of the entire financial system.[146] An example of how this interconnection may harm the whole financial system is when a systemically relevant bank collapses and depositors cannot withdraw their money because of insufficient funds. The knock-on effect of the systemically relevant bank's failure is such that it can create a panic withdrawal by depositors of other banks which were solvent. The panic withdrawals could lead to the collapse of the entire financial system, except if the government makes adequate bailout intervention to rescue the affected banks.

An excellent example was during the global financial crisis of 2007–2009, when the UK government injected £37bn into Royal Bank of Scotland, Lloyds TSB, and HBOS to prevent the UK banking sector from total collapse.[147] It is argued that systemic risks are negative externalities that can only be addressed through effective prudential regulation. Systematically

[144] Ibid
[145] Ibid
[146] Olivier Butzbach, 'Systemic risk, macro-prudential regulation and organizational diversity in banking' Policy and Society 35 (2016) 239–251, p.241
[147] Peter Thai Larsen, 'UK launches £37bn banking rescue,' The Financial Times, 23 October 2008, available at:< https://www.ft.com/content/83bc2cea-98ef-11dd-9d48-000077b07658 > accessed on 8 August 2021.

relevant banks are also interconnected through their interbank borrowings and syndicate lendings, so a failure in one bank can cause distress in several other banks, thereby leading to the collapse of the entire financial system.

From the preceding, it is correct to suggest that systemic regulation is a core part of prudential regulation and separating them is a matter of academic exercise. There are two types of prudential regulation: micro-prudential regulation and macro-prudential regulation. Micro-prudential regulation focuses on safeguarding individual banks from excessive risk-taking. In contrast, macro-prudential regulation mitigates systemic risk to the entire financial system.[148] The overall aim of macro-prudential regulation gives credence to the above argument that systemic regulation is a core component of prudential regulation.

Conduct regulation focuses on the appropriate standards of conduct for banks to operate in the financial system. This regulatory technique's primary emphasis is on how the banks carry out their businesses; in other words, this means the banks' business rules.[149] The conduct of business rules focuses on how banks deal with customers or clients, particularly as it relates to their advertising, marketing, and sales practices.[150] This aspect of conduct regulation ensures that adequate information is made available to the customers or clients, enabling them to make informed decisions. Corporate governance plays a crucial role in business conduct because of how each bank responds to risks; therefore, a comprehensive corporate governance framework for the banking sector will address negative externalities resulting from information asymmetries and market failure.[151] It is argued that a more inclusive corporate governance

[148] Frederic Boissay, Lorenzo Cappiello 'European Central Bank: Eurosystem' Financial Stability Review May 2014, p.135
[149] John Armour and others 'Principle of Financial Regulation' (Oxford University Press 2016) p 75
[150] Ibid
[151] Kern Alexander, Rahul Dhumale, John Eatwell, 'Global Governance of Financial Systems: The International Regulation of Systemic Risk (Oxford University Press, New York, 2005), 243.

framework premised upon the public interest theory will provide positive ways of mitigating, detecting, and dealing with risks associated with the banking business.[152]

From the preceding, it is correct to suggest that corporate governance regulation in the banking sector is a core component of prudential and conduct regulations because measures intended to improve the individual banks' soundness and the stability of the entire financial system are achievable through a comprehensive corporate governance framework.[153] Therefore, the thesis explores the theoretical debates, concepts and models that underpin policies, regulation, and corporate governance practice in the next chapter. Before then, the next section of this chapter examines the approaches to banking regulation in detail.

2.6 Approaches to Banking Regulation

The approaches to banking regulation are connected with the banking regulation strategies examined above. There are two main regulatory approaches, the command-and-control approach and the self-regulatory approach, and their applicability may vary from one jurisdiction to another. Regarding command and control, it is the government's direct interference in the banking business by enacting legislation to direct, control, and govern the banking system.[154] Self-regulation is an alternative approach to command-and-control; it puts the individual banks or third-party organisations in the banking sector, for example, the professional banking associations, in charge of regulating their affairs.[155] Therefore, while it is not a one size fits all, banking regulation cannot rely solely on one approach. The institutional environment determines the scope, quality, and effectiveness of banking regulation. Both

[152] Ibid
[153] Andreas Kokkinis, 'Rethinking banking prudential regulation: why corporate governance rules matter.' Journal of Business Law, 2012 (7). pp. 612- 629.
[154] Robert Baldwin, Martin Cave, Martin Lodge, Understanding Regulation: Theory Strategy and Practice (2nd ed. Oxford University Press 2012)
[155] Ibid

command and control and self-regulation have advantages and disadvantages, and the thesis examines them in detail in the subsections below.

2.6.1 Command and Control

Under this banking regulatory approach, the government designs a mandatory set of rules or policies that it expects banks to obey. This banking regulatory approach also requires that regulatory or supervisory agencies monitor compliance. If the banks fail to comply with these mandatory rules or policies, such non-compliance will attract sanctions.[156] In theory, using this approach to banking regulation is more effective because the government uses the command mechanism to set the legal standards and utilises the control mechanism to monitor and sanction banks that breach the set legal standards.[157] Therefore, command and control entail establishing legal standards, which require direct government intervention in licencing, monitoring behaviours, onsite regulatory inspection, and sanctioning the banks in the event of non-compliance.[158] So, an advantage of this approach is the assumption that the results are predictable and consistent because the regulatory agencies expect all affected banks to conform to the same legal standards.[159] The command-and-control approach directs government regulatory intervention in the banking business in the public's interest, which is achieved through the legislature, which enacts the law and regulatory or supervisory agencies that enforce them.

A significant criticism of the command-and-control regulatory approach is that banks have no incentives to go beyond government minimum standards.[160] Doing the minimum would mean

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[156] Ibid
[157] Ibid
[158]Howard Latin, 'Ideal versus Real Regulatory Efficiency: Implementation of Uniform Standards and Fine-Tuning Regulatory Reforms' Stanford Law Review Vol. 37, No. 5 (May 1985), p 1267, pp1271.
[159] Ibid
[160] Neil Gunningham, Peter Grabosky, Darren Sinclair, 'Smart regulation, Designing Environmental Policy (Oxford University Press 1998) p.45

that banks have complied with government regulatory standards.[161] However, the minimum standard may not be enough because of individual banks' risks profile and the financial market's dynamism. The above view supports the criticism that the command-and-control approach is too costly, rigid, and challenging to incorporate innovations.[162] Making changes to the legal standards may require the legislature to amend the law, which is usually not a straightforward process. However, it is not in all cases that an amendment to the legal standard will require legislative intervention. In certain instances, the extant laws usually empower banking regulators and supervisors to change banking rules, procedures, and policies as the need arises.[163] The criticism that the command-and-control regulatory approach is costly borders on having enough personnel to monitor compliance.[164] To achieve this, the regulators need adequate staff to carry out regular on-site and off-site supervision, which can be more costly than self-regulation. However, it is a lot better than the cost of banking failure that may lead to the collapse of the entire financial system. Therefore, the cost associated with the command-and-control regulatory approach is justified in the public's interest.

2.6.2 Self-Regulation

The self-regulatory approach is the middle ground between conventional regulation and deregulation.[165] Coglianese and Mendelson defined self-regulation as rules created and enforced by the regulated firms themselves.[166] Self-regulation occurs when individuals or a group of organisations exercise control over their members' conduct.[167] Sinclair argued that

[161] Ibid
[162] Ibid
[163] S.13 Banks and Other Financial Institutions Act, 2020 (BOFIA 2020)
[164] S.29 BOFIA, 2020
[165] Darren Sinclair, Self-Regulation versus Command and Control - Beyond False Dichotomies, 19 Law & Policy 529 (1997)
[166] Cary Coglianese, Evan Mendelson, 'Meta-Regulation and Self-Regulation' in Martin Cave, Robert Baldwin, Martin Lodge, (eds), 'The Oxford Handbook on Regulation, (Oxford University Press, Oxford, 2010) p.147.
[167] Robert Baldwin, Martin Cave, Martin Lodge, Understanding Regulation: Theory Strategy and Practice (2nd ed. Oxford University Press 2012) p137

self-regulation could only flourish in the face of absolute willingness and cooperation from the banks.[168]

Although self-regulation may involve the banks applying voluntary codes, these can be coupled with sanctions. For example, those who failed to abide by the codes can be named and shamed; this will deter others, making them step up to avoid negative publicity. It is argued that the self-regulatory approach will thrive where the government regulatory approach is inadequate, especially where there are shortages of government personnel.[169] For example, where there are inadequate resources to facilitate effective monitoring and enforcement of the command-and-control regulatory approach, self-regulation may be better because of its reduced cost.[170]

The government can get involved in self-regulation through a system known as statutory self-regulation. Under the above system, the government may legislate on the self-regulatory structure while it vests the powers to implement on banks or the regulatory and supervisory agencies. So, government involvement could be in the form of the oversight functions carried out by its agencies; for example, banks may need to get their drafted self-regulation rules approved by government regulatory and supervisory agencies.[171]

Self-regulation has some advantages over the command-and-control regulatory approach. For example, self-regulation can allow implementing rules, policies, and procedures that would not have been possible using the command-and-control regulatory approach because of inadequate

[168] Darren Sinclair, Self-Regulation versus Command and Control - Beyond False Dichotomies, 19 Law & Policy 529 (1997)
[169] Cary Coglianese, Evan Mendelson, 'Meta-Regulation and Self-Regulation' in Martin Cave, Robert Baldwin, Martin Lodge, (eds), 'The Oxford Handbook on Regulation, (Oxford University Press, Oxford, 2010) p.147.
[170] Ibid, p.149
[171] Ibid p150

cost, lack of personnel, sectorial expertise, and market awareness.[172] It is relatively cheaper to engage in self-regulation when compared to the command-and-control regulatory approach because the cost of self-regulation is usually internalised into the business cost.[173] One reason for market failure is information asymmetry; banks involved in self-regulation have privileged insider information, which may be difficult for regulatory agencies to obtain.[174] Self-regulation is a faster and more flexible method of addressing businesses' concerns than the command-and-control regulatory approach. It is flexible as it can quickly adjust to changes, unlike the command-and-control that usually takes time to amend the existing law or make a new one.[175]

Despite the advantages of the self-regulatory approach, it has several disadvantages. Self-regulation is a type of contemporary corporatism, which means that a particular interest group, for instance, shareholders, can hijack power without being accountable to other stakeholders.[176] Thus, this can lead to abuse of power, where rules made are to protect the bank shareholders' interests alone, which may differ from the public interest.[177] Therefore, relying only on self-regulation will not create conditions to prevent corporate governance issues in the banking sector.[178] This thesis acknowledges the relevance of the command and control and self-regulatory approaches; however, there is the need to find a middle ground between both types of regulatory approaches in the form of 'responsive regulation.'[179]

[172] Margot Priest, 'The Privatization of Regulation: Five Models of Self-Regulation' Ottawa Law. Review, Volume 29 (1997–1998) 233–302
[173] Ibid
[174] Ibid
[175] A Ogu 'Rethinking Self- Regulation' in Robert Baldwin, Colin Scott, Christopher Hood (ed) A Reader on Regulation (Oxford University Press 1998)
[176] Ibid p 375
[177] Ibid p 376
[178] Ian Ayres, John Braithwaite, 'Responsive Regulation: Transcending the Deregulation Debate' (Oxford University Press 1995). p20
[179] Ibid

Responsive regulation will build a moral commitment to compliance with the law, unlike the command-and-control regulation, which usually fails to secure compliance commitment.[180] The command-and-control regulation does not consider businesses' perceptions of regulated behaviour's morality; instead, it puts a price on non-compliance and depends on the imposed sanctions to secure compliance.[181] An example of responsive regulation is to get third parties involved in banking regulation. Rather than allowing the banks to self-regulate their risk management directly, banking associations could be entrusted with powers to monitor individual banks' risk management processes. For example, the government can give banks the power to self-regulate their risk management process while empowering a third party like the bankers' associations with the mandate to monitor and supervise them.

Responsive regulation is a banking regulatory approach that finds a middle ground between the existing regulatory approaches. Therefore, this thesis used responsive regulation when formulating the Functional Stakeholder Model in Chapter Seven by engaging third parties, for example, bankers' associations in the corporate governance regulatory framework for banks in challenging institutional contexts. Responsive regulation will provide a valuable theoretical framework for analysing and addressing corporate governance challenges, particularly the limited stakeholders' recognition and the protection of stakeholders' interests in the Nigerian banking sector.

2.7 Conclusion

This chapter's objective was to examine the relationship between corporate governance and banking regulation. It explored the regulatory theories which underpin banking regulation.

[180]Christine Parker, 'The "compliance" Trap: The Moral Message in Responsive Regulatory Enforcement' 40 L & Soc Rev (2006) p.591
[181] Ibid

It argued that the justification of banking regulation is purely for economic reasons. The two banking regulation theories, the public interest theory and the private interest theory, were explored. It was argued that the economic justification for banking regulation based on the public interest theory is to protect the relevant stakeholders' interests, including the banks' shareholders' interests.

The chapter also examined the three techniques for banking regulation: prudential regulation, system regulation and conduct regulation. It argued that corporate governance regulation is an integral component of prudential and conduct regulations. The chapter further examined the two main approaches to banking regulation: command and control and self-regulatory approaches. It explored the advantages and disadvantages of both regulatory approaches. It argued that while the command-and-control regulatory approach may promote the public interest in general, as against the self-regulatory approach favouring private interest, no one regulatory approach is adequate in addressing corporate governance challenges in the banking sector. It concludes that a hybrid regulatory approach, 'responsive regulation,' will better address corporate governance challenges, particularly the limited stakeholders' recognition and protection of stakeholders' interests in the Nigerian banking sector. While the relationship between corporate governance and banking regulation in terms of prudential and conduct regulations has been established in this chapter, the next chapter explores the theoretical debates, concepts, and models underpinning corporate governance practice. This lays the foundation for understanding and addressing corporate governance challenges in the Nigerian banking sector.

Chapter Three

CORPORATE GOVERNANCE CONCEPTS, THEORIES AND MODELS

3.1 Introduction

In light of the discussions in the preceding chapter, corporate governance is a fundamental component of banking regulation because it acts as a catalyst for realising banking regulation objectives such as stakeholders' protection, credit allocation, monetary control, and a sound financial system. This chapter addresses the second subsidiary question, 'Why does corporate governance matter?' The aim is to lay the foundations necessary for understanding corporate governance and its relevance to the banking sector, setting the stage for the discussion in the rest of the thesis. The chapter begins by exploring the historical overview of contemporary corporate governance. It argues that corporate governance debates arose following the separation of ownership from the company's management, resulting in the agency problem. However, corporate governance has further evolved in the last decade following several corporate failures, particularly in the banking sector, resulting in the global financial crisis because directors and shareholders pursued their various private interests.

The second section of this chapter examines the core components of corporate governance, such as a corporation, governance, and corporate governance definitions. It argues that though there is no convergence of corporate governance definition, the definition that encompasses stakeholders' recognition and stakeholders' interest, which aligns with the public interest theory discussed in chapter two, was proposed in this thesis.

The penultimate section of this chapter addresses contemporary theories of corporate governance. It explores the shareholder, stewardship, institutional and stakeholder theories of

corporate governance. It argues that shareholder primacy and the ESV models underpinning the Anglo-Saxon corporate governance model are designed to promote shareholders' private interest in line with the private interest theory discussed in chapter two. The primary aim of both shareholders' models is profit maximisation for shareholders' benefit. The stakeholders and institutional theories are discussed as alternative theories of corporate governance. The thesis draws on both theories when analysing corporate governance issues in the Nigerian banking sector and addressing those issues through the proposed functional stakeholder model. The stakeholder theory also influenced the discussions in the next chapter, which focused on stakeholders in the bank's governance. The last section summarises all the significant points discussed in this chapter.

3.2 Nature of Corporate Governance

The concept of corporate governance originates from combining two Latin words, corporation and governance. The word corporation came from '*corpus,'* meaning a body or an organisation, while governance is from *'gubernare,'* which connotes steer, direct, or control.[182] Since the financial crisis of 2007-2009, corporate governance has been an essential lexicon; however, there is no convergence on its definition. The following definitions offer some insights into the various dimensions of the concept. Cadbury defined corporate governance as:

> *'A system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and satisfy themselves with an appropriate governance structure. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business, and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting.'*[183]

[182]Jill Solomon, 'Corporate Governance and Accountability' (2007, John Wiley and Sons, The Atrium Southern Gate, Chichester, UK 2007) p.1

[183] Adrian Cadbury, Report of the Committee on the Financial Aspects of Corporate Governance 1992 - Gee – London, see http://www.ecgi.org/codes/documents/cadbury.pdf, accessed on 10 September 2021

From the above definition, one would argue that the organisation and functioning of the board of directors of companies are what corporate governance entails. Therefore, the board of directors is accountable to the shareholders by reporting on their stewardship. Cadbury's definition promotes the private interest of shareholders. It is related to the definition offered by Shleifer and Vishny,[184] who viewed corporate governance as the way suppliers of finance assure themselves of getting a return on their investment. The main issue here is how to maximise profit for shareholders by ensuring that managers make adequate investment returns.

Another definition of corporate governance is that of the Organisation of Economic Cooperation and Development (OECD), which defines corporate governance as:

> *'a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.'*[185]

The scope of the OECD's definition differs significantly from Cadbury's definition of corporate governance. The difference between both definitions is that the OECD's definition took a broader view of those involved in corporate governance. It encompasses all stakeholders in the corporation; for example, the board, managers, shareholders, auditors, customers, employees, and creditors are considered in the OECD's definition. The OECD's definition also aligns with the definition given by Monk and Minow. They defined corporate governance as a set of relationships amongst various stakeholders in the corporation in determining its direction and

[184] Shleifer Andrei, Robert Vishny, 1997, A Survey of Corporate Governance. The Journal of Finance 52, no. 2: pp737
[185] OECD, G20/OECD 'Principles of Corporate Governance,' (OECD Publishing, Paris, 2015) p.9

performance.[186] It is argued that both definitions addressed corporate governance through the interconnections between stakeholders in the corporation.

Preston defined corporate governance as 'the set of institutional arrangements that legitimates and directs the corporation in performing its functions.'[187] Given the above definition, it is argued that corporate governance is a system of institutional arrangement targeted at various stakeholders within the corporation, each having a unique role to play. Therefore, this thesis defines corporate governance as the institutional arrangements that shape the interlinked relationships between various stakeholders in a corporation, thereby creating checks and balances to promote all stakeholders' interests. This definition comprises two parts; the first part acknowledges the interlinked relationship between key stakeholders, including shareholders, creditors, employees, customers, regulators, directors, auditors, and their roles in banks' governance. The next chapter of the thesis explores stakeholders' role in banks' governance. The second part of the definition proposed in this thesis acknowledges the institutional arrangements' role in shaping the corporate governance framework. One would argue that the corporate governance framework should be country-specific[188] because the problem associated with corporate governance is socially, politically, culturally, and economically rooted in each jurisdiction, which may vary from one country to another. Therefore, understanding corporate governance within the country's scope allows one to identify and analyse the peculiar problems inherent in such a country and propose a comprehensive corporate governance framework which considers the specific country's institutional voids. The lack of attention for context that the institutional theory tries to fill

[186] Robert Monk, Nell Minow, Corporate Governance (1st ed, Blackwell Publishing Ltd Cambridge Massachusetts USA 1995) p. 1
[187] James Post, Lee Perston, Sybille Sach, 'Redefining the Corporation: Stakeholder Management and Organisational Wealth, (Stanford University Press, Stanford California 2002) p. 18
[188] Onyeka Osuji, Franklin Ngwu, Frank Stephen, 'Corporate Governance in Developing and Emerging Markets' (Routledge, Abingdon and New York 2017) p.3

forms a basis of institutional voids. These are intermediaries that allow banks to operate effectively. The absence or poorly functioning of such intermediaries amounts to an institutional void.

Palepu and Khanna coined the term institutional voids in 1997.[189] They describe these voids as the underdevelopment or the absence of formal institutions that support commercial activities in any country.[190] For a country's economy to function properly, there is a need for functioning institutions.[191] Institutions mainly function as the intermediaries between businesses and individuals in any society, and they are of various kinds. If institutions are not functional or are not present, this can cause significant problems for corporate governance in such an environment. For example, there are usually some problems protecting customers' and employees' interests where there is an institutional void in the legal system.[192] Banks' customers and employees would suffer because the system did not offer them adequate protection. These are concrete examples of problems caused by institutional voids. The inadequate protection for customers and employees results from the weak legal system and the underdeveloped capital market. Employees and customers might not be able to exercise their rights in courts as the law may not have provided for such rights in the first place because of the failure of the legal and regulatory framework to take into account the institutional void in the country.

[189] Krishna Palepu, Turan Khanna, Why Focused Strategies May Be Wrong for Emerging Markets, Harvard Business Review, July-August 1997, pp41–51.
[190] Ibid
[191] Krishna Palepu, Turan Khanna, 'The nature of institutional voids in emerging markets', in Krishna Palepu, Turan Khanna (eds), Winning in Emerging Markets: A Road Map for Strategy and Execution: (Boston: Harvard Business Press, 2010) pp.13-26.
[192] Ibid

3.3 Theoretical Perspectives on Corporate Governance

Corporate governance theories provide the basis for analysing, describing, interpreting, and predicting the interlinked relationship amongst stakeholders in the corporation. While there are several corporate governance theories, only a few dominate corporate governance discourse and literature. This thesis examines the prominent theories in recent corporate governance debates and literature. These theories are the agency theory, stewardship theory, shareholder primacy theory, ESV theory, institutional theory, and stakeholders' theory.[193] Exploring these corporate governance theories is essential for understanding the theoretical basis which underpins the different corporate governance models and mechanisms.

3.3.1 Agency theory

The concept of agency theory is the oldest theory in management science and economics.[194] The origin of the agency theory dates back to the work of Jensen and Meckling, titled, '*The Theory of the Firm: Managerial Behaviour, Agency Costs, and Ownership Structure.*'[195] Jensen and Meckling argued that the agency theory is a contractual relationship between the shareholders (principal) who engage the board of directors and senior management (agent) by delegating the management and control of its affairs to its agent because of the information at the agent's disposal. This relates to information asymmetry discussed in Chapter two as one of the reasons for market failure. Suppose the agents are utility seekers; they will pursue their private interest, thereby neglecting the principal's interest, except the agent is monitored or incentivised, which comes at a cost to the corporation.[196] The cost of monitoring the agent is

[193] Christine Mallin, Corporate Governance, (6th ed Oxford University Press, Oxford 2019) p. 80.
[194] Catherine Daily, Dan Dalton, Nandini Rajagopalan Governance through ownership: Centuries of Practice, Decades of Research. Academy of Management Journal, 2003 46(2), 151–158.
[195] Michael Jensen, William Meckling, 'Theory of the firm: Managerial behaviour, agency costs, and ownership structure. Journal of Financial Economics, 3: 305–360. 1976 p.308
[196] Ibid

what is known as the agency cost. Alchian and Demsetz were the first to argue that monitoring employee performance is always at the cost of any corporation.[197]

Jensen and Meckling's primary concern is how to draft the contracts between the principal and the agent. They suggested that the principal concern in drafting the contract between them and the agent is incorporating the procedures for evaluating the agent's performance and rewarding such performance. Such a step will help minimise, if not eradicate, the conflict of interest between the shareholders and managers. If the agent knows they are being monitored, they will strive to promote the company's objective. Through profit maximisation for the benefit of the shareholders, the agent's performance can be measured. It is argued that if the principal does not take the necessary steps to put the agent under check, there is the likelihood that the agent will breach its fiduciary duty to the bank.

The modalities of drafting the contracts between the principal and the agent suggested by Jensen and Meckling will not eradicate the agency problem as they planned. Just because an agreement contains modalities for monitoring and rewarding the agent does not necessarily mean ending the conflict of interest between the principal and the agent. The real solution goes beyond what the contract contains. What is crucial is the implementation and enforcement of the agreement between them. The contract must include effective sanctions for irresponsible behaviour and poor performance. Even though the agency theory is a core theory for understanding corporate governance, it has some fundamental flaws. The theory is narrowly conceived because it does not mirror corporate governance complexities if the theory is limited to a mere contractual relationship between two individuals, the principal (shareholders) and the

[197] Armen Alchian, Harold Demsetz, Production, Information Costs, and Economic Organisation, The American Economic Review p.780 available at https://www.business.illinois.edu/josephm/BA545_Fall%202015/Alchian%20and%20Demsetz%20(1972).pdf

agent (directors).[198] The theory fails to recognise other stakeholders' interests in the corporation. Perrow argues that the agency theory researches are lopsided because researchers have mainly focused on the agent aspect of the 'principal and agent problem,' thereby presenting the agent as the cause of the problem.[199] The principal could be the problem in this relationship because when the principal fails to compensate the agent for the work done adequately, there is bound to be a problem.[200] Perrow further argued that another crucial flaw of the agency theory is that proponents failed to acknowledge the principals' exploitative behaviours; this is evident when the principal regularly exploits, shuns and deceives the agents.[201] The self-regulatory approach aligns with the agency theory because the board of directors acting on behalf of shareholders monitors the bank management against deviating from promoting shareholders' interests. Preventing the misalignment of the interests comes at a price to the bank known as the agency cost. Several corporate governance mechanisms are put in place to mitigate agency costs; these mechanisms are explored in the next chapter of this thesis.

3.3.2 Stewardship Theory

The stewardship theory is the alternative to the agency theory, even though it is also about the relationship between two individuals, the principal (shareholders) and the managers (stewards). The difference between the stewardship and agency theories is based on two fundamental assumptions. The first is that managers are good stewards who ordinarily act in the shareholders' best interest, thereby reducing the agency costs of monitoring the directors.[202]

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[198] Bob Tricker, 'Corporate Governance: Principles, Policies, and Practices (3rd ed. Oxford University Press Oxford 2015) p. 63
[199] Charles Perrow, Complex organizations, (4th ed Echo Point Books & Media 2014) p. 224
[200] Ibid
[201] Ibid
[202] James Davis, David Schoorman, Lex Donaldson, 'Towards a Stewardship Theory of Management Academy of Management Review, January 1997, Vol.22, No. 1, p.20 - 47

The second assumption is that the steward directors are unlikely to act in any way that will be detrimental to the shareholders for fear of jeopardising their reputations.[203]

The stewardship theorists argue that, unlike agency theory, which sees the directors as economic beings and tends to suppress their aspirations, the stewardship theory recognises the importance of structures that empower the steward and offer maximum autonomy built on trust.[204] The theorist further argued that the executive directors do not pursue their interests under the stewardship theory, but rather, they act with integrity and independence.[205] Consequently, the cost of monitoring or assessing the directors is dispensed with because monitoring or evaluating the directors' actions is unnecessary as both parties' interests are aligned, so there is no need for non-executive directors. The stewardship theorists argue that the bank's performance is linked with the executive directors' decision to maximise shareholder returns.[206] According to the stewardship theorists, many non-financial motives are responsible for managerial behaviours, such as the need for achievement, recognition, the intrinsic satisfaction of successful performance, work ethic, and respect for constituted authority.[207] Unlike the executive directors under the agency theory, who may pursue their interests at the expense of the shareholder's interests, the executive directors under the stewardship theory are motivated by the non-financial benefits they will derive from being a good steward to the shareholders than pursuing their interests.

A criticism against stewardship theory is that there is no empirical evidence to support the claim that a board mainly constituted of executive directors performs better. There is no linkage

[203] Ibid
[204] Ibid
[205] Ibid
[206] Ibid
[207] Melinda Muth, Lex Donaldson, 'Stewardship Theory and Board Structure: a contingency approach'. Corporate Governance: An International Review, Vol 6(1) January 1998, pp.5-28, p.6

between board composition or leadership structure and corporate performance or behaviours in light of the existing literature on stewardship theory.[208] Stewardship theory supports unifying the CEO's and the COB's roles to reduce agency costs, thereby giving the stewards a greater responsibility in the bank.[209] One would argue that such fusion of the CEO's and COB's positions hinders adequate monitoring because having the same person as the CEO and COB means putting too much power in one individual's hands. The stewardship theory aligns with the self-regulatory approach discussed in Chapter two because the stewards are trustworthy and are unlikely to deviate from the organisation's objective as such an act will affect their reputation.

3.3.3 Shareholder Primacy Theory

The shareholder primacy theory is based on the firm's traditional view, which argues that shareholders are the owners of corporations and that directors are obliged to act in shareholders' interest.[210] The Michigan State Supreme Court in *Dodge v Ford Motor Co* supported the above position when it held that a business corporation is organised and carried on primarily for the shareholders' profit; hence, the directors' powers are to be directed towards that end.[211] However, later decisions, including *Shlensky v. Wrigley*[212] and *A. P. Smith Manufacturing Co. v. Barlow,*[213] rejected this line of reasoning, emphasising that directors need not treat shareholder wealth maximisation as their sole duty. Though the pronouncement may seem to have given directors some authority or discretion in how they carry out their duties,

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[208] Gavin Nicholson, Geoffrey Kiel. 'Can Directors Impact Performance? A case-based test of three theories of corporate governance' Corporate Governance: An International Review Vol 15(4) July 2007, p. 585-608, p.588

[209] James Davis, David Schoorman, Lex Donaldson, 'Towards a Stewardship Theory of Management Academy of Management Review, January 1997, Vol.22, No. 1, p.20 - 47

[210] Elaine Sternberg, 'Corporate Governance: Accountability in the Marketplace' (2nd edn, The Institute of Economic Affairs (IEA) London 2004) p.36

[211] *Dodge v Ford Motor Co.*, 170 N.W. 668, 684 (Mich. 1919)

[212] *Shlensky v Wrigley*, 237 NE 2d 776 (Ill. App. 1968)

[213] *A. P. Smith Manufacturing Co. v. Barlow*, 13 N.J. 145, 98 A.2d 581 (1953)

the decision in *Katz v Oak Industries, Inc*.[214] proved otherwise. In that case, the Delaware chancery court reaffirmed the reasoning in *Dodge v Ford Motor Co* when it held that directors must attempt within the law to maximise shareholders' interests in the long run. Milton Friedman once canvased this view when he argued that businesses' sole purpose is to utilise their resources and engage in activities designed to increase profits for shareholders' benefit, so long as they abide by the rules, engage in free competitions, and do not act with fraud or deception.[215]

Friedman's capitalist view of the corporation is premised on the agency theory. As earlier stated, the purpose of corporations is to make profits for the benefit of shareholders because the managers are agents appointed by the shareholders to serve their interests by judiciously using the available resources to generate the needed profits. Friedman's concern is for the managers to maximise profit for the shareholders within the confine of the law. Based on the above, one could argue that using available resources judiciously for wealth maximisation includes using some key stakeholders to achieve this task. For example, employees in companies are viewed as part of the human resources used to achieve the organisation's corporate purpose, which is the maximisation of profits for shareholders' benefit. Therefore, the primary argument of shareholder theorists is that corporations should be managed for the benefit of shareholders being the owners of the corporations.[216]

[214] *Katz v. Oak Industries, Inc*., 508 A.2d 873, 1986 Del. Ch. LEXIS 379 (Del. Ch. Mar. 10, 1986)
[215]Milton Friedman, Rose Friedman, 'Capitalism and freedom' (The University of Chicago Press Chicago and London 1962) p. 133
[216]Milton Friedman, 'A Friedzan doctrine' The New York Times, 13 September 1970 available at: <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> accessed 8 October 2021

To suggest that the shareholders are the owner of corporations is to conceive a corporation in the narrowest sense.[217] Corporations are businesses created by law with separate legal identities from their shareholders. One would argue that, at best, shareholders only have proprietary interests in the company, which is different from being the owner.[218] However, the court in *Multinational Gas and Petrochemical Co. Ltd v Multinational Gas and Petrochemical Services Ltd* held that the shareholders are in substance the company so long as the company is solvent.[219] The primary corporate objective of businesses focuses on shareholders' interest, and shareholders' interest equals profit maximisation. If directors claim to act in furtherance of the corporate objective of the banks, they are inadvertently acting in the interest of the shareholders.[220] This view has been supported by Sternberg, who argued that the corporation is still a slave of the shareholders, notwithstanding the doctrine of separate corporate personality.[221] Shareholders determine the corporate objective to maximise profit for their benefit; directors as agents of shareholders must act to achieve this corporate objective; therefore, in pursuit of the corporate objective, directors engage in excessive risk-taking, which is detrimental to other banks' stakeholders.[222]

The proponents of the shareholder primacy theory justify their assertion that the company must be managed to maximise profit for the shareholders' benefit because they own the company

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[217] Elaine Sternberg, 'Corporate Governance: Accountability in the Marketplace' (2nd edn, The Institute of Economic Affairs (IEA) London 2004) p. 36

[218] *Short v Treasury Commissioners [1948] 1 KB 116, 122, CA), Her Majesty's Commissioners of Inland Revenue v. Laird Group plc [2003] UKHL 54 para 35,* David Chandler, 'Strategic Corporate Social Responsibility: Sustainable Value Creation, (4th Edition, SAGE London, 2017) p.119, David Chandler, 'Corporate Social Responsibility: A Strategic Perspective,' (Business Expert Press LLC, New York, USA, 2015) pp.11-13, John Kay, 'Shareholders think they own the company — they are wrong,' Financial Times, 10 November 2015, available at: https://www.ft.com/content/7bd1b20a-879b-11e5-90de-f44762bf9896 accessed 2 May 2022

[219] *Multinational Gas and Petrochemical Co v Multinational Gas and Petrochemical Services Ltd and Others* (1983) Ch 258, para 288, per Dillion LJ.

[220] *Foss v Harbottle* (1843) 2 Hare 461, 67 ER 189

[221] Elaine Sternberg, 'Corporate Governance: Accountability in the Marketplace' (2nd edn, The Institute of Economic Affairs (IEA) London 2004) p. 37

[222] Grant Kirkpatrick, 'The corporate governance lessons from the financial crisis', OECD Journal: Financial Market Trends, vol. 2009/1, available at: <https://doi.org/10.1787/fmt-v2009-art3-en.> accessed 15 September 2021

and bear the risk of losses the company may incur. Sternberg believes that 'although the corporation has a separate legal personality in law, the corporation is a slave to the shareholders. She argued that the shareholders own the corporation, they must determine its purpose and are ultimately entitled to enslave it.'[223] Such a proposition is inaccurate and unfounded because Sternberg and other shareholders' primacy theorists have deliberately ignored the corporation's status under corporate law, as held in the case of *Solomon v Solomon*.[224] Based on the doctrine of a separate legal entity, the company is an artificial person in law who can sue and be sued in its name. Therefore, it is misleading for shareholders' primacy theorists like Sternberg to suggest that a group of persons (shareholders) can own another (company).[225] Shareholder primacy theory will thrive best with a combination of command and control and self-regulatory approaches. These regulatory approaches are required to strike a balance between profit maximisation for the shareholder's benefit and managing the bank's risk profile.

One of the most significant criticisms of the shareholder primacy theory is its assumption that the government has increased social welfare; therefore, businesses should only focus on profit maximisation for the benefit of their shareholders. Empirical evidence does not support the increased welfare proposition. For example, in the US, where shareholder primacy has been practised for several years, there is still a high level of inequality between the rich and the

[223] Elaine Sternberg, 'Corporate Governance: Accountability in the Market Place', (2nd Edition. London: The Institute of Economic Affairs (IEA) 2004) p. 37
[224] *Solomon v Solomon* [1896] UKHL 1, [1897] AC 22
[225] *Short v Treasury Commissioners [1948] 1 KB 116, 122, CA), Her Majesty's Commissioners of Inland Revenue v. Laird Group plc [2003] UKHL 54 para 35,* David Chandler, 'Strategic Corporate Social Responsibility: Sustainable Value Creation, (4th Edition, SAGE London, 2017) p.119, David Chandler, 'Corporate Social Responsibility: A Strategic Perspective,' (Business Expert Press LLC, New York, USA, 2015) pp.11-13, John Kay, 'Shareholders think they own the company — they are wrong,' Financial Times, 10 November 2015, available at: https://www.ft.com/content/7bd1b20a-879b-11e5-90de-f44762bf9896 accessed 2 May 2022

poor.[226] Shareholders have continued to derive significant benefits from the increased corporate profit but failed to remunerate workers adequately, as evidence suggests that employees' wages had declined significantly in recent years.[227]

The shareholder primacy theory is premised on a false assumption that the company owners (shareholders) should be the sole beneficiary in the corporation so long as the company is solvent. It is misleading to suggest that only the shareholders' investments are at stake when compared to other stakeholder groups; thus, the company should be managed for their benefit alone because of the risk they bear. However, in the banking sector, non-shareholders stakeholders, such as employees, customers like depositors, and debtholders, contribute to the bank's capital and long-term success and bear the risk of banking failures. Consequently, a reformed shareholders' theory was postulated to mitigate the inherent flaws in the shareholders' primacy theory. This new theory supposedly incorporates other stakeholders' interests in the corporation. The theory is known as the ESV theory and is explored in the sub-section below.

3.3.4 Enlightened Shareholder Value Theory

The ESV is the rebranded form of shareholders theory that purports to consider the interests of non-shareholders in the corporation, such as customers and employees. However, this thesis argues that the ESV theory and the shareholders' primacy theory are similar in scope because, in the ESV theory, the corporate objective is also to maximise profit for shareholders' benefit. The fundamental difference between both theories is the ESV's theory longer-term approach to profit maximisation, which may include consideration of the interests of other stakeholders, such as customers and employees, that might affect profits. The ESV puts an obligation on

[226] Nicholas Heiserman, Brent Simpson, 'Higher Inequality Increases the Gap in the Perceived Merit of the Rich and Poor', Social Psychology Quarterly Volume: 80 issues: 3, pp.243-253, https://doi.org/10.1177%2F0190272517711919

[227] Benedict Sheehy, Scrooge-The Reluctant Stakeholder: Theoretical Problems in the Shareholder-Stakeholder Debate, 14 U. Miami Business Law Review 193 (2005) p. 215

directors when promoting the company's objective for the benefit of the shareholders to consider some stakeholder's interests, such as employees,[228] customers and suppliers[229] and consider the impact of its operations on the community and the environment.[230]

The ESV theory has received a mixed reception amongst legal academics and corporate law practitioners who spent time evaluating how the principle operates in practice.[231] Some argued that it gives directors too much discretion; it is a shield for directors rather than a duty owed to the company.[232] Section 172 Companies Act 2006 protects the company's directors because there is no obligation for them to promote the interests of any other stakeholders except those of the shareholders. Section 172 Companies Act 2006 requires directors to have regard to the constituents listed therein; however, this does not translate into promoting those stakeholders' interests.

Another problem with section 172 Companies Act 2006 is that although it might seem to have provided a standard against which the directors' conduct can be assessed[233] by requiring the director to act in good faith when exercising their independent judgment.[234] However, it is argued that the duty to act in good faith is subjective because it is for the director to decide in good faith what is in the interest of the company. There is no mechanism to deter short-term profit drive by the directors on behalf of shareholders. To maximise the profit and promote the company's success, directors may engage in activities that undermine other stakeholders' interests. The Companies Act did not attempt to define the word 'success of the company' or

[228] S.172 (b) Company Act 2006
[229]S.172 (c) Company Act 2006
[230] S.172 (d) Company Act 2006
[231] Andrew Keay, 'The Enlightened Shareholder Value and Corporate Governance', (2013) 76(5) Modern Law Review 940
[232] Ibid
[233] Ibid
[234] S.173 Companies Act 2006

did the statute provide any parameter for measuring the success. According to Andrew Keay, directors' action does not necessarily need to lead to success in objective terms, so long as they act in good faith, believing that their action was likely to promote the company's success.[235]

If directors breach the provision of section 172 Companies Act, only shareholders can bring a derivative claim against them.[236] Other non-shareholders stakeholders, including those listed in section172 Companies Act, are not entitled to take action against the directors for contravening the section or any other part of the Act.[237] So, directors in promoting the 'success of the company' are to maximise profits, which is the corporate objective for the shareholders' benefit. As Lord Avebury puts it, 'in many, if not most, cases, the company's success depends on its ability to continue damaging the environment.'[238] So, directors may not have regard to the environment and other constituents listed in section 172 Companies Act. There is no legal basis for those affected to enforce against the directors because only shareholders can enforce against directors on behalf of the company.

From the preceding, this thesis argues that based on the limited cases dealing with section 172 Companies Act, particularly related to its breach, the ESV theory is in practice no different from the shareholders' primacy theory. It purports to incorporate the recognition of certain non-shareholders in the corporation by requiring directors to have regard to them while endorsing the traditional objectives of the corporate law, which is profit maximisation for the benefit of shareholders. In 2021, a coalition of more than 1000 businesses and other

[235] Andrew Keay, 'The Enlightened Shareholder Value and Corporate Governance', (2013) 76(5) Modern Law Review 940
[236] Section 260(1) Company Act 2006
[237] Section 170(1) Company Act 2006
[238] Lord Avebury of UK House of Lords Parliamentary debates 2006 available at: <https://publications.parliament.uk/pa/ld200506/ldhansrd/vo060206/text/60206-32.htm> accessed 15 September 2021

organisations launched a Better Business Act (BBA) campaign to propose reforms to the provision section 172 Companies Act 2006.[239] The reforms will foster an inclusive boardroom decision-making process premised on the idea of a triple bottom line approach to business: people, planet and profit.[240] The BBA is based on the assertion that the triple bottom line approach to business is the only solid foundation for a sustainable economy.[241] Thus, the triple bottom line approach would require that companies operate not only for the benefit of the shareholders but also for the wider society and the environment.[242] If the BBA is enacted, it will displace the doctrine of shareholder primacy as the guiding principle of boardroom decision-making, thus amending the wording of section 172 to state that directors have a duty to 'advance the purpose' of the company instead of 'promote the success' of it.'[243] The BBA would amend section 172 of the Companies Act 2006, which sets out that the default purpose of companies is to benefit their shareholders; as an alternative, the proposed amendment would ensure that businesses must benefit employees, customers, communities, and the environment alongside delivering profit for its members. These proposed reforms give credence to the argument made in this thesis that there is a need for a more stakeholders approach to businesses. However, as it stands presently, the ESV theory embedded in section 172 Companies Act further reaffirms the existing shareholder primacy approach to corporate law and corporate governance. The command and control and self-regulatory approaches will be the best

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[239] Julie Pybus, 'Better Business Act campaigners urge UK parliament to halt relentless pursuit of shareholder profits,' Pioneers Post, 21 April 2022, available at: < https://www.pioneerspost.com/news-views/20220421/better-business-act-campaigners-urge-uk-parliament-halt-relentless-pursuit-of?utm_content=buffer9356d&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer> accessed 2 May 2022

[240]Bates Wells, 'The Better Business Act,' available at: < https://bateswells.co.uk/about/being-a-better-business/better-business-act/> accessed 02 May 2022

[241]Christopher Marquis, 'Advocating For Better Business: U.K. Coalition Aligns To Advance Benefit Corporation Requirement,' Forbes 3 February 2022, available at: < https://www.forbes.com/sites/christophermarquis/2022/02/03/advocating-for-better-business-uk-coalition-aligns-to-advance-benefit-corporation-requirement/?sh=120648e055f4> accessed 02 May 2022

[242] Ibid

[243]Social Good Connect, 'What is the Better Business Act? 23 June 2021, available at: < https://socialgoodconnect.org/better-business-act/> accessed 02 May 2022

regulatory approach since there is no material difference between the shareholders' primacy theory and the ESV theory in practice. Adopting a hybrid regulatory approach will help strike a balance between profit maximisation for shareholders and protecting the interests of non-shareholder stakeholders.

3.3.5 Institutional Theory

The institutional theory argues that the institutional environment influences the development of formal structures in a corporation.[244] The theory deals with how structures such as rules, values, norms, routines, regulatory systems, and beliefs become established as authoritative social behaviour guidelines.[245] An institutional void arises when these structures become deficient or underdeveloped. The institutional theory explains why corporations adopt similar characteristics and forms. The institutional theorists argued that 'organisations conform because they are rewarded for doing so through increased legitimacy, resources and survival capabilities,'[246] a view supported by renowned institutional theorists like Dimaggio and Powell. They argued that behaviours are regulated through three isomorphisms: coercive, normative, and mimetic isomorphisms.[247] These three forms of isomorphisms require further explanation.

Coercive isomorphism occurs because of formal or informal pressures imposed by regulatory authorities on regulated firms. For example, through its regulatory agencies, the government may put a specific procedure in place to ensure legitimacy for practices in the banking sector. This is one way the institutional theory may adopt the command-and-control regulatory

[244] Sheila Puffer, Daniel McCarthy, 'Institutional Theory' Wiley Encyclopaedia of Management January 2015, Vol.6 International Management.
[245] Ibid
[246] Richard Scott The Adolescence of Institutional Theory, Administrative Science Quarterly December 1987 Vol. 32, No. 4 pp. 493-511, p498
[247] Paul Dimaggio, Walter Powell, 'The iron cage revisited: Institutional isomorphism and collective rationality in organisational fields', April 1983, America Sociological Review, Vol. 48, pp.147 -160

approach because the regulatory/supervisory agencies set the standard the banks are expected to comply with. The coercive isomorphism includes external pressures from other sectors of the economy, government and non-governmental organisations requiring the banks to conform to socio-cultural expectations. An excellent example of such restrictive pressure could originate from governmental mandates, regulated forms of CSR, contractual relationships, and financial reporting requirements.[248] Coercive isomorphism arises when prudential regulators mandate banks to hold adequate financial resources such as capital and liquidity and also put a comprehensive risk control measure in place. The banks must comply with such mandates as failure to do will attract appropriate sanctions.

Normative isomorphism is the pressures of social or professional norms or standards.[249] This results from people influenced by their similar educational backgrounds. Since people have had the same training, particularly within a particular profession, there is a tendency that they will approach specific problems using the same method. Being a member of a profession can also contribute to what is acceptable in corporate governance practice. For example, the auditors will use a similar auditing method based on audit tenders' notes on best practices in the UK. Companies can see how auditing firms carry out their business. Suppose a firm of auditors is not employing the same method to solve related accounting problems as others within the field; such a firm has deviated from the acceptable norm within that profession. Normative isomorphism means that auditing firms will instead stick with the norm within the profession because any attempt to deviate from the acceptable norm might jeopardise the likelihood of being appointed afterwards.

[248] Ibid
[249] Ibid

Mimetic isomorphism refers to imitating the best practice within an organisation.[250] One reason for this is the uncertainty within a particular corporation. In the quest for them to become successful or attain a particular standard, they are tempted to emulate any successful company within the organisation by adopting their policies, practice, and procedures. This is common in small, medium and start-up companies just joining the sector to imitate the established ones because they believe that their successes, particularly those more prominent firms, are connected with how the companies are being organised. Therefore, mimetic isomorphism is where the established companies' practices, procedures, and policies become the norm, setting the standard for start-ups and small and medium firms to follow.

Like other corporate governance theories, the institutional theory has also been criticised. One of the most significant criticisms is the non-convergence of the institutional theory. Lex Donaldson[251] argued that Lynne Zucker used the plural 'theories' in her article titled *'Institutional Theories of Organisation'*[252] to suggest more than one institutional theory. There is also the argument that institutional theorists tend to treat all organisations as though they are one, thereby neglecting organisations' heterogeneousness.'[253] They further argue that even though the institutional theorists acknowledge that differences exist in organisations, they see those differences as irrelevant to the institutional theory.[254] This thesis argues that the above criticism, in no small measure, is defective because, while it is correct that organisations are different, there is the possibility that they may still act in the same way. It could also be possible that the differences may be so insignificant that they would not alter the way organisations are

[250] Ibid
[251] Lex Donaldson, 'American Anti-Management Theories of Organisation: A Critique of Paradigm Proliferation' (Cambridge University Press, Cambridge 1995) p.121
[252], Lynne Zucker 'Institutional Theories of Organization', Annual Review of Sociology 13 (1987): 443-64. http://www.jstor.org/stable/2083256.
[253] Royston Greenwood, C. R. Hinings, Dave Whetten, (2014), Rethinking Institutions and Organizations, Journal of Management Studies, 51, (7), 1206-1220, p1206
[254] Ibid

being influenced. As mentioned above, since the institutional theory is based on how formal and informal institutions influence organisations, both the command and control and self-regulatory approaches can help promote the institutional theory. The institutional theory is one of the corporate governance theories adopted in this thesis. It enables the researcher to explore the Nigerian institutional environment and its effects on corporate governance in the banking sector. The institutional theory helps understand the challenges of effective corporate governance in the Nigerian banking sector by exploring the institutional voids in Nigeria and how coercive and normative isomorphisms could help solve these challenges. Therefore, this thesis draws on institutional theory, particularly the coercive and normative isomorphisms, in formulating the proposed functional stakeholder model for the Nigerian banking sector.

3.3.6 Stakeholder Theory

The term stakeholder has become a buzzword in corporate governance discourse in recent times. Despite its popularity, there seems to be a lack of clarity about the conceptualisation.[255] Various scholars have offered many definitions of stakeholders in corporate governance; however, the difference in these definitions centres on whom may or may not qualify as a stakeholder.[256] Eden and Ackermann defined stakeholders as those 'people or small groups with the power to respond to, negotiate with, and change the organisation's strategic future.'[257] From this definition, individuals without the power to engage with the corporation will not qualify as stakeholders. This definition is too narrow because it excludes those who may have been affected directly or indirectly by the corporation's actions but lacks the means to engage the corporation. The above argument is supported by Bryson when he suggested that the

[255] Jeffrey Harrison, Edward Freeman, Monica Sa de Abreu, 'Stakeholder Theory as an Ethical Approach to Effective Management: applying the theory to multiple contexts, Review of Business. management, Vol. 17, No. 55, 2015, pp. 858-869, p.858

[256] Fran Ackermann, Colin Eden, 'Strategic Management of Stakeholders: Theory and Practice, Long Range Planning 44 (2011) pp179 - 196, p.180

[257] Colin Eden, Frank Ackermann, 'Making Strategy: The Journey of Strategic Management' (Ist ed SAGE London 1998) p.117

definition of stakeholder offered by Eden and Ackermann is too restrictive because it prevents those who are affected but lack the power or means to respond to or negotiate with the corporation.[258]

A more inclusive definition of the stakeholders is the one offered by Edward Freeman, who defined stakeholders as any group or individual who can affect or is affected by the achievement of the organisation's objectives.[259] This definition is inclusive because it contemplates a broad range of individuals or groups who directly or indirectly affect or are affected by an organisation's actions. This thesis adopts this definition of stakeholders by Edward Freeman because it enables the researcher to identify the stakeholders in the Nigerian banking sector. It also helps define key stakeholders' roles under the proposed Functional Stakeholder Model.

The stakeholder theory is another fundamental theory of corporate governance. It is prominent in many discussions on business ethics, organisational effectiveness, and corporate governance. Its origin dates back to the work of Edwin Merrick Dodd Jr. titled *'For Whom Are Corporate Managers Trustees?*'[260] They centred this work on a debate between Dodd and Adolph Berle on whom behalf should the corporation managers act. Berle's view was that the corporation must act for the shareholders' benefit, while Dodd believed that, though the law supports Berle's argument, employees' interests should also be considered.[261] That is why stakeholder theorists like James Post, Lee Preston, and Sybille Sach rejected the corporation's

[258] John Bryson, 'What to do when Stakeholders Matter' Public Management Review, 6(1), 21-53 2004, p.22
[259]Edward Freeman, 'Strategic Management: A Stakeholder Approach (Boston Pitman, 1984) p.34
[260] E. Merrick Dodd, Jr., For Whom Are Corporate Managers Trustees? Harvard Law Review, Vol. 45, No. (7) May 1932, pp. 1145-1163
[261] Ibid p.1151

conceptualisation based on the shareholder primacy examined above.[262] They disagreed with the notion underpinning the shareholder primacy and the ESV theories that the corporation's corporate objective is to maximise profit for the benefit of shareholders.[263] They argued that the corporation is an organisation engaged in mobilising resources for productive users to create wealth and other benefits and not destroy wealth, increase risk, or cause harm intentionally for its multiple stakeholders.[264]

Therefore, the organisation's corporate goals should transcend beyond maximising profit for shareholders' benefit to running the corporation for all stakeholders' benefit. Besides the shareholders, the corporation comprises other internal and external constituents, like employees, creditors, and local communities, whom the corporations must recognise and consider their interests. The stakeholder theorists believe that the corporation should not only seek to protect the interest of the shareholders, as the company includes other stakeholders, but it is also essential that their interests must equally be pursued. The corporation should pursue all its stakeholders' interests because of their various roles in promoting its success. as previously stated above, the BBA campaign for the reform of s.172 UK Companies Act supports the above point. The shareholder's primacy and the ESV are not adequate in promoting the interest of all stakeholders. BBA campaigners advocate for legislation to align company practices and policies with long-term benefits for people and the planet and profit by requiring public companies and their directors to weigh and advance some key stakeholders' interests, not just shareholders.[265]

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[262]James Post, Lee Preston, Sybille Sach, 'Redefining the Corporation: Stakeholder Management and Organisational Wealth, (Stanford University Press, Stanford California 2002) p. 17

[263] Ibid

[264] Ibid

[265]Christopher Marquis, 'Advocating For Better Business: U.K. Coalition Aligns To Advance Benefit Corporation Requirement,' Forbes 3 February 2022, available at: < https://www.forbes.com/sites/christophermarquis/2022/02/03/advocating-for-better-business-uk-coalition-aligns-to-advance-benefit-corporation-requirement/?sh=120648e055f4> accessed 02 May 2022

As previously stated in the introductory chapter of this thesis, there is no convergence on those that constitute stakeholder groups in the corporation, as this may vary from one organisation to another. Considering the difficulty of having a consensus of the stakeholders' group, some scholars have claimed that anything and everything in the human environment would qualify as stakeholders. Sternberg argued that 'everyone, everything, everywhere, including terrorists, competitors, vegetation, nameless sea creatures, and generations yet unborn, are amongst the many groups that are now seriously considered the corporation's stakeholders.'[266] The above argument is overstated; for example, identifying stakeholders in a corporation like the banks is not as complicated as Sternberg purports to make it look.

Edward Freeman's definition of stakeholders adopted in this thesis is handy in determining the stakeholders' group in the banking sector, which includes individuals or groups who can affect or are affected by the achievement of the bank's objectives.[267] There are two broad categories of stakeholders: internal stakeholders and external stakeholders. Internal stakeholders are those without which the company cannot survive as a going concern, while external stakeholders affect or are affected by the organisational objectives. The banking sector's internal stakeholders are shareholders, employees, directors and managers, depositors, and creditors. In contrast, the external stakeholders consist of local communities, government, public interest groups, trade unions, clients, business partners and corporate regulators.[268] Their importance as stakeholders is examined and analysed in the next chapter of this thesis.

Like all other theories of corporate governance, the stakeholder's theory has also suffered from various criticisms. The criticisms come from shareholders' primacy value and enlightened

[266] Elaine Sternberg, 'The Defects of Stakeholders Theory', Corporate Governance: An international Review, Vol 5 (1) January 1997, p.4
[267] R Edward Freeman, 'Strategic Management: A Stakeholder Approach' (Pitman, Boston MA 1984) p.46
[268] Ibid

shareholder value theories supporters like Elaine Sternberg, who argued that the stakeholder's theory is incompatible with the business objectives. While acknowledging that the stakeholder theory was intended to improve strategic management planning, she contended that proposing that the corporation be managed for all stakeholders' benefit undermines its primary purpose, which is maximising profits for shareholders' benefit.[269] Sternberg further argued that the stakeholder's theory is incompatible with corporate governance. She claimed that corporate governance is about the board of directors' accountability to the shareholders and not to any other group.[270] Sternberg opined that the fact that stakeholder's theory demands accountability from the corporation to all stakeholders is relatively ineffective because being accountable to everyone is to be accountable to no one.[271] Therefore, she believes that the stakeholder's theory cannot serve as a suitable corporate governance model. She argues that the theory does more damage than good because conventional corporate accountability based on the stakeholder's accountability theory is unjustified.[272] Despite the above criticisms, this thesis adopts the stakeholder's theory in addition to the institutional theory previously adopted. The stakeholder's theory helps identify the relevant stakeholders in the Nigerian banking sector, their challenges, particularly customers and employees, and how their interests are protected. The command and control and self-regulatory approaches are ideal in implementing the stakeholder's theory because the banks comprise different stakeholders who can affect or are affected by the achievement of the banks' objectives.

3.4. Conclusion

This chapter aimed to explore the theories underpinning corporate governance discourse. It began by examining the different definitions of corporate governance. While it acknowledged

[269] Elaine Sternberg, 'The Defects of Stakeholders Theory', Corporate Governance: An international Review Vol 5 (1) January 1997, p.4
[270] Ibid p. 5
[271] Ibid
[272] Ibid

that there is no convergence in corporate governance definition, defining the concept from a narrow perspective, for example, from the shareholder-centric angle, is misleading and undermines other constituents' contributions and interests. Therefore, the OECD's definition, which perceives corporate governance as the relationship between all stakeholders in the corporation and Preston's definition, which defines corporate governance as a set of institutional arrangements that legitimates and directs the corporation in performing its functions, influenced the proposed definition of corporate governance in this thesis.

Several corporate governance theories were examined in this chapter. These theories are agency theory, stewardship theory, shareholder primacy theory, ESV theory, institutional theory, and stakeholder theory. The thesis argues that the agency theory is based on a wrong premise because it only concerns the relationship between the shareholders and the managers in a corporation, thereby neglecting other stakeholders. The stewardship theory is slightly related to the agency theory. Stewardship theory is also based on the relationship between shareholders and managers. However, the cost required to keep the managers under check under the agency theory, known as agency cost, is absent in the stewardship theory.

The chapter further examined the shareholders' primacy and the ESV theories entrenched in section 172 UK companies Act 2006. While the latter purports to require directors to have regard to some stakeholders listed in the section when promoting the company's success, it is nothing more than a mere codification of the existing shareholder primacy approach to corporate law and corporate governance. The corporate objectives remain the same under both types of shareholders' theories; directors are to maximise profits for shareholders' benefit. No other person apart from the shareholders should benefit from the company.

The institutional and stakeholders' theories were also considered and adopted as the underlining theories in this thesis. The institutional theory enabled the researcher to explore the Nigerian banking institutional environment through various corporate governance challenges. The stakeholder's theory helped the researcher explore the main stakeholders in the Nigerian banking sector and how the corporate governance framework recognises these stakeholders, particularly customers and employees, in protecting their interests. Before exploring the corporate governance framework in the Nigerian banking sector, the next chapter focuses on bank governance. This includes identifying the key stakeholders in bank governance and the various corporate governance models underpinned by theories discussed in this chapter. The next chapter also explores the different corporate governance mechanisms based on the different models applicable in the banking sector.

Chapter Four

DETERMINANTS OF EFFECTIVE CORPORATE GOVERNANCE IN THE BANKING SECTOR

4.1 Introduction:

As a follow-up on the discussion in chapter two, 'the relationship between banking regulation and corporate governance,' and chapter three, 'corporate governance concepts, theories and models,' this chapter focuses on addressing the third subsidiary question of this thesis: What are the determinants of effective corporate governance in the banking sector? The chapter begins by exploring the concept of effective corporate governance in the banking sector. It argues that since risk-taking characterises the banking business, an effective corporate governance framework ensures adequate risk management and promotes the interests of relevant stakeholders. It argues that the banking sector's corporate governance framework is deemed effective if it promotes key stakeholders' interests, such as employees and customers.

The second section of this chapter explores the international frameworks for bank governance. The two primary international instruments for bank governance, the Basel Committee on Banking Supervision (BCBS) Corporate Governance Principles for Banks and the OECD Principles of Corporate Governance,[273] are explored. Although both international instruments aim to promote effective corporate governance in the banking sector without being legally binding, they have significantly influenced several countries' corporate governance frameworks. The third section of this chapter deals with stakeholders in the banking sector. Based on the definition of stakeholder adopted in chapter three, this chapter argues that stakeholders in the banking sector fall within two broad categories, internal and external.

[273] Basel Committee on Banking Supervision, Corporate Governance Principles for Banks, Bank for International Settlement July 2015 available at: < https://www.bis.org/bcbs/publ/d328.pdf>, OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris, available at: <https://doi.org/10.1787/9789264236882-en. > accessed 15 September 2021

The fourth section of this chapter addresses the dominant models of corporate governance in the banking sector: the Anglo-Saxon model, the Continental European model, and the Japanese model. It argues that shareholder primacy underpins the Anglo-Saxon model, and the stakeholders' theory underpins the Continental European and the Japanese *Keiretsu* models. The fifth section of this chapter examines corporate governance mechanisms in the banking sector, while the penultimate section of this chapter addresses the concept of corporate social responsibility. It argues that one way of promoting stakeholders' interests is through incorporating corporate social responsibility into banks' corporate governance. The last section summarises the key points discussed in this chapter.

4.2 Notion of Effective Corporate Governance

Scholarships in corporate governance have attempted to re-conceptualise corporate governance in the wake of corporate scandals in recent times, particularly after the global financial crisis of 2007–2009.[274] The re-conceptualisation is evident in academic works and corporate governance practices; a new layer of concern has been added to the concept. Academic literature, practitioners in the field and even corporate governance codes now adopted the term 'effective corporate governance.'[275] Despite this new trend in describing corporate governance, no definition has been offered for the newly coined notion of effective corporate governance. The common perception amongst academics and corporate law practitioners is that effective corporate governance is good corporate governance.[276]

[274]Donald Nordberg. Edging Toward 'Reasonably' Good Corporate Governance. Philosophy of Management 17, 353–371 (2018). https://doi.org/10.1007/s40926-017-0083-9

[275] Melinda Timea Fülöp, 'Why Do We Need Effective Corporate Governance?'. *Int Adv Econ Res* 20, 2014, pp.227–228, available at:< https://doi.org/10.1007/s11294-013-9430-3> accessed 15 September 2021

[276] Ibid

Ira Millstein *et al.* argue that effective corporate governance is premised on four fundamental principles: fairness, transparency, accountability and responsibility.[277] The principle of fairness means shareholders' protection through regulations prohibiting fraud, managerial or controlling shareholders' self-dealing, and other insider wrongdoings.[278] The accountability principle is achieved through clearly set-forth governance roles and responsibilities that allow the board to monitor management and ensure they act in shareholders' interests.[279] Transparency is attained through regulations that mandate the timely disclosure of information to shareholders.[280] Responsibility ensures that corporations comply with the societies' acceptable standards in which they operate.[281] It could be argued that the shareholders' primacy underpins the above principles that describe effective corporate governance.

Fairness as a requirement for effective corporate governance focuses on protecting shareholders' interests and ensuring equal treatment of all shareholders, particularly the minority shareholders. Therefore, the accountability of the board is to the shareholders. The Financial Reporting Council supports the above standpoint by suggesting that effective corporate governance is the right to enable shareholders to hold directors to account and the availability of information needed to assess the management's performance.[282] Therefore, one would argue that for corporate governance to be effective, it must be based on a combination of internal and external environments to maximise corporate performance, minimise the risk,

[277] Ira Millstein, Michel Albert, Adrian Cadbury, Robert Denham, Dieter Fedddersen, Nobuo Tateisi, 'Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets: A Report to the OECD by the Business Sector Advisory Group on Corporate Governance, OECD Publishing, Paris, 1998 https://doi.org/10.1787/9789264162709-en
[278] Ibid p 40
[279] Ibid
[280] Ibid
[281] Ibid p. 23
[282] Financial Reporting Council, 'Effective Corporate Governance', July 2011, available at: < https://www.frc.org.uk/getattachment/8d5dd29f-0630-4521-86b2-f41a75d9be6b/FRC-Effective-Corporate-Governance-July-2011.pdf> accessed 15 September 2021

and protect all stakeholders' interests.[283] Effective corporate governance is designed to ensure that corporations are responsible for contributing to the welfare of society. Effective corporate governance also ensures that corporations are managed with integrity, honesty, responsibility, transparency, accountability, and fairness to all stakeholders. One would argue that effective corporate governance in a broader context is fundamental to the proper functioning of banks within the national economy in particular and within the global economy in general. Consequently, the international standards for effective corporate governance in the banking sector are examined next.

4.3 International Standards for Corporate Governance of Banks

The Basel Committee on Bank Supervision has issued several guidelines addressing different corporate governance issues in the banking sector. The most important ones are compliance and the compliance function in banks,[284] which provide sound practice guidance to help banks design, implement, and operate an efficient compliance function.[285] It deals with directors' and senior management's responsibilities in complying with banking regulations.[286] The internal audit function guidelines[287] seek to promote a robust internal audit function within banks by encouraging internal bank auditors to comply with national and international professional standards on internal auditing.[288] Similarly, the Basel guidelines on the external audits of banks[289] seek to provide a framework to assist audit committees in the governance and

[283] Melinda Timea Fülöp, 'Why Do We Need Effective Corporate Governance?'. *Int Adv Econ Res* 20, 2014, pp.227–228, available at:< https://doi.org/10.1007/s11294-013-9430-3> accessed 14 September 2021

[284]Basel Committee on Banking Supervision, 'Compliance and the Compliance Function in Banks,' Bank for International Settlement April 2005 available at:< https://www.bis.org/publ/bcbs113.pdf> accessed 15 September 2021

[285] Ibid

[286] Ibid

[287] [287]Basel Committee on Banking Supervision, 'The Internal Audit Function in Banks,' Bank for International Settlement June 2012 available at:< https://www.bis.org/publ/bcbs223.pdf > accessed 15 September 2021

[288] Ibid

[289] [289]Basel Committee on Banking Supervision, 'External Audits of Banks,' Bank for International Settlement March 2014 available at:< https://www.bis.org/publ/bcbs280.pdf > accessed 15 September 2021

oversight of the external audit function.[290] The banks' corporate governance principles[291] provide a framework within which banks and supervisors can achieve comprehensive and transparent risk management and effective decision-making. This guideline emphasised the importance of effective corporate governance for banks' safe and sound functioning.[292] It stressed the importance of risk governance as a fundamental component of the bank's corporate governance framework[293] and the importance of promoting the value of strong boards and board committees.[294]

Compared to the previous one, the recent corporate governance principles are unique because the 2015 principles introduced a new distinction between the board of directors and senior management's duties.[295] The BCBS Corporate Governance Principles for Banks focus on promoting effective corporate governance in the banking sector. The principles do not have the force of law. However, it is intended to set the international standards that the banks are expected to follow to promote public confidence and uphold the safety and soundness of the banking system.[296]

Another international framework for effective corporate governance that applies to the banking sector is the OECD Principles of Corporate Governance.[297] They provide specific guidance to assist governments, policymakers, regulators, corporations, and stakeholders in the OECD and

[290] Ibid
[291] Basel Committee on Banking Supervision, Corporate Governance Principles for Banks, Bank for International Settlement July 2015 available at: < https://www.bis.org/bcbs/publ/d328.pdf> accessed 15 September 2021
[292] Ibid
[293] Ibid
[294]Basel Committee on Banking Supervision Guidelines on the corporate governance principles for banks, pp.1-13
[295] Ibid
[296] Rym Ayadi, Sami Naceur, Barbara Casu, Barry Quinn 'Does Basel Compliance Matter for Bank Performance? Journal of Financial Stability, Vol 23, April 2016, 15-32.
[297] OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris, available at: <https://doi.org/10.1787/9789264236882-en. > accessed 15 September 2021

non-OECD countries to improve the legal, regulatory, supervisory, and institutional framework underpinning corporate governance in their jurisdictions.[298] The OECD Principles of Corporate Governance were issued initially in 1999, and since then, it has become the international benchmark for measuring corporate governance in publicly traded companies. It has undergone a series of reviews, with the most recent principles issued in 2015.[299] The OECD revised principles cover six primary areas of corporate governance, which are: ensuring the basis for an effective corporate governance framework, basic rights of shareholders, the equitable treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency and responsibilities of the board.[300]

The Financial Stability Board Forum has endorsed the OECD Principle of Corporate Governance as one of the twelve significant standards for a sound financial system.[301] The OECD Principles of Corporate Governance, like the BCBS Corporate Governance Principles for Banks, do not have a force of law; however, they serve as a benchmark for measuring effective corporate governance in the banking sector. When transplanting the above international guidelines/principles into banks' corporate governance framework into a country's corporate governance framework, that country's legal, socio-economic, and cultural circumstances must be considered. These international principles or guidelines must be tailored to align with the institutional environment of the recipient country. However, before examining how these international guidelines/principles have influenced or will influence effective corporate governance in the Nigerian banking sector, the next section of this thesis explores stakeholders in bank governance.

[298] Ibid
[299] Ibid
[300] Ibid
[301] Fianna Jesover, Grant Kirkpatrick, 'The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries,' Corporate Governance: An International Review, Wiley Blackwell, vol. 13(2), 2005, pp. 127-136

4.4 Stakeholders in Banks' Corporate Governance

As discussed above, effective corporate governance in the banking sector is instrumental to the bank's growth in particular and the country's economic development in general. Maher and Anderson stated that corporate governance and economic performance are affected by the relationship between stakeholders in the corporation.[302] Different stakeholders play significant roles in promoting effective corporate governance in the banking sector. These stakeholders include shareholders, employees, creditors, government, corporate regulators, customers, local communities, public interest groups and trade unions. Their importance as stakeholders in banks is examined further in the subsections below.

4.4.1 Shareholders

The term shareholder, in simple terms, connotes someone that owns shares. The definition of share offered by the UK Companies Act 2006 is unhelpful as 'share' was defined as a share in the company's share capital.[303] The above does not explain what precisely a share is. Lord Russell offered a helpful definition thus, 'a share as in a limited company is an item of property, it is the interest of a person in the company, that interest is composed of rights and obligations defined by the Companies Act and by the company's memorandum and articles of association.'[304] A bank is typically a joint-stock company with its share listed and traded on a stock exchange.[305] Those who purchase the bank's shares become the bank shareholders; the act of purchasing the shares comes with certain rights and responsibilities.[306] The rights arising from shareholders' investment in banks include the right to inspect the banks' accounting records, attend and vote at general and special meetings, and appoint directors.[307] As discussed

[302]Maria Maher, Thomas Anderson, 'Corporate Governance: Effects on Firm Performance and Economic Growth,' (OECD 1999) p.8
[303] S.540(1) Companies Act 2006
[304] Commissioners of Inland Revenue v Crossman [1937] AC 26 (HL) 66
[305] Kern Alexander, *Principles of Banking Regulation* (Cambridge University Press 2019) p.87
[306] Ibid
[307] Ibid p.146

in the previous chapter, one of the unique characteristics of the Agency theory is that the shareholders appoint the directors to act on their behalf. They ensure that senior management and directors do not pursue their interests by implementing an adequate monitoring mechanism; this forms the basis of the agency theory discussed in the previous chapter. Bank shareholders subject to the leave of court can bring a derivative action against a director, third party, or both for an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a bank director.[308] It does not matter if the cause of action arose before or after the shareholder seeking to bring or continue the derivative action became a bank shareholder.[309]

Bank shareholders are entitled to receive dividends paid from the profits accruing to the bank; however, shareholders will not receive any dividend when the bank suffers losses. Their situation might be worse if the losses lead to insolvency. In such instances, shareholders will forfeit all their contributions to the bank if it is a limited liability company.[310] There are situations where shareholders' liability extends beyond their contributions to the bank. For example, the courts are prepared to pierce the veil of incorporation if some improprieties are involved, necessitating that the wrongs orchestrated by those controlling the banks should be remedied; in those instances, the shareholders would personally be liable.[311]

In certain instances, banks' shareholders consist of individuals, institutions, and governments. One would argue that while profits maximisation may be the underlining motivation for individuals and institutional investors acquiring shares in banks, the government's acquisition

[308] S.260 (3)(5) Companies Act 2006
[309] Ibid S260 (4)
[310]Research and Market Development Department Securities and Exchange Commission see <http://proshareng.com/admin/upload/reports/2625.pdf> accessed 15 September 2021
[311] Jonathan Macey, Geoffery Miller. 'Double Liability of Bank Shareholders: History and Implications.' Wake Forest Law Review Vol 27 1992. pp 31-62

of shares in banks, for example, during the financial crisis of 2007-2009, was to stabilise the financial system. There is nothing wrong with governments acquiring shares in banks for the sole purpose of making profits. However, as recent events have shown, where there is a likelihood of the banks failing, governments intervene by acquiring shares, which helps stabilise the financial system. The role of the government as a stakeholder in banks is addressed later in this chapter.

4.4.2 Employees

The banks' workforce (employees) are another critical stakeholder in the banking sector because they also bear the residual risks in the bank as the payment of their incomes depends on the banks remaining a going concern.[312] While the shareholders can reduce the risk of their financial investment through portfolio diversification, employees cannot reduce their risk through diversification.[313] They depend on the banks to provide them with incomes to meet their various financial needs. Like bank shareholders whose investment is mainly capital, bank employees invest their human resources to ensure the success of the bank's corporate objective. This thesis argues that bank employees and shareholders are in a kind of symbiosis relationship because while employees rely on the management who act for the shareholders for their incomes, the shareholders rely on the employees to deliver on the corporate objective of the bank, which is profit maximisation for the benefit of shareholders. From a bank employee's perspective, the bank's long-term growth and prosperity are significant because their emoluments and other benefits are guaranteed if the bank is solvent and remains a going concern.

[312] Robert Wearing, 'Cases in Corporate Governance' (SAGE Publications, London 2005) p.10
[313] Ibid

Bank employees are seriously affected when the bank suffers losses; in such instances, desperate to regain its liquidity or cash flows, the bank may stop or reduce the employees' emoluments and other benefits or, in some circumstances, make several employees redundant. The losses the bank employee may suffer may transcend beyond these identified above; in some cases, the employees may be unable to seek further employment not because of the high level of unemployment in the country but as a result of being a former employee of a failed bank. In *Malik v Bank of Credit and Commerce International SA*[314] and *Mahmud v Bank of Credit and Commerce International SA,*[315] the employees brought a claim against the bank for loss of reputation and stigmatisation. They claimed that no one was willing to employ them because they were former employees of a particular bank involved in massive fraud, money laundering, and other financial crimes. The court held that there is an implied term in employment contracts that the employer shall not conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.[316] Though employees might be entitled to damages in those circumstances, such recourses are cumbersome and usually involve many resources; for example, litigation costs are pretty high and time-consuming. The employees who have lost their jobs may not have the finances to engage an experienced lawyer or any lawyer regardless to represent them. Therefore, bank employees will prefer to work diligently in banks with excellent work ethics to ensure continuous payment of their salaries, enabling them to meet their financial demands, and if they choose to leave that particular bank, they will be able to seek re-employment elsewhere without been stigmatised as a result of the bank's involvement in unethical and fraudulent practices.

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[314] *Malik v Bank of Credit and Commerce International SA* [1997] 3 WLR 95, *Mahmud v Bank of Credit and Commerce International SA* [1997] UKHL 23
[315] Ibid
[316] Ibid

4.4.3 Creditors

Bank creditors are also important stakeholders in banks because they contribute to the banks' capital by offering credit to them. Besides selling their stocks in the stock market to raise capital, banks borrow amongst themselves through the interbank lending market. Therefore, as providers of debt finance for other banks, banks usually advance such funds to them with the expectation that they will repay the principal sum and interest on debts when due. The OECD corporate governance principles highlighted the significant place of creditors in the bank's governance and how their interests should be protected by law if the banks become insolvent. It stated that creditors are key stakeholders, and the terms, volume and type of credit extended to banks will depend significantly on their rights and enforceability.[317] Francis et al. strongly support the view that poor corporate governance is inimical to the bank's ability to secure finance on favourable terms from the other banks. As most banks would advance loans with a low-interest rate and, for a more extended period to banks with an excellent corporate governance record, banks with a poor corporate governance record may struggle to get loans from the other banks on favourable terms.[318]

Besides banks borrowing amongst themselves through the interbank lending market, banks may also secure credit through debtholders, which comprise depositors operating regular accounts, depositors operating fixed accounts, and bondholders.[319] In most cases, these creditors provide unsecured credit for the banks, although such credits may attract interest at various points. Debtholders are concerned about directors' risk-taking appetites, unlike the shareholders who are eager to maximise profit and are less concerned about the risks involved;

[317] OECD, G20/OECD, Principles of Corporate Governance (2015) p.36
[318] Bill Francis, Iftekhar Hasan, Liang Song, 'Corporate governance, creditor protection, and bank loan contracting in emerging markets' Lally School of management and technology of Rensselaer Polytechnic Institute.2007, p6
[319] Klaus Hopt, 'Better Governance of Financial Institutions, Corporate Governance of Banks and Other Financial Institutions After the Financial Crisis,' in: Eddy Wymeersch, Klaus Hopt, Guido Ferrarini, (eds.), Financial Regulation and Supervision, A post-crisis analysis, (Oxford University Press, Oxford, 2012), p.349

debtholders want the banks to remain solvent so that their monies are paid to them when demanded or as at when due.[320] Suppose the banks are experiencing some financial difficulty; even though bondholders can generally sell their debt, the price will reflect the market concern about the bank's current situation. Bondholders may find it difficult to sell their debt, and if they do, they are likely to lose part of their money. Other debtholders like depositors with fixed and standard accounts will also be concerned with the banks' excessive risk-taking, even though their accounts are in theory covered by the deposit insurance scheme, which in most cases are lower than the amount they have in their bank accounts, especially in DMBs in challenging institutional contexts. Involving debtholders in the corporate governance of the banks will help mitigate excessive risk-taking by banks' directors.[321] Chapter seven of this thesis explores the debtholders' role in the proposed Functional Stakeholder Model of corporate governance in the banking sector.

4.4.4 Government

Government is a significant stakeholder in banks' governance. There are several reasons why governments are interested in the corporate governance of banking institutions in different jurisdictions. First, as previously conversed in chapter two, banks play a fundamental role in the economic development of any nation. For example, besides the banks' traditional roles of providing payments and portfolio services, they transform illiquidity assets into liquid liabilities. Second, the government shows interest in the sustainability of banks because when the banks make profits; they pay taxes; the government can then invest those taxes to provide basic infrastructure for its citizens. Third, the government is also interested in banks' corporate governance and sustainability because solvent banks are more likely to create employment opportunities for the growing population.

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[320] Ibid
[321] Ibid

However, the government's role in the corporate governance of banks is not static. As the government can perform all the following functions, it can engage in policymaking, monitoring, supervising and enforcing banking regulations. While it might seem easy for the government to play the above roles in public companies, it might be difficult for the government to regulate state-owned companies. In China, for example, where most banks are state-owned, there are usually conflicts of interests among those in the management and control of Chinese State-Owned banks.[322] Conflict of interests may exist between shareholders and managers. This can occur in instances where shareholders are interested in maximising profits. However, the managers of the banks work to enhance the value of state-owned assets and promote national goals.

Consequently, this may lead to a situation where the government may find it challenging to play its role in policymaking, supervision, and enforcement because of the tripartite conflict of interests between shareholders, government, and managers. During the financial crisis, governments in the UK, US, France, Ireland, Denmark, and Germany increased their stakes by injecting public funds into several systemically important banks in their various countries because those banks were regarded as too big to fail.[323] Sometimes, the intervention made the government own all the shares in those banks. However, the government's motivation to acquire majority shares or, in some cases, all the shares in those banks was not to maximise profit but to prevent the breakdown of the entire financial system. The UK government injected over £955 billion into some systemically important banks like Lloyds TSB, Barclays, Northern Rock, HBOS, and Royal Bank of Scotland to avert the collapse of the entire financial system

[322] Zhaofeng Wang, 'Corporate Governance Under State Control: The Chinese Experience' Theoretical Inquiries in Law 13 (2) 2012 p.493

[323] Pepper Culpepper, Raphael Reinke, 'Structural Power and Bank Bailouts in the UK and the US' Politics and Society, vol. 42, no. 4, Dec. 2014, pp. 427–454, doi:10.1177/0032329214547342.

during the 2007-2009 financial crisis.[324] This thesis argues that the government is a key stakeholder in the banking sector because of its commitment to ensuring the soundness of the banks individually and the financial system's stability as a whole. The above objective of financial stability is the rationale behind establishing supervisory and regulatory agencies. Their role as stakeholders in the bank's governance is explored in the subsection below.

4.4.5 Banking Regulators and Supervisors

Banking regulators and supervisors are key stakeholders in the banking sector, and their concern is to ensure a safe and sound banking system. Depending on the jurisdiction, banking regulators may either be government agencies or professional associations. It is necessary to distinguish between a professional association and a public interest group. A public interest group is more or less a pressure group. In contrast, professional associations act as regulators for banks operating within that particular profession. Banking regulatory and supervisory agencies are empowered by law to ensure that banks comply with the rules and regulations governing the conduct of banking business. For example, it is argued that banking regulators and supervisors implement, supervise, monitor, and enforce banking regulations to maintain the financial stability of the banking system.[325] The central bank is an example of a government agency that acts as a regulator and supervisor in different jurisdictions because they are the bankers' bank and lender of last resort.[326] However, the central banks have faced various criticisms from different quarters in the wake of the global financial crisis of 2007-2009. Some argue that they have not been proactive enough in dealing with the excessive risk-taking culture of directors of banks, particularly related to macro-prudential regulation.[327]

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[324] National Audit Office, 'Maintaining the financial stability of UK banks: Update on the support schemes' available at: < https://www.nao.org.uk/report/maintaining-the-financial-stability-of-uk-banks-update-on-the-support-schemes/> accessed 15 September 2021

[325] Karen Yeung, Regulatory Agencies, in Peter Cane, Joanne Conaghan (eds) The New Oxford Companion (Oxford University Press, Oxford 2008) p.998

[326] Iris Chiu, Joanna Wilson, 'Banking Law and Regulation' (Oxford University Press, Oxford, 2019) p.241

[327] Ibid

Consequently, the UK has adopted a 'twin peaks' approach to banking regulation, involving two regulatory and supervisory agencies, the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA), both responsible for different regulatory and supervisory objectives.[328] The PRA is responsible for prudential objectives by ensuring banks' solvency and financial soundness, while the FCA is responsible for the conduct of banking business.[329] Both agencies have enormous power of law-making and enforcement to ensure compliance by the banks. Banking regulators and supervisors are key stakeholders because of their role as facilitators in managing the risks associated with the banking business. This they achieved through implementing, supervising, monitoring, and enforcing the regulatory and statutory framework where risk management is initiated.

4.4.6 Host Communities

Host communities are key stakeholders in the banking sector, particularly in banks operating in their locality. There are several reasons the host communities show interest in the banks operating in their region. First, host communities want banks operating in the area to employ residents in those communities. These employment opportunities would boost the economic development within those host communities.[330] They believe that for as long as the banks remain a going concern, there will be jobs securities for the residents of the communities. Employments will be guaranteed if the banks are making profits; however, if the banks are experiencing financial difficulties, employees could be laid off, and new ones are not employed, resulting in a high level of unemployment in those affected host communities.[331] A good example is when HSBC terminated the employment of over 10,000 of its staff in 2019

[328] Ibid p.248
[329] ibid
[330] Christine Mallin, Corporate Governance (6th Edition Oxford University Press, Oxford, UK 2019) p.82
[331] Ibid

because of the US interest rate cuts, the uncertainty of Brexit, the US-China trade war, and unrest in Hong Kong.[332]

Another reason the host communities show interest in banks operating in their area is the role of the banks in promoting financial inclusion.[333] Financial inclusion means the banks' ability and willingness to advance loans on favourable terms to residents to engage in different businesses; this helps reduce the unemployment level in the communities and boosts economic development in that area.[334] Host communities also expect banks operating in their locality to help provide infrastructure lacking in their area.[335] This aligns with societal expectations that banks, as good corporate citizens, should engage in social responsibility in the communities they operate in.[336] This gives rise to the doctrine of corporate social responsibility, which is examined in the latter part of this chapter.

4.5 Bank Stakeholders and Regulatory Approaches to Corporate Governance

As discussed in Chapter one of this thesis, only two corporate governance models exist worldwide, the shareholder's and stakeholder's models;[337] however, many variations of the two corporate governance models exist in practice in different jurisdictions. Several factors are responsible for the different variations of the corporate governance model adopted in different jurisdictions, for example, the ownership structure, culture, history, legal system, institutional

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[332]David Crow, 'HSBC to axe up to 10,000 jobs in cost-cutting drive' The Financial Times 6 October 2019 available at: < https://www.ft.com/content/b43e7b3e-e6c7-11e9-b112-9624ec9edc59> accessed 15 September 2021

[333] The World Bank, 'Understanding Poverty: Financial Inclusion' available at: < https://www.worldbank.org/en/topic/financialinclusion/overview> accessed 15 September 2021

[334] Ibid

[335] Amaeshi Kenneth, Bongo Adi, Chris Ogbechie, Olufemi Amao, 'Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?' The Journal of Corporate Citizenship, No. 24 (Winter 2006): pp.83-99.

[336] Ibid

[337] Simon Deakin, 'Corporate Governance and Financial Crisis in the Long Run', Working Papers WP417, (Centre for Business Research, University of Cambridge 2010) p.2 available at: < https://www.cbr.cam.ac.uk/fileadmin/user_upload/centre-for-business-research/downloads/working-papers/wp417.pdf> accessed 15 September 2021

framework, and the country's regulatory environment.[338] Different characteristics underpin these variations in corporate governance models. Contrary to Weimer and Pape's argument that the Anglo-Saxon model is the best corporate governance model to guarantee sustainable economic growth,[339] this thesis is premised on the argument that the corporate governance model adopted in any jurisdiction must be context-dependent by considering the institutional environment in that country. This thesis examines the Anglo-Saxon model, underpinned by the shareholder's theory and the Continental European model and the Japanese *Keiretsu* system; both underpinned by the stakeholder's theory in the subsection below.

4.5.1 Anglo-Saxon Model

The Anglo-Saxon corporate governance model is premised on shareholders theory; under this model, the shareholders are the most influential stakeholders to whom directors owe a fiduciary duty to act in their best interests.[340] The Anglo-Saxon corporate governance model is originally from the UK and the USA; however, the model has become dominant and is practised in most banks worldwide, particularly those in Commonwealth countries.[341] In the Anglo-Saxon model, the influence of bank shareholders is institutionalised, and as such, the board must act as an agent in maximising shareholders' wealth.[342] In the UK, for example, the bank shareholders usually appoint members of the board of directors. They also have the power to terminate their employment in the event of any wrongdoing or misconduct.[343] This power to hire and fire directors under the Anglo-Saxon model is one mechanism available to banks' shareholders to minimise the agency problem. When the banks' directors know they could be

[338] Gregory Francesco Maassen, 'An International Comparison of Corporate Governance Models' (Spencer Struart, Amsterdam, Netherlands 1999) p.41
[339] Jeroen Weimer, Joost Pape, 'A Taxonomy of Systems of Corporate Governance,' Corporate Governance: An International Review, April 1999 Vol 7, Issue 2, p.152 – 166, p.152.
[340] Ibid, p.153
[341] Ibid
[342] Ibid
[343] S.168 (1) UK Companies Act, 2006

fired for non-performance or any other corporate misconduct, they are more likely to pursue the banks' corporate objective by maximising profit for the shareholders' benefit rather than pursuing their self-seeking interests.

Another unique feature of the Anglo-Saxon model is its external control mechanisms to reduce the agency problem. Discipline mechanisms such as a hostile takeover or proxy fight are available to banks' shareholders to remove an ineffective, underperforming management team.[344] The Anglo-Saxon model varies slightly between countries in terms of the components. The board of directors in the Anglo-Saxon model is a one-tiered board system composed mainly of non-executive directors elected by the bank shareholders. However, in some jurisdictions practising the Anglo-Saxon model, the one-tiered board system has both executive and non-executive directors. Another difference in how the Anglo-Saxon model is practised between countries is the duality role. Duality role under the Anglo-Saxon model means that one person has a dual role as Chairman of the board (COB) and Chief Executive Officer (CEO) simultaneously. Having the same person serve as the COB and CEO is prohibited in the UK; however, this practice is acceptable in the US.[345] There has been much debate regarding the US approach to duality and whether it compromises the board's independence in the spate of financial scandals; however, this variation of the Anglo-Saxon corporate governance model is still very much in place in the US.

The corporate governance theories discussed in Chapter three are relevant to how the Anglo-Saxon model is practised. The shareholder theory underpins the Anglo-Saxon model; however, the agency theory or the stewardship theory determines how the board is composed. One-tier

[344] James Walsh, James Seward, 'On the Efficiency of Internal and External Corporate Control Mechanisms', The Academy of Management Review July 1990, Vol. 15, No. 3 p. 421-458, p.434
[345] Heidi Meier, Natalie Meier, 'Corporate governance: an examination of US and European models' Corporate Ownership and Control, Vol. 11 No. 2, 2014, pp. 347-351

board system shaped by the agency theory will have more non-executive directors on the banks' board; however, where the directors are stewards, a one-tier board system will have more executive directors on the bank's board. Also, based on stewardship theory, there is nothing wrong with having the same person as the bank's COB and CEO.[346] As directors are unlikely to pursue their self-seeking interests as stewards, unlike under the agency theory, where there is a misalignment of interests, if the directors are not adequately monitored, they will pursue their interests at the expense of those of the shareholders.[347]

4.5.2 Continental European Model

In contrast to the Anglo-Saxon model discussed above, where only the interest of shareholders is paramount, the Continental European model focuses on promoting the interests of all the relevant stakeholders.[348] In Germany, where this model is practised, the law clearly states that the banks must not solely pursue shareholders' interests.[349] Therefore, the Continental European model gravitates toward a stakeholder-oriented approach, unlike the Anglo-Saxon model, which mainly focuses on profit maximisation for the benefit of the shareholders. The key stakeholders in the Continental European model are the same as those already identified in this chapter, and they include shareholders, employees, debtholders, regulators, government, and creditors.[350]

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[346] Giovanna Michelon, Antonio Parbonetti, 'The effect of corporate governance on sustainability disclosure,' Journal of management and governance 16, 477–509 (2012). https://doi.org/10.1007/s10997-010-9160-3

[347] Zhong Tan, 'Stewardship in the Interests of Systemic Stakeholders: Re-conceptualizing the Means and Ends of Anglo-American Corporate Governance in the Wake of the Global Financial Crisis,' Journal of Business and Technology Law Vol 9, Issue 2, (2014) Available at: http://digitalcommons.law.umaryland.edu/jbtl/vol9/iss2/3 accessed 15 September 2021

[348] Lucian Cernat 'The emerging European corporate governance model: Anglo-Saxon, Continental, or still the century of diversity? Journal of European Public Policy, 11 (1), 2004 pp.147– 166.

[349] Franklin Allen, 'Corporate Governance in Emerging Economies', Oxford Review of Economic Policy 21, no. 2 (2005): 164-77, available http://www.jstor.org/stable/23606977.

[350] Jeroen Weimer, Joost Pape, 'A Taxonomy of Systems of Corporate Governance,' Corporate Governance: An International Review, April 1999 Vol 7, Issue 2, p.152 – 166, p.157.

The board structure is another unique difference between the Continental European and Anglo-Saxon models. In contrast to the Anglo-Saxon model characterised by a one-tier board structure, the Continental European model has a two-tier board system: the executive and supervisory boards.[351] In Germany, the executive board is called *Vorstand,* while the supervisory board is called *Aufsichtsrat;* the supervisory board monitors the executive board.[352] This differs from the Anglo-Saxon model, where the executive and supervisory roles are fused in the one-board system.

The supervisory board is responsible for the appointment and removal of members of the executive board in the event of underperformance or gross misconduct. Therefore, this thesis argues that there is no guarantee of the independence of the board, particularly the executive board, despite the separation of roles between the two-tier board system. The composition of the supervisory board varies from one European country to another. For example, in Germany and the Netherlands, employees, their representatives, trade unions, and institutional investors, mainly the banks, constitute the supervisory board.[353]

In Germany and the Netherlands, employees as significant stakeholders have a more considerable influence on the executive board decision-making process when compared to the Anglo-Saxon model as practised in the UK and the USA. Employee involvement resonates with the idea of 'codetermination,'[354] which is the German term for workers' participation. Under the codetermination act,[355] employees are empowered to play a significant role in decisions that affect workers' rights. For instance, they have the right to discuss issues relating

[351] Ibid
[352] Ibid
[353] Ibid
[354] Codetermination Act 1976
[355] Ibid

to employment contracts, working hours, holidays, and dismissal with the executive board.[356] Therefore, because the Continental European model is underpinned by the stakeholder theory, which gravitates towards adequate recognition and protection of stakeholders and stakeholder interests in banks, the model was helpful in further discussion in the latter part of this thesis. Adopting a stakeholders' approach to bank governance helped address the limited stakeholders' recognition and protection of stakeholder interests in the Nigerian banking sector.

4.5.3 Japanese Model

The *Keiretsu* system underpins the Japanese corporate governance model.[357] Networks of commercial relationships among companies underpin the Japanese corporate governance system as companies take shares within each other most times.[358] Despite these connections, the companies within the *Keiretsu* system are autonomous from each other. Notwithstanding the companies' independence under the Japanese model, there are interconnected trading activities amongst the companies. A significant characteristic of the system is that the companies are encouraged to trade amongst themselves and cooperate to promote the corporate governance of the different companies within the *Keiretsu* system.[359] The *Keiretsu* system is divided into two categories, the vertical *Keiretsu* and the horizontal *Keiretsu*. The vertical *Keiretsu* comprises companies within the same supply chain, while the horizontal *Keiretsu* comprises companies that deal in similar products.[360]

The banks play a fundamental role in the rescue operation of companies under the Japanese stakeholder's model. This is evident when the companies are experiencing financial difficulty;

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[356] Ibid
[357] Ibid p.160
[358] Ibid p.160
[359] Erik Berglöf, Enrico Perotti, 'The governance structure of the Japanese financial keiretsu' Journal of Financial Economics, October 1994, Volume 36, Issue 2, pp.259-284, p.262
[360] Masahiko Aoki, 'Toward an Economic Model of the Japanese Firm', Journal of Economic Literature, March 1990, Vol. 28, No. 1, pp. 1-27, p.14

however, the banks' role diminishes when the companies become solvent. In contrast to the Anglo-Saxon model, there is no fear of a hostile takeover in the Japanese stakeholder's model; there is already a friendship network among the various companies within the *Keiretsu* system. This existing relationship between them is solidified through the cross-holding of shares within the *Keiretsu* system. Apart from the connexions within the Keiretsu system, this thesis argues that hostile takeovers are not a prominent feature of the Japanese stakeholder's model due to the undeveloped market for corporate control. Compared to the Anglo-Saxon model practised in the UK, the market for corporate control serves as a disciplinary mechanism for an ineffective board. The Japanese stakeholder's model does not exhibit such characteristics of a hostile takeover because of their firm belief in familism and respect for their cultural values. For example, reaching a consensus in the decision-making process amongst companies within the *Keiretsu* system is sacrosanct because there is little or no emphasis on litigation under the Japanese stakeholder's model.[361]

The Japanese stakeholder's model is similar to the Anglo-Saxon model practised in the USA and the UK in some ways. The board structure is one notable similarity between the Japanese stakeholder model and the Anglo-Saxon corporate model. Under the Japanese stakeholder's model, companies operate a one-tier board system comprising the board of directors, the office of the auditors and the office of the representative director and like in the UK, the board of directors includes both executive directors and non-executive directors.[362] An example of how the non-executive directors participate in corporate governance in the Japanese *Keiretsu* system is when the top banks appoint representatives to sit on the boards as non-executive directors of the companies they do business with.

[361] Ibid
[362] Ibid

Similarities exist between the Japanese stakeholder's model and the Continental European stakeholder's model, as practised in Germany. In the Japanese stakeholder model, the employees and shareholders are key stakeholders that could influence management decisions in the banks.[363] Consequently, Aoki argued that the Japanese stakeholder's model consists of companies with a coalition of both employees and shareholders that is facilitated by the management to strike a balance between the interests of both stakeholders.[364] Therefore, this thesis argues that management responsibility under the Japanese *Keiretsu system* is that of an impartial umpire whose role is to promote the interests of both the employees and the shareholders. Finally, a significant similarity between the Continental European stakeholder's model as practised in Germany and the Japanese stakeholder's model is evident from the employees' involvement in the decision-making process, particularly on matters that directly affect the employees. For example, the employees can discuss with the management issues relating to wage determination, managerial decisions that would affect them, employment conditions and working arrangements under the Japanese stakeholder's model.[365]

4.6 Stakeholders and Institutional Mechanisms in Banks Governance

The stakeholder model will employ mechanisms to protect the interests of all stakeholders in banks.[366] In contrast, the shareholder's model based on the agency theory will employ mechanisms to maximise shareholder value and mitigate agency problems between shareholders and managers.[367] Corporate governance mechanisms in any jurisdiction depend

[363] Ibid
[364] Ibid
[365] Jeroen Weimer, Joost Pape, 'A Taxonomy of Systems of Corporate Governance,' Corporate Governance: An International Review, April 1999 Vol 7, Issue 2, p.152 – 166, p.160
[366]Ruth Aguilera, Igor Filatotchev, Howard Gospel, Gregory Jackson. 'An Organizational Approach to Comparative Corporate Governance: Costs, Contingencies, and Complementarities.' Organization Science Vol 19, No. 3 (2008): 475-492.
[367] Charles Oman "Corporate Governance and National Development", (2001) OECD Development Centre Working Papers, No. 180, OECD Publishing, Paris, see <https://doi.org/10.1787/113535588267>accessed 15 September 2021

on structures, such as rules, values, norms, routines, beliefs, regulatory systems, and public governance systems.[368] This forms the basis of the institutional theory as it examines how the above structures become established as authoritative social behaviour guidelines. Corporate governance mechanisms in the banking sector can be divided into two categories, internal and external mechanisms. Internal mechanisms are divided into ownership and board structures, while external mechanisms are market discipline and system regulation. This thesis has already discussed system regulation in chapter two; therefore, the mechanism addressed in this chapter are ownership structure, board structure, and market discipline.

4.6.1 Ownership Structure

There has been a divergence of opinions surrounding the ownership structure related to banks' corporate governance. The controversy in corporate governance and ownership research is based on the question, *'for whom and what is a business for?'*[369] Wahl argued that ownership is the exclusive possession or control over any form of property.[370] This thesis argues that the above assertion is correct regarding real or personal property. However, it does not apply to banks, as shareholders cannot claim exclusive possession of the bank because of the doctrine of corporate personality.[371] Wahl's assertion is also inaccurate regarding the control of banks because it is the directors and senior management that direct and control the affairs of the banks and not the shareholders.[372]

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[368] OECD, Policy Framework for Investment user toolkit, Chapter 6, Corporate Governance (2011) p.3 available at: < http://www.oecd.org/investment/toolkit/policyareas/corporategovernance/44931152.pdf>

[369] Mike Franz Wahl Governance and Ownership: Theoretical Framework of Research School of Economics and Business Administration, Tallinn University of Technology p.150 available at <http://deepthought.ttu.ee/majandus/tekstid/TUTWPE_08_179.pdf> accessed 15 September 2021

[370] Ibid p150

[371] Salomon v A Salomon & Co Ltd [1896] UKHL 1, [1897] AC 22

[372] H L Bolton (Engineering) Co Ltd v T J Graham & Sons Ltd [1957] 1 QB 159

Berle and Means's thesis titled '*The Modern Corporation and Private Property'* is the basis for investigating ownership structure in the corporation.[373] Their work identified the problem associated with the ownership and control of firms in the US. They claimed that because of the dispersed shareholdings in most corporations in the US, a dilemma has arisen where ownership of wealth is with no control and controllers of wealth are with no ownership.[374] The above view was based on firms operating in the US, controlled by specialised managers who do not have any form of ownership in the companies they manage. In contrast to the view canvassed by Sternberg that shareholders are the owners of the companies, as previously discussed in Chapter three, this thesis argues that banks' shareholders do not own the bank; instead, they are stakeholders because of the shares they bought in the banks.[375]

The agency problem that may result from the ownership structure stated by Berle and Means arises where the ownership structures are dispersed, for example, in countries like the UK and the US. In those circumstances, shareholders cannot exercise control over the managers who pursue their interests rather than the shareholders' interests. The structure of ownership differs from one jurisdiction to another. Therefore, shareholders' interests are protected against the interests of other stakeholders where there is a fusion of management and control. Because of the fusion of management and control, it is unlikely that there will be a misalignment of interest that typically arises where ownership structures are dispersed. The ownership structure is classified into two broad categories: insider ownership and outsider ownership.

Insider Ownership

[373] Adolf Berle, Gardiner Means,' The Modern Corporation and Private Property' (1932 New York, Macmillan Co) p.66
[374] Ibid
[375] *Short v Treasury Commissioners [1948] 1 KB 116, 122, CA), Her Majesty's Commissioners of Inland Revenue v. Laird Group plc [2003] UKHL 54 para 35,* David Chandler, 'Strategic Corporate Social Responsibility: Sustainable Value Creation, (4th Edition, SAGE London, 2017) p.119, David Chandler, 'Corporate Social Responsibility: A Strategic Perspective,' (Business Expert Press LLC, New York, USA, 2015) pp.11-13, John Kay, 'Shareholders think they own the company — they are wrong,' Financial Times, 10 November 2015, available at: https://www.ft.com/content/7bd1b20a-879b-11e5-90de-f44762bf9896 accessed 2 May 2022

This type of ownership structure is where the shares are owned or controlled by the bank's employees, directors, or relatives. Information asymmetry between the principal (shareholders) and the agent (managers), which is the bedrock of the agency problem, does not exist here. However, some flaws are apparent in banks with a concentrated ownership structure with excessive shares in one individual or one family. For example, where wealthy families and rich individuals acquire most of the bank's shares, one outcome of such a concentrated ownership structure is that the management does not have a mind of their own because most of their actions and policies are usually influenced by the majority shareholder. Consequently, the traditional agency problem, which is the basis for the Anglo-Saxon model, no longer exists here as the conflict is now between the principal (dominant shareholder) and the principal (minority shareholders). The mechanisms devised to solve the principal-agent problem may not yield the desired result if the majority shareholder acts opportunistically by taking advantage of the minority shareholders. There is also a conflict of interest between the insider owner (minority shareholders) and the creditor (debtholders).[376] This conflict is based on the relationship between the level of equity ownership by insider owners and the bank's cost of debt financing. The insider owners with a smaller share fraction are more likely to extract personal benefit by undertaking excessive risk. The bank creditors will ask for higher returns when insider owners are more likely to engage in activities that may harm them. Thus, there is a negative relationship between insider ownership (minority shareholders) and the creditor (debtholders) because of banks' debt cost.[377]

Outsider Ownership

As the name suggests, the outsider ownership structure is a more dispersed form of ownership, like in the UK and the US. No single individual shareholder holds an enormous amount of

[376] Stefano Lugo, 'Insider ownership and the cost of debt capital: Evidence from bank loans,' International Review of Financial Analysis, Volume 63, 2019, Pages 357-368,
[377] Ibid

banks' shares. Because of the dispersed nature of share ownership, professional managers are appointed to manage the banks under the Anglo-Saxon model, so ownership is separated from control. The outsider ownership structure also has challenges, such as the costs of monitoring managers by bank shareholders, known as the agency cost. If individual shareholders decide to monitor management individually, the managers' shareholders may feel reluctant to monitor management because of the cost involved in doing so. The shareholders must come together and introduce some monitoring mechanisms that would enable them to protect their interests. The monitoring of the management of banks is through the board of directors. Therefore, the thesis explores the role of the board of directors as a corporate governance mechanism in the banking sector in the next subsection.

4.6.2 Board of Directors as a Corporate Governance Mechanism

The board of directors is an essential internal control mechanism that plays a vital role in a bank's corporate governance.[378] Under the Anglo-Saxon model, the board of directors creates the link between managers and shareholders, and under the stakeholders' model, it creates the link between managers and stakeholders.[379] Under the Anglo-Saxon model, the shareholders appoint the board of directors to manage the banks on their behalf.[380] Therefore, the board of directors is an internal mechanism for monitoring the management to minimise agency problems caused by the separation of ownership and control.[381] Armour, Hansmann, and Kraakman argue that managers are supposed to be agents of the shareholders who have delegated their powers to the directors.[382] To ensure that managers do not abuse the powers at

[378] Ooghe Hubert, Tine De Langhe, 'The Anglo-American versus the Continental European corporate governance model: empirical evidence of board composition in Belgium.' European Business Review 14.6 (2002): 437-449.
[379] Ibid
[380] Gregory Francesco Maasen 'An International Comparison of Corporate Governance Models, (3 edn Spencer Stuart Amsterdam, The Netherlands 2002) p. 48
[381] Eugene Fama, Michael Jensen 'Separation of Ownership and Control' Journal of Law and Economics, Vol. 26, No. 2, Corporations and Private Property (1983), pp. 301-325 see: <https://are.berkeley.edu/~cmantinori/prclass/FamaJensen.pdf> accessed on 15 September 2021
[382] John Armour, Henry Hansmann, Reinier Kraakman, 'Agency Problems, Legal Strategies and Enforcement', ECGI Working Paper Series in Law, Working Paper N°.135/2009 November 2009, p.3

their disposal, a formal institutional mechanism of control known as the board of directors provides checks and balances and directs the management towards realising the bank's corporate objective, which is to maximise profits for the benefit of the shareholders.[383]

Various stakeholders have recently demanded a boardroom reform, particularly in the banking sector. These demands include separating the position of COB from that of the CEO, limiting directors' shareholdings, reducing the number of directors, addressing directors' remuneration practices, and having employees' representation on the banks' board.[384] Macey and O'Hara argued that the board of directors is an important corporate governance mechanism in the banking sector because banking fiduciary responsibilities extend beyond shareholders to include a broader stakeholder group like employees, customers, government, creditors/depositors and banking regulators.[385] The link between board characteristics and effective corporate governance in the banking sector has been an area of recent debate in corporate governance discourse.[386] Some argue that board characteristics, such as the board size, qualification of board members, board independence, CEO duality and gender diversity, are responsible for how the board engages in its risk management and how it promotes the interests of all stakeholders in the banking sector.[387] Therefore, the board of directors'

[383] Margaret Blair 'Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century (Brookings Institution Press, Washington D.C. USA 2011)
[384] Corporate Governance Reform, Department for Business, Energy & Industrial Strategy, 2016, available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/584013/corporate-governance-reform-green-paper.pdf> accessed 21 October 2019
[385]Jonathan Macey, Maureen O'Hara, 'The corporate governance of banks.Federal Reserve Bank of New York Economic Policy Review, Vol 9, (2003) pp.97–107, p.94
[386] Francesco Vallascas, Sabur Mollah, Kevin Keasey, 'Does the impact of board independence on large bank risks change after the global financial crisis? Journal of Corporate Finance, Volume 44, 2017, pp. 149-166, Tawei Wang, Carol Hsu, 'Board composition and operational risk events of financial institutions' Journal of Banking & Finance, Volume 37, Issue 6, 2013, pp. 2042-2051, Renée Adams, Hamid Mehran, 'Bank board structure and performance: Evidence for large bank holding companies,' Journal of Financial Intermediation, Volume 21, Issue 2, April 2012, Pages 243-267
[387] Ibid

characteristics, especially as it relates to its composition, leadership, and independence, need further consideration.

Board Size and Qualification of Board Members

There are divergent opinions on what is the perfect size for bank boards. Some scholars have argued that a larger bank board is better because it will benefit from its members' vast expertise.[388] Such a board would be equipped with an adequate workforce and resources to reduce the COB / CEO dominance.[389] Some other scholars have argued that smaller board sizes are more effective in making quick managerial decisions;[390] one could hastily agree with the above argument because of the number of members on the board. However, this thesis argues that it is not in all cases that decisions are reached more quickly by a smaller board, as some matters could go on for a more extended period depending on the issues at stake and its members' level of experience and expertise. This thesis further argues that a larger bank board with members who possess the relevant skills, experience, and expertise on a range of subjects matter will engage in better decision-making and is more likely to promote stakeholders' interests in the banking sector. For example, a large bank board with members from diverse professional backgrounds and experience will have the edge over a smaller board regarding the robustness of debates, decision-making, and balancing all stakeholder interests.[391]

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[388] Ibid

[389] Sailesh Tanna, Fotios Pasiouras, Matthias Nnadi, 'The effect of board size and composition on the efficiency of UK Banks. International Journal of the Economics of Business, 18(3), (2011) pp.441–462, Renée Adams, Hamid Mehran, 'Bank board structure and performance: Evidence for large bank holding companies,' Journal of Financial Intermediation, Volume 21, Issue 2, April 2012, Pages 243-267

[390] Michael Jensen 'The Modern Industrial Revolution, Exit, and the Failure of Internal Control Systems,' The Journal of Finance, Vol. 48, No. 3 (1993), pp. 831-880, Shams Pathan, Robert Faff, 'Does board structure in banks really affect their performance? Journal of Banking & Finance, Volume 37, Issue 5, May 2013, Pages 1573-1589

[391] Jeffrey Cohen, Ganesh Krishnamoorthy, Arnold Wright, 'Corporate Governance and the Audit Process,' Volume19, Issue4, Winter (2002) pp.573-594

Connected with the above point is another characteristic of the board, which is the qualification of the board members. Some commentators[392] have suggested that a board that displays broad diversity is more likely to carry out its functions effectively[393] because it will have members with varying degrees of experience and diverse levels of qualification. A bank board where directors have many years of financial experience with suitable academic qualifications will perform better in aligning the interests of all stakeholders compared to a board where directors have members with little financial experience and lack relevant educational qualifications. For example, the study conducted by Hau and Thum, which focused on the 29 largest banks in Germany, showed that insufficient academic qualifications and lack of banking-related experience of the supervisory board members contributed to the banking failure.[394] They argued that proper educational qualification, managerial and financial expertise are essential competencies for members of the supervisory board, which will enable them to select and effectively monitor the management board.[395] Therefore, directors must have the proper qualification and experience, which will allow them to advise and monitor management and align the interests of all bank stakeholders.

Board Independence and Non-executive Directors

Another essential characteristic of the board structure is the board of directors' composition. A bank board of directors comprises the executive directors and the non-executive directors.[396]

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[392] Douglas Freeman Board diversification strategy; realising a competitive advantage and shareholder value. Organisational science. 15(3) 1984,
Richard. Allen, Gail Dawson, Kathleen Wheatley, Charles White, 'Perceived diversity and organizational performance,' Employee Relations, Vol. 30 Issue: 1, pp.20-33, https://doi.org/10.1108/0142545081083539, Maran Marimuthu, Ethnic Diversity on Boards of Directors and Its Implications on Firm Financial Performance Journal of International Social Research. 1, 2-15.

[393] Lawrence Gales, Idalene Kesner an analysis of board of director size and composition in the bankrupt organization, s Journal of Business Research Volume 30, Issue 3, July 1994, Pages 271-282

[394] Harald Hau, Marcel Thum, Subprime Crisis and Board (In-)Competence: Private vs. Public Banks in Germany, ECGI Working Paper Series in Finance Working Paper No. 247/2009, p.13 available at: <https://ecgi.global/working-paper/subprime-crisis-and-board-competence-private-vs-public-banks-germany> accessed 15 September 2021

[395] Ibid

[396] Christopher Pass, 'Corporate Governance and the Role of Non-Executive Directors in Large UK Companies: An Empirical Study' Corporate Governance International Journal of Business in Society Vol 4 Issue 2 (June 2004) pp. 52-63

There is no consensus about the role of the executive directors and that of the non-executive directors.[397] The divergence in opinions concerning their functions depends on several factors. These include the ownership structure, board composition, whether the bank is public or private and the power between external and internal stakeholders.[398]

The UK Companies Act 2006 does not distinguish between the role of the executive directors and that of the non-executive directors.[399] Both the executive directors and non-executive directors have the same responsibilities in promoting the bank's success,[400] exercising independent judgment[401] and avoiding conflict of interests.[402] Sir Walker outlined the responsibilities of non-executive directors as ensuring an effective executive team in place, participating in the board decision-making process, and exercising appropriate oversight over the execution of the agreed strategy by the executive team.[403] Therefore, this thesis argues that the two primary differences between the two types of directorship are, first, executive directors usually are appointed from amongst the bank's employees. In contrast, the non-executive directors are appointed from outside of the bank. Second, the executive directors are involved in the day-to-day running of the banks, while the non-executive directors play a significant role in monitoring their activities.[404] Based on the above arguments, this thesis concludes that the non-executive directors' primary function under the Anglo-Saxon model would be to oversee management activities by monitoring the executive directors.

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[397] Tracy Long, Victor Dulewicz, Keith Gay, 'The Role of the Non-executive Director: findings of an empirical investigation into the differences between listed and unlisted UK boards, Corporate Governance: An International Review, September 2005 Vol 13, Issue 5, p.667 – 679, p.668
[398] Ibid
[399] UK Companies Act 2006
[400] S.172 Companies Act 2006
[401] Ibid S.173
[402] Ibid S.175
[403] Sir David Walker, 'A review of corporate governance in UK banks and other financial industry entities' The Walker Review, Secretariat, London, 26 November 2009 p. 35
[404] Michael Weisbach, 'Outside directors and CEO turnover' Journal of Financial Economics, 1988, vol. 20, issue 1-2, 431-460. P.433

The importance of high-quality board composition promoting diversity and inclusion has recently garnered much attention. For example, in the UK, several issues that need to be considered when discussing board diversity include gender, ethnicity, age, disability, and culture.[405] Pande and Ford recommended that there should be a reasonable proportion of women to men on the board.[406] Empirical evidence shows that including a fair proportion of women on a board can lead to a better financial performance of banks.[407] Research has also suggested that banks with more women on their boards are less likely to be hit by scandals such as bribery, fraud or shareholders' battles, and such boards are better at aligning the interests of all stakeholders.[408] Although the number of reported cases of corrupt women directors is low, this does not suggest that women are generally less likely to abuse their positions. The relatively small number is because there are fewer women on the board when compared to men, and as such, the number of women who rises to become CEO/COB is relatively low.

Evidence suggests that there is a lower percentage of women on the board of financial services in the UK than men.[409] About 23 percent of women are on the board of financial services companies, with only 14 percent of this number on executive committees.[410] This gross inequality undoubtedly promotes the lack of women's leadership in the banking sector. Research suggests that having more women on the banks' boards will enhance their decision-

[405] José García Martín, Begoña Herrero, 'Boards of directors: composition and effects on the performance of the firm, Economic Research-Ekonomska Istraživanja, 31:1, (2018) pp.1015-1041,
[406] Pande, Rohini, Deanna Ford, 'Gender Quotas and Female Leadership: A Review,' World Development Report on Gender, 2011. Available at <http://www.tinyurl.com/yxhp8v6z> accessed 15 September 2021
[407] Carolyn Wiley, Mireia Monllor-Tormos, 'Board Gender Diversity in the STEM&F Sectors: The Critical Mass Required to Drive Firm Performance,' *Journal of Leadership & Organizational Studies*, vol. 25, no. 3 (January 2018)
[408] Scott Berinato, 'Banks with More Women on Their Boards Commit Less Fraud' Harvard Business Review May – June 2021, available at: < https://hbr.org/2021/05/banks-with-more-women-on-their-boards-commit-less-fraud> accessed 15 September 2021
[409] House of Commons Treasury Committee, 'Women in finance' Fifteenth Report of Session 2017–19, June 2018, p.5, available at: < https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/477/477.pdf> accessed 15 September 2021
[410] Ibid

making capacity as women are more risk opposed in decision-making than their male counterparts.[411] Therefore, this thesis argues that banks with more decisive female leadership will benefit from better risk management.[412]

Another issue to consider when discussing board composition should be the proportion of executive directors to non-executive directors. Lynall, Goden and Hillman submit that a board with many non-executive directors is better because it will alleviate the agency problem.[413] If the non-executive directors are not involved in the daily management of the bank, they can monitor the executive directors who oversee the bank's day-to-day running. Donaldson and Davis suggest that boards composed of more executive directors function better because the executive directors are good stewards of the shareholders, as they would work tirelessly for the attaintment of the bank's corporate objective, which is to maximise profits for the benefit of its shareholders.[414] The view of the agency theorists favours having more non-executive directors on the board by suggesting that such practice would enable the executive directors to focus on the day to day running of the bank.[415] The agency theorists further argued that a duly constituted board with more non-executive directors would draw on their expertise to engage in robust discussions during board meetings.[416] The above argument will depend on how truly independent the non-executive director are in cases where the independence of the non-executive directors has been eroded; discussions in the boardroom will be a matter of formality.

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[411] Linda-Eling Lee Ric Marshall Damion Rallis Matt Moscardi, 'Women on Boards: Global Trends in Gender Diversity' MSCI Research November 2015 available at: < https://www.msci.com/documents/10199/04b6f646-d638-4878-9c61-4eb91748a82b> accessed 15 September 2021

[412] Ibid

[413]Matthew Lynall, Brian Golden, Amy Hillman, 'Board Composition from Adolescence to Maturity: A Multitheoretic View,' Academy oí Management Review 2003, Vol. 28, No. 3, 416-431. p.418

[414] Lex Donaldson, James Davis 'Boards and Company Performance - Research Challenges the Conventional Wisdom, Corporate Governance: An International Review, 1994 2, (3), 151-160

[415] Charlie Weir, David Laing, (2001) "Governance structures, director independence and corporate performance in the UK", European Business Review, Vol. 13 Issue: 2, pp.86-95,

[416] Ibid

Separation of the Roles of Chairman of Board (COB) and CEO

The board's leadership structure depends typically on the corporate governance model practised in the country. Under the Anglo-Saxon model, banks operate a one-tier board system that combines the CEO's office with the COB. However, under the European Continental model, for example, in Germany, banks operate a two-tier board system that separates the CEO's office from the COBs. As previously stated above, duality occurs when the same person simultaneously occupies the positions of COB and CEO of the bank. The CEO is the bank employee that oversees its day-to-day activities, while the COB ensures that the board of directors functions effectively.[417] The problem with such an arrangement is that the CEO, who also doubles as the COB, would become more powerful, limiting the board's ability to monitor the management team effectively. Given the above argument, Finkelstein and D'aveni suggested separating the CEO's office from that of the COB of banking institutions.[418] They argued that a CEO who also doubles as the COB is vested with enormous power and authority, thereby compromising the board's impartiality.[419]

This thesis argues that such fusion would hinder the effective governance of the bank because such a CEO who doubles as the COB will dominate the agenda and the content of board meetings. There is bound to be a conflict of interests, as management would pursue their interests to the detriment of other stakeholders.[420] Such a board would lack the independence required to observe and monitor the management team if the same person holds both offices. Some scholars, for example, Brickley, Coles and Jarrell, who are in favour of duality, argued

[417] Ibid
[418] Sydney Finkelstein, Richard A. D'Aveni, 'CEO Duality as a Double-Edged Sword: How Boards of Directors Balance Entrenchment Avoidance and Unity of Command, The Academy of Management Journal Vol. 37, No. 5 (Oct. 1994), pp. 1079-1108, p.1082
[419] Ibid
[420] Lex Donaldson, James Davis Stewardship Theory or Agency Theory: CEO Governance and Shareholder Returns Australian Journal of Management, 16, 1, 1991 pp.51

that such a combination would lead to better outcomes and performance of the bank. [421]Their argument was based on the premise that separating both positions would cost the bank more than the benefit to be derived. However, the existing empirical evidence does not support the claim that banks with duality perform better. A study conducted using Malaysian corporations shows that about 17.9% of companies operate the duality leadership structure. The research results suggested that companies with duality are underperforming compared to companies where the role of the CEO is separated from that of the COB.[422] This thesis is premised on the argument that duality does not guarantee the performance of banks, nor does it help promote all stakeholders' interests. What is essential for the bank's performance and protection of all its stakeholders' interests among all the board's characteristics discussed above is the board's independence. The best way to achieve board independence and protect key stakeholders' interests is by separating the position of the CEO from that of the COB.

Board Committees

Board Committees is another essential characteristic of the board of directors. The board committees are a subsidiary of the board of directors, and occasionally, the various committees comprise both executive and non-executive directors. Specific committees carry out the oversight functions of the board of directors. Board Committees perform specific functions or other random functions assigned by the board of directors as the need arises. For example, an audit committee of the board will oversee the financial reporting process and make recommendations to the entire board. The corporate law of some countries makes it mandatory for the board of directors to have specific board committees. For example, the UK Code of Corporate Governance makes it mandatory for listed companies to have a board audit

[421] James Brickley, Jeffrey Coles, Gregg Jarrell, "Leadership structure: Separating the CEO and Chairman of the Board," Journal of Corporate Finance, Elsevier, vol. 3(3), p 189-220, June 1997.
[422] Rashidah Abdul Rahman, Roszaini Mohd Haniffa, 'The Effect of Role Duality on Corporate Performance in Malaysia, Corporate Ownership & Control / Volume 2, Issue 2, Winter 2005 p 44

committee.[423] The code also provides for the number of members for such a committee by suggesting that at least three members shall be non-executive directors, one of whom shall have recent and relevant financial experience.[424] Therefore, in most jurisdictions, the creation of board committees is a matter of law, as the structure and numbers of the board committees are provided for by the applicable law. The committees commonly provide for by law are the audit committee, the risk committee, the remuneration committee, and the nominations committee.[425] However, CSR or sustainability committees have become an essential board committee after the financial crisis of 2007-2009, particularly in banks that have adopted the stakeholders' model; CSR or sustainability committees are geared towards promoting accountability and transparency.[426] This thesis is premised on the argument that embedding CSR in the corporate governance of banks is one way of recognising and promoting the interests of key stakeholders.[427] This thesis explores the role of CSR as a component of corporate governance in the latter part of this chapter.

Executive Compensation

Executive compensation is another internal mechanism used to ensure that the banks' management and directors pursue the long-term goal of the banks. Before the financial crisis of 2007–2009, there were some concerns about executive remuneration, the primary concern centred on the growth and size of executive pay.[428] However, following the financial crisis,

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[423]UK Corporate Governance Code, Financial Reporting Council July 2018, p.10 available at: <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf> accessed 28 April 2021

[424]Ibid

[425] José Sánchez, María Zamanillo, Manuel Luna, 'How Corporate Governance Mechanisms of Banks Have Changed After the 2007–08 Financial Crisis,' Volume11, IssueS1, Special Issue: Contemporary Issues in Banking, January 2020, pp. 52-61

[426] Ibid

[427]Chris Mason, John Simmons, 'Embedding Corporate Social Responsibility in Corporate Governance: A Stakeholder Systems Approach.' Journal of Business Ethics 119, (2014) pp.77–86, available at: < https://doi.org/10.1007/s10551-012-1615-9> accessed on 28 April 2021

[428]Lord Adair Turner, The Turner Review A regulatory response to the global banking crisis, FSA March 2009, p.79 available at: <http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/18_03_09_turner_review.pdf> accessed on 15 September 2021

there has been an intense focus on executive pay. There seems to be a link between the banks' failure and excessive risk-taking by the board and senior management in return for short-term bonuses.[429] Lord Turner argued that directors and senior management of banks in the UK engaged in excessive risk-taking because of the high level of executive remuneration in the UK banks, which was why the banks suffered significant losses during the global financial crisis of 2007-2009.[430] Based on the above finding, the UK government introduced several reforms to address UK banks' bonus culture and executive pay.[431] For example, the government introduced the remuneration code for banks in September 2009, focusing on decreasing the short-termism of incentives among banks' executives.[432] One of the remuneration code innovations was the delay in paying at least 50% of bank executive bonuses for three years.[433] There is a condition subsequent for the delayed payment to be made based on the banks' making financial profits in the long run. Suppose the banks' future performance is adjudged as inadequate because they failed to make profits or incurred losses; any bonus amount previously paid out to directors and senior managers will be clawed back. The regulation of executive compensation is not only peculiar to banks in the UK. The US enacted the Dodd-Frank Act in July 2010,[434] which contained several corporate governance provisions that dealt with directors' compensation in banks in the US.[435] European Union Member States also collectively attempted to tackle the bonus culture in banks in their jurisdictions by introducing reforms that

[429] Ibid
[430] ibid
[431] Department for Business Innovation and Skills ("BIS"), 'Executive remuneration discussion paper' (2011) 11 available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31660/11-1287-executive-remuneration-discussion-paper.pdf> accessed 15 September 2021
[432] House of Commons Treasury Committee, Banking Crisis: reforming corporate governance and pay in the city, Ninth Report of Session 2008–09, p.22
[433] Ibid
[434] Dodd-Frank Act 2010
[435] Ibid

targeted executive compensation.[436] This was one way to ensure that directors and senior management of banks were put under check and mitigate the excessive risk-taking in banks, which was one reason for the financial crisis.[437]

It is evident from discussions in this subsection that the board of directors is an important corporate governance mechanism. It has become apparent that to ensure the board's performance and the protection of stakeholders' interests, the board's composition, particularly regarding qualification, diversity, and independence, is sacrosanct. One significant way of guaranteeing the board's independence is by separating the position of CEO from that of the COB. Such separation would ensure that power is not concentrated in the hands of a domineering individual who doubles as the CEO and the COB; if power were to be concentrated in one individual, it would hinder the board of directors' ability to monitor management effectively. The thesis has examined the ownership and board structures as mechanisms of corporate governance in the banking sector; the next subsection examines market discipline as a form of corporate governance mechanism in the banking sector.

4.6.3 Market Discipline

The external auditors are key contributors to market discipline. External auditors ensure that financial information is transparent, thereby allowing stakeholders to make informed decisions; external auditors also contribute to the financial soundness of the banks.[438] External auditors are supposed to act independently of the board of directors. Under the Anglo-Saxon model, the

[436] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, available:<http://data.europa.eu/eli/dir/2017/828/oj> accessed 15 September 2021

[437] Paul Gregg, Sarah Jewell, Ian Tonks, 'Executive pay and performance: did bankers' bonuses cause the crisis? International Review of Finance, Vol. 12, No. 1, (2012), pp. 89-122.

[438] The World Bank,' Banking Supervisors and External Auditors: Building a Constructive Relationship,' Centre for Financial Reporting Reform, Governance Global Practice, World Bank Group. 2015. Available at: < http://hdl.handle.net/10986/25074> accessed 15 September 2021

primary responsibility of external auditors is to protect shareholders' interests by providing bank shareholders with relevant and accurate information.[439] Some scholars have argued that external auditors can help minimise the agency problem by ensuring that directors act in the interest of the shareholders.[440] For example, the auditors' reason for examining bank financial statements is to identify any financial misstatement or fraud to defraud the shareholders. Therefore, the external auditors' responsibility is to express an opinion indicating that reasonable assurance has been obtained and that the banks' financial statements are free from material misstatement.[441] The financial statement has been prepared following the financial reporting framework of the country in which the bank has its head office and following any relevant regulations laid down by regulators in that country.[442] The external auditors must carry out their functions with due diligence and suggest suitable recommendations to improve banks' corporate governance.[443] However, in performing their statutory responsibilities, some auditors compromise their professional integrity for personal gains by conspiring with the board to falsify the bank's financial statements.[444]

The courts have found external auditors liable for negligent misstatement and other cases of false accounting. For example, in the recent case of *Assetco Plc v Grant Thornton UK LLP*, the Court of Appeal held that the auditors are liable for a negligent failure to uncover two

[439] Adrian Cadbury, Report of the Committee on the Financial Aspects of Corporate Governance Gee and Co Ltd London 1992, p.36, available at: < http://www.ecgi.org/codes/documents/cadbury.pdf> accessed on 15 September 2021
[440] Marianne Ojo, 'The Role of External Auditors in Corporate Governance: Agency Problems and the Management of Risk' MPRA Paper 6 July 2009, available at:< https://mpra.ub.uni-muenchen.de/28149/1/MPRA_paper_28149.pdf> accessed 28 November 2021
[441] Basel Committee on Banking Supervision, 'The relationship between banking supervisors and banks' external auditors' January 2002, available at: <https://www.bis.org/publ/bcbs87.pdf > accessed 15 September 2021
[442]Ibid
[443]Marijana Joksimović, Alseddig Ahmed, The Internal Audit as Function to the Corporate Governance, Megatrend Review Vol. 14, No 2, 2017: 109-126 pp. 113
[444] Julius Olatunde Otusanya, Sarah Lauwo, 'The role of Auditors in the Nigerian Banking Crisis,' Accountancy Business and the Public Interest, Vol 9, 2010 p.179

fraudulent activities by Assetco's directors.[445] The auditors, in this case, failed to detect the dishonest concealment of substantial losses in 2009 and the group's insolvency, which continued in 2010 and 2011, resulting in the losses claimed by AssetCo. This failure to uncover these two fraudulent activities had deprived Assetco of the opportunity to call the senior management to account.[446]

The external auditors' role in the period leading to the financial crisis of 2007-2009 generated many debates about contemporary auditing practices. Some scholars argued that the four dominant accountancy firms in the UK: Deloitte, KPMG PricewaterhouseCoopers, and Ernst and Young, contributed to the global financial crisis by collecting large amounts in audit fees and providing incorrect valuations of bank assets before 2007.[447] As a result, the House of Lords Economic Affairs Committee conducted an inquiry into the UK auditing standard, which led to a referral to the Office of Fair Trading.[448] Therefore, the external auditors have a responsibility to ensure that they provide accurate and relevant information about the actual financial positions of the banks in order for all relevant stakeholders to be well informed when dealing with the banks. By providing accurate, relevant, and unbiased information, external auditors can help protect all bank stakeholders' interests, as such disclosures will solve the problem of information asymmetry, which causes market failure.[449]

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[445] [2020] EWCA Civ. 1151
[446] Ibid
[447] Prem Sikka, 'Financial crisis and the silence of the auditors,' Accounting, Organizations and Society, Volume 34, Issues 6–7, 2009, pp. 868-873, Rajib Doogar Stephen Rowe Padmakumar Sivadasan, 'Asleep at the Wheel (Again)? Bank Audits During the Lead-Up to the Financial Crisis,' Contemporary Accounting Research Vol. 32 No. 1 (Spring 2015) pp. 358–391, Adam Jones, 'Auditors criticised for role in financial crisis' The Financial Times Newspaper, 30 March 2011, available at: < https://www.ft.com/content/358b366e-59fa-11e0-ba8d-00144feab49a> accessed 15 September 2021, Nick Mathiason, 'Auditors' face being called to account for their role in the global financial crisis,' The Guardian Newspaper, 25 October 2009, available at: <https://www.theguardian.com/business/2009/oct/25/auditors-role-financial-crisis> accessed 15 September 2021
[448] Lords Select Committee. The Economic Affairs Committee, 'Auditors: market concentration and their role,' 2nd Report of Session 2010–11, Volume I: Report, Published by the Authority of the House of Lords London
[449] Frederic Mishkin, 'Asymmetric Information and Financial Crises: A Historical Perspective,' In Glenn Hubbard (ed) Financial Markets and Financial Crises, (University of Chicago Press, 1991) p.69-108

4.7 Stakeholder Model, Corporate Governance and Corporate Social Responsibility

There have been recent debates on the relationship between corporate governance and Corporate Social Responsibility (CSR). The high points of the debate are whether CSR is relevant for banks to engage in as a matter of obligation[450] and whether CSR should be a key corporate governance mechanism.[451] Banks as corporate citizens have to meet their societal expectations, which include promoting the interests of key stakeholders and demonstrating that stakeholders' interests are recognised and protected, which can be achieved through CSR.[452] The Anglo-Saxon model discussed above highlights the board of directors' responsibility to pursue the bank's corporate goal, profit maximisation for shareholders' benefit. However, embedding CSR in the corporate governance of banks is a medium through which the board of directors and management of banks can promote stakeholders' interests and not just those of its shareholders.[453] Therefore, this thesis argues that the nexus between CSR and corporate governance focuses on the banks' responsibility to be accountable to stakeholders.[454] This responsibility may vary from one jurisdiction to another and may take different approaches. For example, banks' CSR initiatives may not be designed to provide infrastructure and social amenities in the UK, as CSR activities are not globalised but context-dependent. However, in Nigeria, banks have a social responsibility to help develop infrastructures and social amenities because of the institutional environment in the country.[455] Therefore, this thesis argues that

[450]Ruth Aguilera, Cynthia Williams, John Conley, Deborah Rupp, 'Corporate Governance and Social Responsibility: a comparative analysis of the UK and the US, Corporate governance and social responsibility: A comparative analysis of the UK and the US,' Corporate Governance: An International Review, Vol. 14, No. 3 2006, pp. 147-158.

[451] Andreas Scherer, Guido Palazzo, 'Toward a political conception of corporate responsibility: business and society seen from a Habermasian perspective,' Academy of Management Review, 2007 Vol. 32, No. 4, pp. 1096-1120. P. 1096

[452] Ibid p.34

[453] Ruth Aguilera, Cynthia Williams, John M Conley, Deborah Rupp, 'Corporate Governance and Social Responsibility: a comparative analysis of the UK and the US

[454] Dima Jamali, Asem Safieddine, Myriam Rabbath, 'Corporate Governance and Corporate Social Responsibility Synergies and interrelationships' Corporate Governance: An International Review, 14 October 2008 Vol 16, Issue 5, p. 443-459

[455] Adaeze Okoye, 'Exploring the relationship between corporate social responsibility, law and development in an African context: Should government be responsible for ensuring corporate responsibility?' International Journal of Law and Management, Volume 54, Number 5, 2012, pp. 364-378 p.367

CSR must be embedded in the corporate governance framework in the banking sector to enable banks' board of directors and senior management to adhere to the following core principles: transparency, integrity, fairness, accountability, and responsibility. This will allow them, regardless of which corporate governance model is adopted, to balance the interests of shareholders and other key stakeholders.

4.8 Conclusion

The chapter follows the discussion in chapter three on the theoretical approaches to corporate governance, particularly the critics of the stakeholder theory, which purport to suggest that the stakeholder group is too broad, as anything anywhere can be a stakeholder. However, based on Freeman's stakeholder definition, this chapter has identified those who can affect or are affected by the achievement of the banks' objectives, including shareholders, employees, creditors, government, host communities, banking regulators and supervisors. The chapter also explored the key regulatory approaches to banks' governance, the Anglo-Saxon model underpinned by the shareholder's theory, the Continental European model, and the Japanese *Keiretsu* model underpinned by the stakeholder's theory. The chapter further examined the four corporate governance mechanisms in the banking sector: ownership structure, board structure, system regulation, and market discipline. The chapter argues that, more recently, embedding CSR in the corporate governance of banks has become a means by which the board of directors must use to promote key stakeholders' interests in the banking sector. This chapter concludes the theoretical and conceptual framework, which laid the foundation for the remaining discussion in this thesis. Based on the discussion in this chapter, the thesis examines the extent to which the corporate governance regulatory framework in the Nigerian banking sector allows for the recognition of stakeholders and the protection of their interests. However, in the meantime, the next chapter examines the corporate governance regulatory framework applicable to companies incorporated in Nigeria to ascertain the extent to which it allows for

the recognition of stakeholders and the protection of stakeholders' interests in Nigerian companies.

Chapter Five

STAKEHOLDERS AND CORPORATE GOVERNANCE REGULATION IN NIGERIA

5.1 Introduction

Based on the discussions in the preceding chapter on stakeholders in bank governance, this chapter addresses the thesis's fourth subsidiary question thus: To what extent are stakeholders recognised and their interests protected under Nigeria's corporate governance regulatory framework? This chapter draws on the institutional theory in its analysis to show that Nigeria is a challenging institutional environment for corporate governance. The chapter begins by providing an overview of corporate governance development in Nigeria. It traced the corporate governance model practised in Nigeria to the era of British rule in the country. It observed that during this era, most of the companies operating in Nigeria were British companies and, as a result, were subject to English corporate law, which is rooted in the Anglo-Saxon model of corporate governance. The application of English law gained further prominence under the Statute of General Applications (SOGA), introduced in Nigeria on 1 January 1900. Consequently, all companies operating in Nigeria were subject to English corporate law, irrespective of their places of origin.[456]

The second section of this chapter examines the legal framework for corporate governance applicable to companies incorporated in Nigeria. The principal regulatory legal framework for corporate governance in Nigeria is CAMA 2020,[457] which applies to all companies regardless of the sector in which they operate. This thesis argues that the Anglo-Saxon corporate governance model underpins CAMA because it protects and enhances shareholders' value. The third section of this chapter examines the different institutional frameworks of corporate

[456] Statues of General Application 1 January 1900
[457] CAMA 2020

governance in Nigeria. The regulatory agencies that deal with corporate governance of companies in Nigeria are the Corporate Affairs Commission, Securities and Exchange Commission, Central Banks of Nigeria, Nigeria National Pension Commission, National Insurance Commission, Nigeria Communications Commission and Financial Reporting Council of Nigeria. It argues that the corporate governance codes issued by the different regulators show a limited stakeholders' recognition and protection of stakeholders' interests. The last section highlights the core issues revealed in this chapter viz-a-vis the corporate governance framework in Nigeria companies' favouritism for shareholders' primacy value; this forms the basis to probe corporate governance in the Nigeria banking sector in the next chapter.

5.2 Historical Development of the Nigerian Corporate Governance Model

The concept of corporate governance regulation was alien to the region that comprises the pre-colonial Nigeria states of the Hausa Fulani Empire, Oyo Empire, Kanem Bornu Empire, the Igbo loosed states, and the Benin kingdom before the coming of the British. The first companies to operate in this region following the annexation of Lagos in 1862 were British companies registered in England.[458] The British government introduced the Anglo-Saxon corporate law model in Lagos, the Northern Protectorate, and the Southern Protectorate to regulate the British companies operating in the Nigerian business environment.[459] On 1 January 1900, all laws in England became applicable in Nigeria under the Statute of General Application.[460] The first company law in Nigeria was the Companies Ordinance 1912, which is the domestication of the English Companies Act 1908; the Ordinance was amended in 1922 and became the Companies

[458] Boniface Ahunwan, 'Corporate Governance in Nigeria,' Journal of Business Ethics 37 (3): (2002), pp.269 - 287

[459] Emmanuel Adegbite, Chizu Nakajima, Corporate governance and responsibility in Nigeria International Journal of Disclosure and Governance, 8 (3) (2011), pp. 252-271

[460] Statute of General Application 1900

Ordinance of 1922.[461] Consequently, Nigeria inherited a corporate governance system based on the Anglo-Saxon corporate law model.

As discussed in Chapter four, under the Anglo-Saxon corporate governance system, the directors and management pursue the corporate goal, which equals profit maximisation for shareholders' benefit. Although the Companies Ordinance 1922 received amendments in 1929, 1941 and 1954, the Ordinance was designed to reduce the agency problem that arose from separating ownership from control.[462] So, due to the dispersed ownership structure in England, the corporate governance system operating in England was designed to make the management of companies accountable to the shareholders through the board of directors. This corporate governance system has been transplanted into the Nigerian business environment, even though the ownership structure in the country is highly concentrated.[463]

There has been no notable change in the corporate governance system since Nigeria gained its independence in 1960, although the Companies Ordinance 1922 was eventually repealed and re-enacted as the Nigerian Companies Act 1968. However, this new legislation was still premised on the Anglo-Saxon corporate law model because the Nigerian Companies Act replicates the English Companies Act 1948.[464] CAMA, the principal legislation governing corporate law practice in Nigeria, replicates the English Companies Act 2006, which is underpinned by the Anglo-Saxon corporate law model. Although there have been several amendments to CAMA, the most recent one re-enacted in 2020, this thesis argues that CAMA is designed to promote shareholders' interests because shareholders' value is embedded in this

[461] Boniface Ahunwan, 'Corporate Governance in Nigeria,' Journal of Business Ethics 37 (3): (2002), pp.269 - 287
[462] Elewechi Okike, 'Corporate Governance in Nigeria: The status quo,' Corporate Governance an International Review 15(2) 2007, pp.173-193
[463] Ibid
[464] Ibid

principal legislation. Therefore, the legal framework for corporate governance applicable to companies generally in Nigeria, including CAMA, the principal legislation, needs further examination to ascertain the extent to which it allows for the recognition of stakeholders and protection of stakeholders' interests.

5.3 Legal Framework for Corporate Governance in Nigeria

As stated earlier, CAMA is the primary legal framework for corporate governance in Nigeria. The law mandates that all companies operating in Nigeria be registered under CAMA.[465] This means all banks must register first as a company before commencing operation in Nigeria. By registering as a company, they will be governed by CAMA. Nigeria's corporate governance practice is underpinned by the shareholder's primacy model,[466] which is statutorily embedded in CAMA 2020. Several provisions in CAMA reiterate the shareholders' primacy system under Nigerian corporate law. For example, this thesis argues that in recognition of shareholders and their interests, CAMA made it mandatory for the companies to hold a general meeting of shareholders within six months of their incorporation.[467]

CAMA also requires directors to act in the company's best interest. In discharging their fiduciary duty to the company, directors are to act in the interests of shareholders.[468] S.305 of CAMA is in *pari materia* with the provision of s.172 of the UK Companies Act 2006, which codifies the ESV theory as previously discussed in chapter three.[469] Furthermore, there are other provisions in CAMA echoing the shareholder's primacy. These provisions include the following: that directors' personal interests should not conflict with shareholders' interests,[470]

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[465] Section 18 CAMA 2020
[466] Joseph Olakunle Orojo '*Company law and practice in Nigeria*,' (3rd edn, Mbeyi and Associates Lagos, Nigeria, 1992) p.1
[467] S.235 CAMA, 2020
[468] S.305 (3)(4) CAMA, 2020
[469] S.172 UK Companies Act 2006
[470] S.306 CAMA, 2020

shareholders can bring personal and representative action against the directors, company and third-party,[471] shareholders are entitled to receive financial statements as of right,[472] shareholders' right to obtain copies of financial statements,[473] and lastly, auditors shall report to shareholders on the accounts examined by them.[474]

The separation of ownership and control that underpins the Anglo-Saxon model is embedded in s.87(1)(3) and s.269 (1) CAMA, where it provides for the directors of a company to exercise management power in the company.[475] The above provisions had received judicial approval in the case of *Baffa v Odili* where the court held that directors of a company are persons duly appointed by the company to manage the company's business.[476] Thus, s.269 CAMA puts directors at the centre of corporate governance in a Nigerian company.[477] The shareholders delegate the management and control of the company to the board of directors; the directors are to act in the company's interest and deliver on their responsibilities. If directors are not adequately monitored, they might pursue their interests while jeopardising shareholders' interests to maximise profits for their benefit.[478]

The responsibilities vested in the directors, if not monitored effectively, will give rise to agency problems as stated in s.87(1) CAMA 2020, all the powers of the company are vested in the board of directors save for those which are expressly reserved for members in the general meeting.[479] The above statutory provision has also received judicial backing in many decided

[471] S.344 CAMA, 2020
[472] S.387 CAMA, 2020
[473] S.392 CAMA, 2020
[474] S.404 CAMA, 2020
[475] S.87(1)(3) and S.269(1) CAMA, 2020
[476] *Baffa v Odili* (2001) 15 NWLR (pt 737) 709, S.269 CAMA, 2020
[477] S.269 CAMA, 2020
[478] S.87(1)(3) CAMA, 2020
[479] Ibid

cases; in *Okolo v Union Bank of Nigeria,*[480] the Supreme Court held that a company's director is, in the eyes of the law, an agent of the company for which he acts. The general principle of the law of principal and agent would apply. For example, where a director enters into a contract in the company's name or purports to bind the company, it is the company, 'the principal,' which is liable for the contract and not the director.[481] This judgment implies that the directors are agents to the shareholders; they are to act in the company's best interests by promoting organisational objectives, which is profit maximisation for the benefit of shareholders.

Though CAMA, by virtue of s.305(3)(4), requires that directors consider the impact of the company's operations on the environment and also that they should consider employees' interests when performing their functions,[482] in contrast, s.305(9) CAMA took away the power of enforcement from these stakeholders mentioned in the above section because if the directors fail to consider the matter stated in s.305(3)(4) by failing to promote the relevant stakeholders' interests, only the company can sue the directors for breach of the provision of that section.[483] From the above analysis, it is evident that there is a limited stakeholders' recognition and protection of stakeholders' interests under Nigerian corporate law. This thesis now examines the institutional and regulatory framework for corporate governance of companies in Nigeria to ascertain the role of the regulatory framework in promoting effective corporate governance in Nigeria.

[480] 3 NWLR (Pt.859) SC 87
[481] As per Niki Tobi JSC (as he then was) delivering the lead judgment in the case.
[482] S.305(3)(4) CAMA 2020
[483] S.305(9) CAMA 2020

5.4 Institutions for Corporate Governance of Companies in Nigeria

Corporate Affairs Commission

The Corporate Affairs Commission (CAC) was established under the Companies and Allied Matters Act.[484] The Commission regulates the formation, incorporation, registration, management, and winding up of all companies incorporated in Nigeria.[485] All companies must submit an audited financial statement within 42 days after their annual general meeting to the Commission. Some argue that the CAC has been ineffective in delivering its objectives in monitoring companies' compliance with corporate governance provisions in CAMA.[486] The ineffectiveness is because of the lack of rigorous enforcement mechanisms. For example, despite the requirement for companies to file their financial statement with the Commission, most companies do not comply with the requirements. The CAC hardly applies any sanctions at its deposal for non-compliance by companies despite its enormous power under the Act.[487] This thesis argues that CAC is ineffective in carrying out its functions as customers have complained about how the Commission carries out its tasks.[488] The majority of the complaints relate to staff incompetence, poor service delivery, missing documents, payment of extortion fees, data loss due to its epileptic server and poor internet connectivity.[489]

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[484] CAC History, available at: < http://new.cac.gov.ng/home/about-us/> accessed 15 September 2021

[485] S.1 (2) (b) CAMA, Cap C20 LFN 2004

[486] The World Bank, 'Reports on the Observance of Standards and Codes,' 2004 p.30, The World Bank, available: https://www.worldbank.org/en/programs/rosc accessed on 15 September 2021, Elewechi Okike 'Corporate Audit Report and the Structure of the Market for Audit Services to Listed Companies in Nigeria: A Longitudinal Study.' 1995, A Research Report submitted to the Research Committee of the Institute of Chartered Accountants of Nigeria

[487] Ibid

[488] Bassey Udo, 'Normal business disrupted at CAC as customers protest poor services,' Premium Times Newspaper, 15 September 2014, available at: < https://www.premiumtimesng.com/business/168188-normal-business-disrupted-at-cac-as-customers-protest-poor-services.html> accessed 2 November 2021, Tyavzua Saanyol, Customers Reject Courier Services, Protest CAC Electronic Delivery Policy, Nigerian Tribune, 23 July 2020, available at: < https://tribuneonlineng.com/covid-19-customers-reject-courier-services-protest-cac-electronic-delivery-policy/> accessed 2 November 2021

[489] Sonnie Ekwowusi, Whither Corporate Affairs Commission? Thisday Newspaper, Wednesday 14 July 2021, p.14, Shaka Momodu, The CAC and Ease of Doing Business: The Commission should live up to its responsibilities, Thisday Newspaper, Wednesday 21 July 2021, p.15

Securities and Exchange Commission

The Securities and Exchange Commission is the apex regulatory institution for the Nigerian capital market.[490] All companies listed on the Nigerian Stock Exchange come under the regulatory framework of the SEC. The regulatory framework in the Nigerian capital market comprises listing rules and regulations[491] and the corporate governance code for public listed companies.[492] These various pieces of legislation issued by the SEC enable it to regulate all companies listed on the Nigerian stock exchange. The legal framework that enables SEC to carry out the above function is the Investments and Securities Act (ISA) 2007. The ISA 2007 empowers the SEC to regulate the capital market by ensuring investors' protection, maintaining a fair, efficient and transparent market, and reducing systemic risk.[493] In 2003, SEC issued the code of best practices for public companies in Nigeria.[494] The SEC code is designed to ensure accountability in all public companies in Nigeria. SEC was the first regulatory agency to have issued a corporate governance code for companies in Nigeria. The principal focus of the SEC code is to protect and enhance shareholders' value in public companies in Nigeria.[495] The extent to which the SEC code promotes stakeholders' recognition and protection of stakeholders' interests is examined in detail in the next chapter of this thesis.

Central Bank of Nigeria

The CBN was established under the Central Bank of Nigeria Act of 1958; however, it began operations on 1 July 1959.[496] The CBN is the apex regulatory body responsible for banking supervision in Nigeria, which is statutorily empowered to regulate the banking industry.[497] The CBN carries out its legal mandate through two pieces of legislation, the Banks and Other

[490] Investments and Securities Act 2007
[491] SEC Nigeria's Consolidated Rules and Regulations 2013
[492] Code of Corporate Governance for Public Companies 4 April 2011
[493] S.13 Investments and Securities Act 2007
[494] SEC, Code of Corporate Governance for Public Companies 2003
[495] Principle 2.2 Code of Corporate Governance for Public Companies in Nigeria 2011
[496] History of the CBN is available at <https://www.cbn.gov.ng/AboutCBN/history.asp> accessed 15 September 2021
[497] S.1 BOFIA, 2020

Financial Institutions Act (BOFIA) 2020[498] and the Central Bank of Nigeria Act 2007.[499] Under the CBN Act 2007, the bank is an autonomous body and discharges its duties to promote financial stability and continuity in economic management.[500] This mandate of CBN is, to no small extent, questionable because, more often than not, it is the minister of finance and the President that determine the direction of the national economy.[501] There are several instances where CBN independence has been eroded by the Federal Government, despite CBN pretending to be the brain behind those policies.[502] For example, suppose the CBN Governor wants to exercise his sovereignty regarding fiscal and macroeconomic policies. In that case, there are often conflicts of interests between CBN and government officials, especially the ministry of finance and the presidency.[503] An example of such a situation was when Dr Ebele Jonathan, former Nigerian President, suspended the then Governor of CBN Mallam Sanusi, alleging financial recklessness and misconduct after Sanusi alleged that the sum of £12 billion ($20 billion) in oil revenue had gone missing.[504]

Nevertheless, the core objective of CBN under the CBN Act 2007 includes promoting a sound financial system in Nigeria, acting as the lender of last resort, and providing economic and financial advice to the Federal Government.[505] There is no doubt that CBN faces several challenges in exercising its powers and functions under BOFIA and CBN Act; one of such challenges is regarding policy conflicts between CBN and the government. The CBN Governor

[498] BOFIA, 2020
[499] S.1 (3) CBN Act 2007
[500] S.2 CBN Act 2007
[501] Samuel Bandele Falegan, 'Central bank autonomy: historical and general perspective. Economic and Financial Review, 33(4), 1995, pp.416-428
[502] Ibid
[503] Joseph O Sanusi, 'Central banking authority, economic stability and the rule of law,' A paper presented at the Ninth Annual Harvard International Development Conference, Boston, 4 April 2003, available at: https://www.bis.org/review/r030530d.pdf accessed 15 September 2021
[504]Alexander Thurston, 'The Politics of Technocracy in Fourth Republic Nigeria,' 61 African Studies Review 215 (2018)
[505] S.2 CBN Act of 2007

cannot unilaterally carry out certain activities, for example, revoking a banking licence, without first seeking 'approval' from above. To put it mildly, the CBN Governor must always consult with the finance minister and the President most times before performing some of its core functions under BOFIA 2020[506] and the CBN Act 2007[507]. Such an arrangement undermines the CBN's independence to act timeously to a certain extent. As the prudential regulator and supervisor for the banking industry, the CBN has issued the corporate governance code for the banking industry to achieve a safe and healthy financial system. Like the SEC code, the CBN Code of Corporate Governance for Banks and Discount Houses in Nigeria[508] protects and enhances shareholders' value. The extent to which the CBN code promotes stakeholders' value in the Nigerian banking sector is examined in detail in the next chapter of this thesis.

National Pension Commission

The National Pension Commission (PENCOM) was established by the Pension Reform Act 2004 to establish standards, rules, and guidelines for managing pension funds in Nigeria.[509] In 2008, PENCOM issued a corporate governance code for the pension scheme operators to guide them on best corporate governance practices; the Code of Corporate Governance for Licensed Pension Operators is an industry-specific code.[510] The code applies to the banks if they act as pension fund administrators or pension fund custodians. Like the other sectoral codes discussed above, this code is designed to promote shareholders' value; this is evident from the provision of the code, which states that the purpose of the code is to create the necessary conditions for shareholders to exercise an active and responsible ownership role.[511] As a result, the board of

[506] BOFIA, 2020
[507] CBN Act, 2007
[508] Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014
[509] Pension Reform Act 2004
[510] Code of Corporate Governance for Licensed Pension Operators June 2008, p.4, available at: < https://www.pencom.gov.ng/wp-content/uploads/2017/04/Code_of_Corporate_Governance_for_Licensed_Pension_Operators.pdf> accessed 15 September 2021
[511] Principle 3.1.1 Code of Corporate Governance for Licensed Pension Operators June 2008, p.3

pension companies will set its objective based on what is in its shareholders' best interest.[512] As discussed in the preceding chapter, the company's goal under the Anglo-Saxon corporate governance model is to maximise profit for the benefit of the shareholders.

National Insurance Commission

The National Insurance Commission (NAICOM) was established by the National Insurance Commission Act 1997.[513] The Commission is responsible for ensuring the effective administration, supervision, regulation and control of the insurance business in Nigeria.[514] The Commission is also responsible for protecting insurance policyholders, beneficiaries, and third parties to insurance contracts.[515] In 2009, the Commission issued the Code of Good Corporate Governance for the Insurance Industry in Nigeria.[516] This corporate governance code is an industry-specific code that will apply to banks if they provide insurance services for their customers as part of their banking business. On 17 March 2021, the Commission issued the Corporate Governance Guidelines for Insurance and Reinsurance Companies (CGGIRC) 2021, which became effective on 1 June 2021.[517] The objective underpinning the new corporate governance code is not different from others discussed in this chapter because it is based on the Anglo-Saxon corporate law model. The CGGIRC 2021 stipulates that directors are expected to preserve and enhance shareholders' value.[518] Therefore, there is a limited stakeholders' recognition or attempt to protect stakeholders' interests in the Nigerian insurance sector.

Nigerian Communications Commission

[512] Ibid Principle 4.1, p.6
[513] S.1 National Insurance Act 1997
[514] S.7 National Insurance Act 1997
[515] Ibid
[516] Code of Good Corporate Governance for the Insurance Industry in Nigeria 2009
[517] Corporate Governance Guidelines for Insurance and Reinsurance Companies 2021
[518] Principle 2.0 Corporate Governance Guidelines for Insurance and Reinsurance Companies 2021

The Nigerian Communications Commission (NCC) was established by the Nigerian Communications Act 2003.[519] The Commission is responsible for regulating the supply of telecommunications services and facilities, promoting competition, and setting performance standards for telephone services in Nigeria.[520] In 2016, the Commission issued the Code of Corporate Governance for the Telecommunication Industry (CCGTI); like all other codes already examined, the CCGTI is designed to protect and enhance shareholders' value.[521] This is evident from several specific provisions of the CCGTI; for example, the code states that apart from the shareholders in general meetings, the board of directors shall be the highest decision-making body.[522] It also states that it is the responsibility of shareholders to appoint the board of directors.[523] Furthermore, the CCGTI requires companies to establish effective systems and structures for risk governance and a comprehensive internal controls system to safeguard shareholders' investment.[524]

Financial Reporting Council of Nigeria

The Financial Reporting Council of Nigeria (FRCN) was established by the Financial Reporting Council Act 2011.[525] The FRCN Act also established the Directorate of Corporate Governance,[526] responsible for developing sound corporate governance principles in Nigerian companies.[527] To realise the above objective and address the multiplicity of corporate governance codes and overlapping legislation, the Directorate of Corporate Governance attempted to unify the various industry-specific codes discussed above by issuing the National Code of Corporate Governance (NCCG) 2016, which became effective on 17 October 2016.

[519] S.3 Nigerian Communications Act 2003
[520] S.1 Ibid
[521] Principle 1.0 Code of Corporate Governance for the Telecommunication Industry
[522] Ibid Principle 2.1(c)
[523] Ibid Principle 2.1(a)
[524] Ibid Principle 11.0
[525] S.1 Financial Reporting Council of Nigeria Act 2011
[526] S.49 Financial Reporting Council of Nigeria Act 2011
[527] S.50 Financial Reporting Council of Nigeria Act 2011

However, this faced much resistance from various shareholders who claimed the NCCG 2016 was a disincentive to investment. On 28 October 2016, less than twelve days after the NCCG 2016 came into force, the government suspended the code.[528] This follows the decision in *Eko Hotels v FRCN*, where the court held that there was no law empowering the FRCN to exercise any form of regulatory power over Eko Hotels and Suites, as it was a private company.[529] The thesis argues that the court reached the above decision because FRCN had acted *ultra vires* by requesting Eko Hotels to register with the FRCN. The FRCN Act only requires the registration of accountants and other professionals based on their involvement in the financial reporting process in private companies.[530]

Subsequently, the FRCN exercised its power to conduct a periodic assessment of the codes and guidelines issued by the Council and reintroduced the National Code of Corporate Governance in 2018, which applies to all companies in Nigeria.[531] The NCCG 2018 became effective on 1 January 2020.[532] The FRCN has described the NCCG 2018 as one that highlights fundamental principles that seek to institutionalise corporate governance best practices in Nigerian companies and promote public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment.[533] The NCCG 2018 made some attempts to recognise some stakeholders and protect stakeholders' interests, such as the principle requiring companies as responsible corporate citizens to pay adequate attention to

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[528] The Editor, 'Investors' laud suspension of FRCN corporate governance code, The Nigerian Guardian Newspaper 9 November 2016 available at: < https://guardian.ng/business-services/investors-laud-suspension-of-frcn-corporate-governance-code/> accessed 15 September 2021

[529][529] Eko Hotels v Financial Reporting Council of Nigeria (Unreported: Suit No. FHC/L/CS/1430/2012 delivered 21 March 2014 by Justice Abang

[530] Ibid

[531] Nigerian Code of Corporate Governance 2018

[532] Nelson Anumaka, 'The Nigeran Code of Corporate Governance is Principle based, Flexible and Scalable' Interview with the Institute of Directors of Nigeria, available at: http://www.iodnigeria.org/Portals/0/Documents/The%20Nigeria%20Code%20of%20Corporate%20Governance%202018%20is%20a%20principle%20based%20flexible%20and%20scalable.pdf?ver=2020-08-02-164202-313 accessed 15 September 2021

[533] Nigerian Code of Corporate Governance 2018, p.iv

sustainability by contributing to economic development.[534] Another of the NCCG 2018 principles dealing with stakeholders' interests is the one that requires companies to communicate and interact with stakeholders, keeping them conversant with the companies' activities and assisting them in making informed decisions.[535] Lastly, the code also recognised stakeholders' interests by requiring companies to fully and comprehensively disclose all matters material to shareholders and stakeholders and of matters set out in the code to ensure proper monitoring of its implementation.[536]

The above provisions are undoubtedly commendable regarding the attempted recognition of some stakeholders; however, this thesis argues that NCCG 2018 is defective as it cannot offer the needed protection of stakeholders' interests for the two reasons. First, the NCCG 2018 did not attempt to repeal the different sectoral codes previously discussed above or attempt to make the NCCG 2018 mandatory for all companies. Industry-specific codes like the CBN code and the SEC code are still the dominant codes in the banking sector, and the shareholders' primacy model underpins these codes. Second, the NCCG 2018 is subject to the primary corporate law legislation CAMA 2020, which is also underpinned by the shareholders' primacy value, as already discussed above. Consequently, the stakeholder innovations evident in the NCCG 2018 are unlikely to offer the required protection for stakeholders and stakeholders' interests in the banking sector in particular and other companies generally. The NCCG 2018 did not attempt to harmonise the corporate governance provisions in CAMA 2020 with the provisions of other codes. Neither did it make its application supersede CAMA and the various other codes.

[534] Principle 26 Nigerian Code of Corporate Governance 2018
[535] Ibid Principle 27
[536] Ibid Principle 28

5.5 Conclusion

This chapter has examined the state of corporate governance regulation in Nigeria. It argues that the Nigerian corporate governance model is founded on the Anglo-Saxon model, transplanted from Britain to Nigeria because of its colonial past. In Nigeria, the corporate governance model is traced to the annexation of Lagos in 1862, which marked the beginning of British rule in Nigeria. Between then and 1922, when the first Companies Ordinance was introduced, most companies operating in Nigeria were of British extraction and were governed by English corporate law. Another reason for the transplantation of the Anglo-Saxon model is through the received law of Statute of General Application, which made all laws applicable in England as of 1 January 1900 became law in Nigeria.[537] As a result, all companies operating in Nigeria, irrespective of their origin, were now subject to the English corporate law, which is underpinned by the Anglo- Saxon corporate governance model.

The thesis also argues that despite the various amendments to the Companies Ordinance 1922, there was no notable change in the corporate governance framework. It remained rooted in the shareholders' primacy value. Even after Nigeria's independence, the Companies Ordinance 1922 was repealed by the Nigerian Companies Act 1968, a replica of the English Companies Act 1948 designed to promote and enhance shareholders' value. The shareholders' primacy model has been prominent under Nigerian corporate law. It has been statutorily embedded in CAMA 2020, the primary legal framework for Nigeria's corporate law. The thesis argues that CAMA protects shareholders' interests by giving them several rights and ensuring that directors are accountable to shareholders. However, the case is different concerning non-shareholder stakeholders; it argues that there are limited stakeholders' recognition and protection of stakeholders' interests under CAMA 2020.

[537] Statute of General Application 1900

The chapter further examined the institutional framework for corporate governance in Nigeria. It discussed the importance of the Corporate Affairs Commission, Securities and Exchange Commission, Central Banks of Nigeria, National Pension Commission, National Insurance Commission, Nigeria Communications Commission and Financial Reporting Council of Nigeria. It examined the various codes issued by these institutions and argued that the codes issued by the different institutions show to a considerable extent, limited stakeholders' recognition and protection of stakeholders' interests. It argues that even the NCCG 2018, with its limited stakeholder recognition, does not truly protect stakeholders' interests because of its inherent defects, such as its failure to harmonise the corporate governance provisions in CAMA 2020 with the provisions of other industry-specific codes and also its failure to make its application to supersede the application of CAMA corporate governance provisions and those of the other codes.

Having established the nature of corporate governance in Nigerian companies generally, the next chapter of this thesis explores the nature of corporate governance in Nigerian DMBs, explicitly drawing on the institutional theory. The analysis in this chapter has shown that Nigeria is a challenging institutional environment for corporate governance, resulting in the limited stakeholders' recognition and protection of stakeholders' interests under the Nigerian corporate governance framework applicable to companies. The next chapter examines the Nigerian Deposit Money Banks' corporate governance framework to demonstrate further Nigeria's challenging institutional context, evidenced by the limited stakeholders' recognition and protection of stakeholders' interests in the corporate governance framework in the Nigerian banking sector.

Chapter Six

STAKEHOLDERS AND CORPORATE GOVERNANCE OF DEPOSIT MONEY BANKS IN NIGERIA

6.1 Introduction:

The preceding chapter dealt with the nature of the corporate governance framework for companies operating in Nigeria. In that regard, the legal, regulatory, and institutional frameworks of corporate governance were considered; it is evident from the discussions that the Anglo-Saxon model underpins the Nigerian corporate governance framework applicable to companies. As was done in the preceding chapter, this chapter draws on the institutional theory in its analysis to show that Nigeria is a challenging institutional environment for corporate governance in Deposit Money Banks (DMBs). This chapter examines the nature of corporate governance in deposit money banks in Nigeria to ascertain the challenges of implementing an effective corporate governance framework in the banking sector and the extent to which the regulation in the banking sector allows for the recognition of stakeholders and protection of stakeholders' interests.

This chapter begins by examining the structure of DMBs in Nigeria. It examines the statutory framework that deals with corporate governance in the Nigerian banking sector, particularly the CBN Codes of Corporate Governance for Banks[538] and the SEC Code of Corporate Governance for Public Listed Companies,[539] to ascertain to the extent these codes allow for the recognition of stakeholders and protection of stakeholders interests. The next section of this chapter examines how Nigeria's institutional environment affects corporate governance in DMBs. The corporate governance mechanisms, including ownership structure, board structure

[538] Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014
[539] Securities and Exchange Commission Code of Corporate Governance for Public Companies 2011

and market for corporate control discussed in chapter four of this thesis, are useful in the analysis in this section. They helped assess how the banking sector's corporate governance model has been implemented. The last section of this chapter will highlight all the key discussions, particularly regarding the limited stakeholder recognition and protection of stakeholders' interests in the Nigerian banking sector. The proposed Functional Stakeholder Model forms the basis of discussion in the next chapter, which addresses the limited stakeholder recognition and protection of stakeholders' interests in the Nigerian banking sector.

6.2 Structure of Nigerian Deposit Money Bank

Banking activities vary slightly between countries, often going beyond the business of accepting deposits and maintaining an account book. The institutional theory underpins these variations between countries; such differences are usually a result of the structures such as schemes, rules, norms, and routines that become established as authoritative guidelines for social behaviour. The economic and legal factors principally influence the type of banking institutions a country operates. The economic factor is based on the banking service that customers want the bank to provide. This is, however, subject to the regulation in that jurisdiction. For example, a regulator may issue a banking licence for specific banking activity, such as accepting deposits and honouring customers' cheques. While it has specified the bank's activities, it may also state what the bank cannot do, such as dealing in foreign exchange. Even if the customers want the banks to provide foreign exchange services, the bank cannot legally do that due to its banking licence prohibiting it from engaging in foreign exchange dealings.

Legal factor is another reason banking operations may differ from one jurisdiction to another, and this depends on the banking regulatory framework in that jurisdiction at that time.[540] Such

[540] Ibid

regulation may only prescribe that all banks can engage in any banking activity instead of restricting banks to certain types of activities. An excellent example was when CBN introduced the universal banking model in 2000, which enabled banks to transform into one-stop shops and engage in an almost infinite range of financial activities either in the ordinary course of their conventional banking operations or indirectly through designated subsidiaries.[541]

The Nigerian banking sector witnessed significant changes over the years, ranging from the ownership structure, the number of banking institutions, and changes in the mode of operations.[542] Today, the Nigerian banking system comprises 22 commercial banks, 900 micro-finance banks, six development finance institutions, five discount houses, 45 finance companies, five merchant banks, two non-interest banks, 33 primary mortgage banks and three payment service banks.[543] Despite the number of banks identified above, only two of these categories are regarded as DMBs in Nigeria: commercial banks and merchant banks. Therefore, this research focuses on the above 27 banks in these categories, not because they only accept deposits from their customers. However, employees and customers of these banks are major victims of the persistent banking failures in Nigeria; hence, they are key stakeholders that the current regulatory framework has rather ignored. Before discussing the corporate governance in these banks, it might be helpful to examine the scope of DMBs in Nigeria.

Commercial banks are the oldest banking institutions in Nigeria, as the first commercial bank to operate in Nigeria was established in 1894.[544] The traditional role of commercial banks was

[541] Ebenezer Adodo, 'Legal Challenges of Universal Banking in Nigeria,' Modern Practice Journal of Finance & Investment Law, (2002) Vol 6 (3-4), pp.398-406.
[542] Charles Chukwuma Soludo: Consolidating the Nigerian banking sector to meet the development challenges of the 21st century, 6 July 2004, p.2, available: <https://www.bis.org/review/r040727g.pdf> accessed 15 September 2021
[543] CBN, 'Financial Institutions' available at: <https://www.cbn.gov.ng/Supervision/finstitutions.asp> accessed 15 September 2021
[544] First Bank of Nigeria is the pioneer commercial bank in Nigeria, which started a business in 1894.

to engage in the banking business of accepting deposits that were withdrawn by cheques.[545] However, commercial banking activities have gone beyond mere acceptance of deposits and cheque withdrawal with time. It now engages in services rendering, which includes providing credit facilities for its customers, acting as agents of payment through hosting of internet banking and safekeeping of valuables for customers. Commercial banks play a prominent role in the Nigerian financial system and thus contribute to the nation's overall economic development. Commercial banks in Nigeria engage in their primary assignment of deposit acceptance from customers, making payment upon presentation of cheques and advancing the surplus of the deposits collected as loans to borrowers in return for profit. Another paramount importance of commercial banks in Nigeria is that they provide specific financial advice and guidance to their customers, particularly related to information on financial products.

Before the CBN's 2004 consolidation/recapitalisation reform agenda, 89 licenced commercial banks were operating in Nigeria. However, the number reduced significantly to 25 commercial banks, as not all the banks could raise the minimum capital within the stipulated time. While some banks raised the minimum capital, some had to merge with other banks to raise the minimum capital; those who could not devise any means to raise the minimum capital within the specified time had their licences revoked by CBN. There are three types of commercial banks operating in Nigeria, regional commercial banks, national commercial banks, and international commercial banks. The regional commercial banks are banks operating in ten states or fewer. They must have a minimum paid-up capital of ₦15 billion ($41,7 million). The national commercial banks must have a minimum capital requirement of ₦25 billion ($69.4 million) and are eligible to operate in all the states in Nigeria. Last, the international commercial banks must have a minimum paid-up capital of ₦100 billion ($278 million) and

[545] Ibid p 31

can operate in Nigeria and other international destinations. Presently, there are 22 commercial banks in Nigeria. Eight commercial banks have the license to operate internationally, eleven commercial banks are licensed to operate nationally, and the remaining three commercial banks are licensed to operate regionally.[546]

The core function of the merchant bank as it stands today in Nigeria is mainly to provide medium-term and long-term credit, equipment leasing, the arrangement of syndicate loans, provision of foreign exchange services, giving advice and management of portfolio investment.[547] Merchant banks' operation in Nigeria dates back to 1960 when the two pioneer institutions began merchant banking business in Nigeria. The two pioneer Merchant banks in Nigeria were Phillip Hill Nigeria Limited, established in September 1960 and the Nigeria Acceptance Limited, established in November 1960. Before the 1960s, there were no merchant banks in Nigeria, as commercial banks handled investment financing in the country. Merchant banking operations were phased out following the adoption of the Universal Banking Model in 2000; however, it was reintroduced on 8 August 2010 following the abolition of the Universal Banking model.[548] This thesis argues that Merchant banks were reintroduced in Nigeria to bridge the gap in the type of credit provided by commercial banks; at that time, commercial banks could not provide the level of finance required by the industries to operate effectively because of their capital base. Merchant banks are now required to maintain a minimum paid-up share capital of ₦15 billion ($41,7 million).[549] This thesis further argues that the reintroduction of merchant banks became necessary to safeguard the deposit of customers

[546] CBN, Supervision: List of Financial Institutions available at: < https://www.cbn.gov.ng/supervision/Inst-DM.asp> accessed 15 September 2021
[547] Ikpefan Ailemen, 'Issues in Banking and Finance' (The Chartered Institute of Bankers of Nigeria 2012) p 11
[548] Alex Ehimare Omankhanlen, 'The financial sector reforms and their effect on the Nigerian economy,' Economy Transdisciplinarity Cognition 15 (2), 45-57
[549] Omoh Gabriel, CBN re-introduces merchant banking, The Nigerian Vanguard 8 August 2010, available at: <https://www.vanguardngr.com/2010/08/cbn-re-introduces-merchant-banking> accessed 15 September 2021

of commercial banks. As previously noted, CBN felt that commercial banks lack the capacity to carry out merchant banking activities because of their national reach and low capital base. There are presently five merchant banks in Nigeria: FSDH Merchant Bank Ltd, Rand Merchant Bank Limited, Nova Merchant Bank Limited, FBN Merchant Bank Limited, and Coronation Merchant Bank Limited.[550]

6.3 Legal Framework for Corporate Governance in Nigerian Deposit Money Banks

As previously discussed in the preceding chapter, the legal framework of corporate governance in the Nigeria banking sector is contained in CAMA 2020, BOFIA 2020, the Investments and Securities Act 2007, CBN Act 2007, CBN Code of Conduct for Directors of Licensed Banks and Financial Institutions 2010, SEC Code of Corporate Governance for Public Companies 2011, Nigerian Sustainable Banking Principles 2012, CBN Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014 and Nigerian Code of Corporate Governance 2018. It is argued that compliance may not be guaranteed despite the availability of these regulations, particularly the corporate governance codes. In the event of non-compliance by the banks, it is unlikely that the banks would be sanctioned as specified by the codes because of the weak enforcement regime.[551] Therefore, it is necessary to explore the two main corporate governance codes applicable to the DMBs in Nigeria in detail to ascertain to what extent they allow for the recognition of stakeholders and the protection of stakeholders' interests.

6.3.1 SEC Code of Corporate Governance for Public Companies in Nigeria

[550] CBN, 'List of Financial Institutions: Merchant Banks' available at: < https://www.cbn.gov.ng/Supervision/Inst-MB.asp> accessed 15 September 2021

[551] Vincent Nmehielle, Enyinna Nwauche, 'External-internal standards in corporate governance in Nigeria' The George Washington University Law School Public Law and Legal Theory Working Paper 2004, p.115: 1-50

Following the various corporate governance scandals globally in the wake of the new millennium, the need to overhaul the corporate governance frameworks of most countries' publicly listed companies became a matter of utmost priority. In Nigeria, the Securities and Exchange Commission set up a committee in 2001 that drafted the code of Best Practices for Public Companies in Nigeria, which became operational in 2003 and applied to all listed companies irrespective of the sector. The SEC code was criticised for its lack of enforceability. Thus, in addressing the weaknesses and improving the mechanism for the enforceability of the SEC code, in September 2008, a committee was constituted to identify weaknesses in the code that acts as constraints to effective corporate governance in public companies in Nigeria; following the committee recommendation, the SEC code was revised in March 2011.[552]

The SEC code is designed to ensure that directors of companies are accountable to shareholders. There is limited recognition of other stakeholders and protection of their interests in the SEC code. For example, the SEC code makes it mandatory for the board to protect shareholders' statutory and general rights at all times.[553] It also enjoins directors to protect and enhance shareholders' value at all times.[554] Therefore, for the board to deliver on these provisions, other stakeholders' interest becomes secondary because the code specifies that directors must always protect shareholders' interests. According to the SEC code, one of the board's core responsibilities is to ensure effective communication with shareholders. This can be achieved by using general meetings to communicate with the shareholders and encourage their participation.[555] This thesis argues that directors of the board who fail to communicate with shareholders effectively and encourage their participation will be affected negatively in

[552] Elewechi Okike, Emmanuel Adegbite, 'The Code of Corporate Governance in Nigeria: Efficiency Gains or Social Legitimation? Corporate Ownership and Control, Volume 9, Issue 3, 2012, pp.262 - 275
[553] SEC code 2011 Principle 22.1
[554] SEC code 2011 Principle 2.2
[555] Ibid Principle 3.1(g)

the long term. Shareholders appoint directors and approve the terms and conditions of their directorships.[556] Therefore, directors who fail to comply with the above provisions of the SEC code are more likely to be removed from office.[557]

Several other provisions in the SEC code guarantee the protection of shareholders' interests over and above those of other stakeholders. These provisions are worth considering as they further support the assertion that the Nigerian corporate governance model is underpinned by the Anglo-Saxon corporate law system designed to enhance shareholder value. The SEC code made it mandatory for the board to ensure that all shareholders are treated equally and that no shareholder should be given preferential treatment or access to information or other materials based on their shareholding.[558] In recognition of the problem between minority shareholders and majority shareholders, the SEC code made it mandatory for the board to ensure that minority shareholders are treated fairly and are adequately protected from abusive actions of controlling shareholders.[559] The SEC code requires the board to ensure that the venue of a general meeting is accessible to shareholders and that no shareholder is disenfranchised on account of the choice of venue of the meeting.[560] Before analysing corporate governance mechanisms in Nigerian banks, the next subsection examines the CBN's code for DMBs and the Nigerian Sustainable Banking Principles to demonstrate how it allows for the recognition of stakeholders and protection of stakeholders' interests in the Nigerian banking sector.

[556] Ibid Principle 13.4
[557] Ibid Principle 19.1
[558] Ibid Principle 22.2
[559] Ibid Principle 22.3
[560] Ibid Principle 23

6.3.2 CBN Corporate Governance Code and the Nigerian Sustainable Banking Principle

Following the consolidation exercise in the Nigerian banking sector, the CBN introduced the Code of Corporate Governance for Banks in Nigeria in March 2006, which became effective on 3 April, 2006.[561] As discussed in the preceding chapter, the code aimed to restore public confidence in the banking sector by ensuring good corporate governance practices in DMBs. The CBN code made it mandatory for all DMBs to comply with its code provisions.[562] Publicly listed banks must ensure compliance with both the CBN code and the SEC code, despite the variations in the requirements of both codes. Like the SEC code, the CBN code was also criticised for its ambiguity and incompatibility with international best practices.[563] To strengthen the corporate governance practices in the banking sector endangered by poor corporate governance practice that almost led to the failure of 10 DMBs operating in Nigeria in 2009, on the 16 May 2014, CBN issued a revised code of corporate governance applicable to DMBs which became effective on 1 October 2014.[564]

Some may argue that the revised CBN code, like the SEC code to a certain extent, protects stakeholders' interests by including a requirement for banks to establish a whistleblowing policy for reporting unethical behaviour.[565] The codes did not define illegal or unethical behaviours. However, it provided a list of conducts that could be construed as illegal or unethical behaviours, including all forms of financial malpractice or impropriety or fraud; failure to comply with a legal obligation or statutes, actions detrimental to health and safety or

[561] Code of Corporate Governance for Banks in Nigeria Post Consolidation, available at: https://www.cbn.gov.ng/OUT/PUBLICATIONS/BSD/2006/CORPGOV-POSTCONSO.PDF accessed 15 September 2021
[562] Ibid
[563] Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector2014 available at: https://www.cbn.gov.ng/out/2014/fprd/circular%20on%20code%20of%20circular%20on%20corporate%20governance%20and%20whistle%20blowing-may%202014%20(3).pdf accessed 15 September 2021
[564] Ibid
[565] Ibid

the environment; any form of criminal activity. Improper conduct or unethical behaviour; failure to comply with regulatory directives; other forms of corporate governance breaches; connected transactions; insider abuses; non-disclosure of interest; and attempts to conceal any of these, amongst others.[566] It is argued that contrary to the claim by the CBN that the whistleblowing policy is intended to encourage relevant stakeholders to report perceived unethical or illegal conduct. However, stakeholders like customers and employees are reluctant to report unethical or illegal conduct due to the absence of the necessary statutory framework, which protects whistleblowers if their identities are later exposed.[567]

Before revising the CBN code in 2014, the CBN tried to bridge the gap between the shareholder primacy model practised in the Nigerian Banking sector and the recognition and protection of key stakeholders and their interests by introducing the Nigerian Sustainable Banking Principles.[568] The primary aim of the principles is to serve as a common baseline and framework for each DMB to implement its own internal corporate social responsibility policies and standards.[569] The Nigerian Sustainable Banking Principles advocate for promoting women's empowerment through gender inclusivity in the workplace,[570] promoting financial inclusion by providing financial services to individuals and communities which previously had little or no access to the formal financial sector,[571] and minimising the effects of banking operation on the environment and local communities.[572] While these principles are laudable and expected to promote stakeholders' recognition and protection of stakeholders' interests, they are only recommendations. Unlike the CBN code, the Nigerian Sustainable Banking

[566] Ibid
[567] Folashade Adeyemo, 'The Achilles' heel of whistleblowing: the position of Nigerian legislation' Journal of International Banking Law and Regulation, 31 (2) 2016. pp. 105-109, p.105
[568] CBN, 'Nigerian Sustainable Banking Principles,' Central Bank of Nigeria July 2012 available at:< https://www.cbn.gov.ng/out/2012/ccd/circular-nsbp.pdf> accessed 15 September 2021
[569] Ibid
[570] Ibid, Principle 4
[571] Ibid, Principle 5
[572] Ibid, Principle 2

Principles do not have a force of law, hence the high rate of non-compliance by DMBs. This is evident in the next section, which examines the corporate governance mechanisms in Nigerian DMBs.

6.4 Corporate Governance Mechanisms in DMBs in Nigeria

The ownership structure of DMBs in Nigeria is highly concentrated in a few individuals, families, and the government to a certain extent.[573] The recapitalisation reform introduced by Soludo in 2004 – 2005 witnessed a series of mergers and acquisitions of banks. This created avenues for affluent individuals, wealthy families, and institutional investors to own substantial equity in Nigerian DMBs. The CBN code did not specify a limit for an individual or institutional shareholding; however, if individuals are to own equity above five percent, they must get CBN permission.[574] The CBN code specified that government shareholding in any Nigerian DMB should not exceed 10 percent by the end of the 2007 financial year.[575] However, based on the figures in Appendix A, government shareholding within the period under investigation contravened the CBN code by exceeding the maximum threshold in some banks. A private individual can own 100 percent equity in any DMB; all that is required is for such an individual to seek CBN's approval. The code did not specify any condition that should be met for CBN to approve investors' equity ownership above 10 per cent. Therefore, it is left to the discretion of CBN whether such requests are granted. This thesis argues that such unfettered discretionary power is likely to be abused because CBN independence, in reality, is subject to the whims and caprices of political officeholders like ministers and the President, as stated previously in the preceding chapter. Table A1 Appendix A show that some banks have 100

[573] Ikpefan Ailemen, 'Issues in Banking and Finance' (The Chartered Institute of Bankers of Nigeria 2012) p 11
[574] Ibid p.11
[575] Ibid

percent private equity ownership. For example, Equitorial Trust Bank, Fidelity Bank, Standard Chartered Bank and Union Bank had 100 percent private equity ownership in 2007.

From the figure in Table A1 Appendix A, the 100 percent equity in Standard Chartered Bank was owned by private individuals or institutional investors of foreign extraction. It is correct to refer to Standard Chartered Bank as a foreign bank operating in Nigeria. One of the reasons for distinguishing between foreign and domestic ownership structures is to show how ownership structure can affect corporate governance. For example, where foreigners own a substantial amount of equity in a DMB, there is a tendency that the corporate governance practice applicable in their home country will be adopted and applied in their host country.[576] Tables A1 – A4 in Appendix A reveal that the ownership pattern had stayed the same except during the time government-owned 100 percent equity in some banks because of its rescue interventions. For example, from 2011 to 2014, government equity holding in Mainstreet Bank, Keystone Bank and Enterprise Bank was 100 per cent.[577] These banks were bridge banks that CBN granted licences to take over Afribank, Bank PHB and Spring bank, respectively, as an interventionist approach to mitigate the possibility of a systemic financial failure.[578] Three failed banks, Afribank, Bank PHB and Spring Bank, were acquired by AMCON, making the government own 100 percent equity in those banks. It is worth mentioning that during the last quarter of 2014, Skye Bank and Heritage Bank Ltd acquired Mainstreet Bank Ltd and Enterprise Bank Ltd, respectively. In 2018, CBN revoked Skye Bank's licence following a

[576]Elewechi Okike, Emmanuel Adegbite, Franklin Nakpodia, Stephen Adegbite, 'A review of internal and external influences on corporate governance and financial accountability in Nigeria', International Journal of Business Governance and Ethics, vol. 10, no. 2, 2015, pp.165-185.

[577] NDIC, A Brief on Nigeria Deposit Insurance Corporation to The House Committee on Banking and Currency, October 2011, p.6 available at:< https://ndic.gov.ng/files/NDIC%20ACTIVITIES%20FOR%20THE%20HOUSE%20COMMITTEE%20ON%20BANKING%20AND%20CURRENCY.pdf> accessed 15 September 2021

[578] Chijioke Ohuocha, 'Exclusive: Nigeria's banking crisis seen resolved in 2011' Reuters 14 December 2011 available at: https://www.reuters.com/article/businesspro-us-nigeria-amcon/exclusive-nigerias-banking-crisis-seen-resolved-in-2011-idUSTRE6BD2QK20101214 accessed on 15 September 2021

series of financial difficulties due to poor corporate governance evidenced by its high non-performing loans and insider related dealings.[579] AMCON set up a bridge bank known as Polaris Bank to take over the assets and liabilities of Skye Bank. This move led to the government acquiring 100 per cent equity in Polaris Bank.[580]

As discussed in chapter three of this thesis, the Anglo-Saxon model assumes that ownership structure is dispersed. However, this thesis argues that such a model does not fit the Nigerian environment because of its highly concentrated ownership structure. The Anglo-Saxon model is designed to resolve the agency problem that arises from the separation of ownership from control. This thesis argues that the agency problem in Nigeria's banking sector due to the high ownership concentration may arise in the relationship between the majority shareholders and minority shareholders. The majority shareholders may also oversee the bank's management, thereby taking advantage of the social context and weak institutional arrangement to exploit minority shareholders. This is evident from the various banking scandals involving several CEOs, for example, Oceanic Bank, where a domineering shareholder took advantage of the challenging institutional environment to perpetrate fraud. The EFCC charged Mrs Ibru, the CEO who was also a majority shareholder, to court on several counts of fraud and related offences, amounting to ₦160.2 billion (approximately $1.35 billion). She was convicted of these offences and sentenced to 18 months' imprisonment. Following her conviction, she forfeited about 199 assets worth over ₦160.2 billion (approximately $1.35 billion).[581] Despite the mechanisms introduced to mitigate the agency problem, some bank CEOs / COB circumvents the corporate governance codes and the CBN's whistleblowing policy to

[579]Mohammed Kudu Ibrahim, 'Press Statement on the resolution of Skye Bank Plc' Thursday, 20th September 2018 available at: https://ndic.gov.ng/press-releases/press-statement-on-the-resolution-of-skye-bank-plc/ accessed 15 September 2021

[580] Ibid

[581] Federal Republic of Nigeria v Dr (Mrs) Cecilia Ibru, Charge FHC/L/297C/2009.

perpetrate all manners of frauds and other financial crimes. Therefore, the board structure as a corporate governance mechanism in Nigeria DMBs needs to be examined further to ascertain the extent it allows for the recognition of stakeholders and protection of stakeholders' interests.

6.4.1 Board Appointment

The Board of Directors is a major driving force in ensuring effective corporate governance as it sets the bank's strategic direction.[582] For the board to ensure effective corporate governance, its composition, leadership, integrity, and independence are sacrosanct. Apart from small companies, all companies incorporated in Nigeria shall have a minimum of two directors as provided for under s.271(1) CAMA 2020.[583] The law provides that small companies can have a minimum of one director; however, Nigerian banks will not fall under the small companies category because of the minimum capital requirement for establishing banks.

CAMA has not made provision for the maximum number of directors that a company can have, but the SEC code and the CBN code have some provisions on the size and composition of the board. The difference in the requirements of these two codes was used to determine which code banks have complied with. SEC code provides for a minimum of five directors,[584] but it is silent on the maximum number of directors as this is left to the banks' discretion to determine. The SEC code further recommends that the board be a mixture of executive and non-executive directors headed by a COB. Besides having non-executive directors, the SEC code recommends that most board members be non-executive directors with at least one independent director.

[582] Section 2.3, Securities and Exchange Commission Code of Corporate Governance for Public Companies 2011 p.2, Section 4.2 and 4.6 CBN, 'Code for Corporate Governance for Banks in Nigeria Post Consolidation' 2006 p.9
[583] S.271 (1) CAMA 2020
[584] Section 4.1 – 4.4 'Securities and Exchange Commission Code of Corporate Governance for Public Companies 2011 p.3

In dealing with board size,[585] the CBN code is silent on the minimum number of directors in the 2006 code; however, the revised CBN code stated that the minimum number of directors in a board should be five.[586] Another difference between the CBN code and the SEC code is the maximum number of directors. The SEC code did not provide for the maximum number of directors, as that will depend on the company's size and complexity; however, the CBN code has set a limit of 20 directors. SEC and CBN codes mandated that the board should have more non-executive directors. The CBN code seems to be stricter in terms of board independence because of the provision mandating the appointment of at least two independent directors, unlike the SEC code, which only mandates the board to have at least one independent director. Under S. 275 (1) CAMA 2020, a public company shall have at least three independent directors on its board.[587] To be appointed as a director, the SEC code requires the person to be of proven integrity, have the core competence, and be knowledgeable in board matters.[588] However, the CBN code also requires that such a person is of proven integrity and that the individual is knowledgeable in business and financial matters.

Based on the challenging institutional environment in Nigeria, social and political connections are key determinants when appointing directors.[589] Most directors in family-owned banks are either relative or close allies; choosing a director in most cases is unnecessary to monitor the executives as they are also the owners of the banks.[590] Therefore, this thesis argues that directors' appointments in Nigerian DMBs are more often not based on merit and integrity in most cases due to the ownership structure, which is highly concentrated. Due to the institutional

[585] Section 5.3.5 – 5.3.6 'Code for Corporate Governance for Banks in Nigeria Post Consolidation' 2006 p.13
[586] Section 2.2.1 Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014
[587] S 275 (1) CAMA 2020
[588]Section 4.4 'Securities and Exchange Commission Code of Corporate Governance for Public Companies 2011 p.3
[589] Muhammad Arslan, Ahmad Alqatan,'Role of institutions in shaping corporate governance system: evidence from emerging economy, Heliyon, Volume 6, Issue 3, 2020, p.9
[590] Ibid

environment in Nigeria, the appointment of directors in DMBs, particularly those that are family-owned, is highly influenced by tribalism, nepotism, socio-political and religious connections.[591] This thesis argues that a director appointed to the board based on favouritism is bound to show loyalty to those who influenced their appointment. For example, when siblings and other family members are appointed to the board, as was the case in the Oceanic Bank scandal, where the directors were related, family ties will supersede other stakeholders' interests. This has been one of the primary reasons for poor corporate governance in the Nigerian banking sector.[592]

6.4.2 Board Size

The SEC Code made no recommendation for the maximum size of the board; however, the CBN code suggested that the maximum size of the board should not be over twenty.[593] Between 2007–2018, no DMB board exceeded the maximum recommended by the CBN code. Tables B1 - B4 in Appendix B show that between 2007 – 2018, all the DMBs satisfied the provision of both codes, mandating that the board members should not be less than five persons.[594] Table B1 Appendix B shows a board size between 6 directors in Wema Bank and 20 directors in UBA. All the DMBs had ten or more directors during the periods under review save for Spring Bank in 2007 and 2009, Stanbic IBTC in 2007, Standard Chartered Bank and Wema Bank in 2007 – 2009 and Equatorial Trust bank in 2009. Table B2 Appendix B shows that in the fiscal year ending in 2010, 2011, and 2012 the board size of DMBs continued to be well above

[591] Chris Ogbechie, *Dimitrios* Koufopoulos, Corporate governance practices in publicly quoted companies in Nigeria. International Journal of Business Governance and Ethics, Vol. 3 (4) 2007 pp.350-381.
[592] Chris Ogbechie, Corporate Governance Practices and Leadership in Nigeria,' June 7, 2019, available at: < https://ssrn.com/abstract=3400913>, Section 2.4 Code of Corporate Governance for Banks in Nigeria Post Consolidation, available at: https://www.cbn.gov.ng/OUT/PUBLICATIONS/BSD/2006/CORPGOV-POSTCONSO.PDF accessed 15 September 2021
[593] Section 2.2.1 Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014
[594]Section 4.4 'Securities and Exchange Commission Code of Corporate Governance for Public Companies 2011 p.3, Section 2.2.1 Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014

average for all DMBs apart from Spring Bank, Wema Bank, and First Monument Bank had ten or fewer directors. In 2010 Spring Bank had a board size of three directors, which contravened the codes that put the minimum membership of the board at five.[595]

Table B3 Appendix B showed that most DMBs had a minimum of 10 directors on their board in the fiscal years ending 2013, 2014 and 2015, except for Standard Chartered Bank. The table also showed that Coronation Merchant Bank and FBN Merchant Bank had seven directors in 2015. Table B4 Appendix B shows the board size for 2016–2018; the average board size remains ten directors, and no DMB was below the minimum number of 5 directors as prescribed by both codes.[596]

6.4.3. Board Composition

The agency theory supports having more non-executive directors than executive directors on the board, which underpins both corporate governance codes.[597] Table B1 Appendix B shows the board composition for the 2007-2009 fiscal year. Regarding compliance with the provisions requiring more non-executive directors on the board, all the DMBs except Oceanic Bank, Union Bank and Zenith Bank had more non-executive directors than executive directors on their board in 2007. However, in the 2008 fiscal year, Afribank, Wema Bank and Zenith Bank contravened codes regarding having more non-executive directors than executive directors on their board. Table B1 shows that in 2009, all the DMBs complied with the requirement to have more non-executive directors than executive directors on the board, except for Afribank, Equatorial Bank Ltd, First Bank Nigeria, Spring Bank and Wema Bank. Compliance was still

[595] Section 4.2, 'Securities and Exchange Commission Code of Corporate Governance for Public Companies 2011 p.3

[596] Section 4.2, 'Securities and Exchange Commission Code of Corporate Governance for Public Companies 2011 p.3, Section 2.2.1 Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014

[597] Section 2.2.3 Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014

an issue, as evident from the data in Tables B2 – B4, which shows that majority of DMBs, in theory, had complied with the provision and had more non-executive directors on their boards; however, there were still a few DMBs that failed to comply.

6.4.4 Board Independence

In theory, many factors can promote the board's independence. First is the separation of the CEO's office from that of the COB, as discussed in chapter four of this thesis, based on the agency theory, which underpins the Anglo-Saxon model practised in the Nigerian banking sector; fusing these positions can erode the independence of the board.[598] The CEO shall oversee the bank's day-to-day running while the COB oversees the board of directors. All codes except for the SEC 2003 contained a requirement that two different people who must not be from the same extended family should occupy the two offices. The SEC code 2003 did not make the separation of both offices a compulsory requirement but had suggested that the position of the COB and the CEO should preferably be separated and held by different individuals.[599] Despite the variation between the SEC code and CBN code regarding this particular requirement, all the DMBs complied with the CBN code by separating the CEO's office from the COB since the 2007 fiscal year.

Another way to ensure board independence is the requirement that besides the board comprising more non-executive directors than executive directors, a proportion of the non-executive directors must be independent. The CBN code did not define who is an independent director. However, the guideline for appointing independent directors defined it as a director that does not represent any particular shareholder interest and holds no business interest in the

[598] Section 2.3.1 Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014
[599] SEC, Code of Corporate Governance for Public Companies 2003

bank.[600] For example, CAMA 2020 provides that a board of a publicly listed company shall have a minimum of three independent directors.[601] The CBN code requires the appointment of at least two independent directors, while the SEC code requires the board to have at least one independent director.

From the data in Table B1 in Appendix B, no DMB had an independent director on their board in 2007 and 2008. In 2009, only ten DMBs had at least complied with the requirement for having independent directors on the board; however, the remaining 14 breached both the SEC code and the CBN code, requiring at least one independent director or two independent directors, respectively. Tables B2, B3 and B4 in Appendix B show the data set for 2010 – 2018, although there seem to be more DMBs with one independent director on their board. However, many DMBs were still in breach of SEC code and CBN code provisions requiring them to have at least one independent director as per SEC code or two independent directors as per CBN code.

This thesis argues that for the board to be truly independent, there should be more independent directors because independent directors have no particular interest in the bank, unlike the non-executive directors appointed to represent shareholders' interests. More often than not, the appointments of non-executive directors are based on favouritism rather than on merit, and such appointments limit the board's oversight function and independence.[602] Therefore, having

[600]CBN, 'Guidelines for the Appointment of Independent Directors,' Circular to All Banks, BSD/DIR/GEN/CIR/VOL.1/013, 26 OCTOBER 2007, available at<https://www.cbn.gov.ng/out/circulars/bsd/2007/guidelines%20for%20the%20appointment%20of%20independent%20directors.pdf> accessed 15 September 2021

[601] S. 275(1) CAMA 2020

[602] Peter Klein, Daniel Shapiro, Jeffrey Young, Corporate governance, family ownership and firm value: the Canadian evidence. Corporate Governance: An International Review 13(6) 769–784. Wiley Blackwell, vol. 13(6) November 2005, pp 769-784,

more independent directors whose appointments are solely on merit will help promote stakeholder recognition and protect stakeholders' interests.

Enforcement of the code is of utmost concern. Data from Tables B2, B3, and B4 in Appendix B indicates that some DMBs were still in breach of the CBN code, requiring them to have a minimum of two independent directors on their board several years after the directive was issued. One would argue that the main reasons for this non-compliance are the result of the CBN's ineffective supervisory and enforcement technique. There have been no severe actions against those who failed to comply with the codes. Although the CBN code states that compliance with the code is mandatory,[603] it also states that failure to comply with its provisions would attract sanctions under BOFIA or as may be specified in any applicable legislation or regulation.[604] This thesis argues that CBN as a regulator is neither proactive nor reactive in its approach because a proactive regulator will put the necessary mechanism in place to ensure DMBs comply with the code's requirements. Likewise, a reactive regulator would have acted against those DMBs that are not complying with the code's requirements. The regulatory powers conferred on CBN under BOFIA empower it to impose sanctions on DMBs that failed to comply with their licence conditions; it is argued that taking such steps against the defaulters will serve as a deterrent to others.[605] The CBN code further mandated DMBs to report on their compliance with the provision of the code to CBN at the end of each quarter; however, one cannot be certain whether these reports are sent to CBN as required.[606] Most of the annual reports examined revealed that most banks in their compliance statements declared that they have complied with both the SEC and the CBN codes, and if there were discrepancies

[603] Section 8.1 1 Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014
[604] Ibid Section 8.1.3
[605] Ibid
[606] Ibid Section 8.1.2

in the codes, they have complied with the CBN code, which is the sector-specific code for the banking sector.[607] This raises an issue concerning the nature of these disclosures on the part of the DMBs. The banks should be required to make full and transparent disclosures for the benefit of all their stakeholders. Failure to make such disclosures, CBN should invoke its powers under the s.33(1) BOFIA 2020 to investigate the DMBs in the interests of the public and apply appropriate sanctions on defaulting DMBs.[608] If proper investigations are carried out, CBN, as a proactive regulator, will detect the non-compliance with the requirement of the code by DMBs and will be able to address the issue before it develops into a banking crisis. For example, CBN has powers under BOFIA to carry out on-site and off-site examinations of DMBs, including the appointment of more qualified persons other than the officers of CBN to investigate the books and affairs of the DMBs.[609]

6.4.5 Board Committees

The board of directors of DMBs in Nigeria operates through subcommittees to effectively discharge its responsibilities. Both the SEC code and the CBN code provide for establishing board committees. For example, the SEC code provided for a minimum of three board committees, including the audit committee, risk management committee, and governance/remuneration.[610] Save for the governance/remuneration committee, which membership shall be exclusive to non-executive directors; the SEC code is silent on the composition of the audit and risk committees. It is not clear if those committees should comprise either executive directors or non-executive directors, or both.

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[607] GTBank Annual Report 2015, p.15, available at: < https://www.gtbank.com/uploads/financial-information/2015-Year-End-Audited-Results.pdf> accessed 22 September 2021
[608] S.33 (1) BOFIA, 2020
[609] S.33 (2) BOFIA, 2020
[610] S.9.2 'Securities and Exchange Commission Code of Corporate Governance for Public Companies' 2011 p.7,

On the other hand, the CBN code provided for establishing a minimum of four Board committees, namely, Risk Management and Audit functions (which can be performed by one committee depending on the size of the bank), the Board Governance and Nomination Committees.[611] The CBN code further specified that all board committees must have a charter that DMBs are obligated to submit to the CBN for approval.[612] The board audit committee differs from the mandatory statutory audit committee required under s.404(3) CAMA 2020, as both committees have different functions.[613] While the function of the Board Audit Committee is an oversight committee that investigates the board's activities in general terms, the Statutory Audit Committee is to scrutinise the audited financial statements and accounts to ensure objectivity, integrity and independence of the external auditors. The COB cannot be appointed a member of any board committee, let alone head any board committee; all board committees are to be headed by non-executive directors to ensure the independence and transparency of those committees.[614]

Membership of each committee is dependent on the Board size and availability of directors. So, where the Board size is small, for example, Table B1 in Appendix shows Wema Bank having Six directors between 2007-2009; all the directors will be shared in the different committees except the COB. Therefore, all the members will have to serve in all the committees apart from the specific committee; for example, the remuneration committee requires only non-executive directors as members. Assigning the same people to different committees and merely changing the chair supports the argument that different Board committees may not necessarily guarantee Board independence, primarily when the compositions of these committees are not

[611] S.2.5.1 Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014
[612] Ibid S.2.5.2
[613] Ibid S.2.5.1(i)
[614] Ibid S.2.5.4

determined by the qualifications, competence and experience of its members. The committees could be subject to manipulation in the hands of domineering CEOs/COBs, particularly in family-owned DMBs. For example, the 10 DMBs that failed in 2009 and recently, Skye Bank had the Risk Management Committee and the Credit Committee. However, they could not deliver on their oversight function, as the banks failed because of the absence of an appropriate Risk Management Framework.[615] The institutional environment in Nigeria affects how directors are appointed to the board and are allocated to board committees. As stated above, those appointed may lack the required skills, training, and experience to perform their oversight functions since they were not chosen on merit in the first place.

6.4.6 Board Gender Diversity

In recent times, board gender diversity has been a topical issue in the corporate governance discourse, particularly in the banking sector. The issue of gender imbalance has become apparent in the boardroom of DMBs in Nigeria. Under the extant laws in Nigeria, there are no specific provisions for board gender diversity; neither the SEC code nor the CBN code made any specific provisions dealing with board gender diversity. However, in an attempt to remedy that defect, the CBN, on 24 September 2012, issued the 'Nigerian Sustainable Banking Principles.'[616] As previously stated above, Principle four, which deals with women's economic empowerment, mandated DMBs to have at least 30 percent of women representation on their boards, and 40 percent of top management positions should be women should be occupied by the end of December 2014.[617] DMBs were required to disclose compliance with this directive in their annual reports by stating the statistics of female representation.[618]

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[615]Sanusi L. Sanusi (2010) Global Financial Meltdown and the Reforms in the Nigerian Banking Sector, CBN Journal of Applied Statistics Vol. 2 No.1 P 93. 98

[616]CBN, 'Nigerian Sustainable Banking Principles,' Central Bank of Nigeria July 2012 available at:< https://www.cbn.gov.ng/out/2012/ccd/circular-nsbp.pdf> accessed 15 September 2021

[617] Ibid p.19

[618] Ibid p.21

This thesis argues that the above CBN directive was to stimulate women's participation in national development to enable them to contribute meaningfully to the economy and society. Before CBN issued this directive, only a few women were desirous of pursuing top management positions within the banking sector; one of the reasons was that men heavily dominated the banking sector resulting in women playing second fiddle.[619]

On 3 March 2014, Sarah Alade, the then CBN Acting Governor, reaffirmed the need for women's representation in the board/management of DMBs in line with the CBN regulatory directive and the need for CBN to carry out a compliance check by December 2014.[620] According to her, CBN expects compliance from all DMBs, as there was a sense of agreement between the CBN and DMBs that they should increase the number of women on boards for economic growth sustainability.[621] She emphasised the need for the banking sector to increase the number of women participating in the decision-making process of the banks for the benefit of all stakeholders by ensuring that women should fill at least 40 percent of top management positions and 30 percent of board positions from now on.[622] One significant flaw with the above regulatory directive is that it lacks a proper enforcement mechanism. It did not contain sanctions for DMBs that failed to adhere to it. This thesis argues that though the above is a CBN's directive, it does not mean it is less important than the code. CBN has issued this directive to promote women's participation in national development and in line with its powers to make rules and regulations for the operation and control of all institutions under its supervision[623] and powers under s.67(1)(a) BOFIA 2020 to make regulations and issue

[619] Folarin Alayande, where have all the Women Gone? Thisday Newspaper, 7 March 2020, available at: <https://www.thisdaylive.com/index.php/2020/03/07/where-have-all-the-women-gone/> accessed 22 May 2021
[620] CBN reviews 40% women board slot, The Nation Newspaper, 5 March 2014 available at: https://thenationonlineng.net/cbn-reviews-40-women-board-slot/ access 22 September 2021
[621] Ibid
[622] Ibid
[623] S.56 (2) BOFIA, 2020

guidelines regarding corporate governance, CBN should have imposed sanctions such as fines on DMBs for failing to comply with this directive.[624]

One may also argue that DMBs' failure to comply with the directive resulted from Nigeria's institutional context; for example, Nigeria is a patriarchal society with a strong culture of male dominance and women playing second fiddle.[625] Another point worth mentioning is that perhaps the banks did not receive relevant quality applications from the women and are therefore not responsible for the inadequate representation and low number on the board.[626] This could be one of the possible reasons for CBN's reluctance to impose sanctions despite the insistent breaches by the DMBs to comply with the directive.[627]

Table C1 in Appendix C shows the percentage of female representation in Nigeria's DMBs in 2015; the data revealed that only four out of the 24 DMBs: Access Bank, FSDH Merchant Bank Ltd, Unity Bank and Wema Bank, had 30 percent female representation in their board. The number of women occupying the top positions of CEO and COB was insignificant compared to their male counterparts. Table C1 Appendix C shows that only five out of the 24 DMBs had either a female CEO or COB. Three DMBs, namely Access Bank, First Bank Nigeria and GTBank, had female COBs, while Standard Chartered Bank and Unity Bank had female CEOs. A woman was appointed the new COB of GTBank Board on 31 March 2015, making her the first woman to occupy that position since the bank began operation on 17

[624]S.29 BOFIA, 2020, S.67(1)(a), BOFIA, 2020,
[625] Godiya Allanana Makama, 'Patriarchy and Gender Inequality in Nigeria: The Way Forward,' European Scientific Journal, Vol 9 No (17) June 2013, p115. Available at: https://doi.org/10.19044/esj.2013.v9n17p%p
[626] Helen Ojo, 'Mojekwu, Awosika, seek adoption of 30% female representation on board of Nigerian firms,' The Guardian 21 September 2018, available at: < https://guardian.ng/business-services/mojekwu-awosika-seek-adoption-of-30-female-representation-on-board-of-nigerian-firms/> Onyinye Nwachukwu, 'Emefiele: When a Central Bank governor doubles as women's cheerleader,' BusinessDay 4 August 2021, available at: < https://businessday.ng/features/article/emefiele-when-a-central-bank-governor-doubles-as-womens-cheerleader/> accessed 5 May 2022
[627] Ibid

January 1990.[628] Another woman was appointed as the new COB of Access Bank on 30 July 2015.[629] Also, First Bank Nigeria appointed a woman as the COB on 7 September 2015, making her the first woman to occupy that position since the bank was established in 1894.[630] Other women have generally been appointed as CEOs or COB in different companies in Nigeria; however, the number of women appointed in the Nigerian banking sector is relatively small because the sector is heavily dominated by men, as shown by figures in Appendix C. A few women had made it to the top positions of COBs and CEOs in the Nigerian banking sector; for example, a woman was appointed the CEO of Stanbic IBTC Bank from 2011 to 2012.[631] Standard Chartered Bank appointed women as CEOs from 2011 to 2018,[632] and Unity Bank, on 11 August 2015, appointed a woman as CEO, a position she still occupies to date,[633] making her the first female to occupy that position since the bank was founded in 2006. It is also important to note that in the fiscal year ending in 2015, as indicated in Table C1 in Appendix C, Jaiz Bank did not have any female representation on its board.

Table C2 in Appendix C shows a similar trend in 2016 as in the previous year in board gender diversity. The table shows that only four out of twenty-five DMBs had 30 percent or more female representation on their board. These are Access Bank 35.7 per cent, Citibank Nigeria 33.33 per cent, Standard Chartered Bank 42.85 per cent and Wema Bank 33.33 per cent. Table

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[628] Business Journal, 'GT Bank Appoints Osaretin Demuren as New Chairman, 28 April 2015, available at:<https://www.businessjournalng.com/gt-bank-appoints-osaretin-demuren-as-new-chairman/> accessed 22 September 2021

[629] Wale Odunsi, 'Mosun Belo-Olusoga replaces Gbenga Oyebode as Access Bank Chairman,' Daily Post Newspaper 31 July 2015, available at:< https://dailypost.ng/2015/07/31/mosun-belo-olusoga-replaces-gbenga-oyebode-as-access-bank-chairman/> accessed 22 September 2021

[630] First Bank of Nigeria Board of Directors, available at:< https://www.firstbanknigeria.com/about-us/the-leadership/board-of-directors/ibukun-awosika-profile/> accessed 22 September 2021

[631] Stanbic Bank Our Leadership, available at: https://www.standardbank.com/sbg/standard-bank-group/who-we-are/our-leadership/Sola,David%E2%80%93Borha accessed 22 September 2021

[632] Standard Chartered Bank Press Release, 'We've announced key appointments in Africa' 27 December 2018 available at: < https://www.sc.com/en/media/press-release/weve-announced-key-appointments-in-africa/> accessed 22 September 2021

[633]Unity Bank Board of Directors, available at: < https://www.unitybankng.com/board-of-directors> accessed 22 September 2021

C2, Appendix C also showed no change in the DMBs, with females occupying the top position of COBs/CEOs in 2016. The figures from Table C2 revealed that 21 DMBs fell short of meeting the threshold of women's participation in the board as directed by the CBN. For the second year, Jaiz Bank had no female participation on its board. This raises the issue of adequate enforcement mechanisms and sanctions for non-compliance, as over 80 percent of the DMBs have failed to meet the required threshold. As there is a reporting obligation mandating DMBs to disclose the number of women on their board in their annual reports, the CBN cannot claim they are unaware of such a high level of non-compliance. Except otherwise, the DMBs involved failed to make full and transparent disclosures in that regard. Considering how DMBs breach the directive, one would wonder if CBN had intended for the directive to have no force of law and not just a mere recommendation. CBN should have taken punitive action against defaulting DMBs even though the directive did not recommend any specific punishment for failure to comply; CBN could rely on its powers under s.12 (g) BOFIA 2020 to sanction DMBs for breaching their licences' conditions.[634]

Table C3 in Appendix C show the number of women on the boards of DMBs in the 2017 fiscal year; while the number of DMBs with 30 percent or more female representation in their board has increased compared to the previous years, 18 DMBs failed to meet the required threshold as directed by the CBN. From the data in Table C3 Appendix C, only eight DMBs met the requirement in the 2017 fiscal year. These are Access Bank 35.29 per cent, Citibank 38.46 per cent, Coronation Merchant Bank 30 per cent, FSDH Merchant Bank 36.36 per cent, FCMB 36.36 per cent, Stanbic-IBTC 30 per cent, Unity Bank 33.33 per cent and Wema Bank 33.33 per cent. Table C3 Appendix C revealed that Jaiz Bank and Skye Bank had no female representation on their board. For the third consecutive year, Jaiz Bank had not complied with

[634] S.12(g) BOFIA, 2020

the CBN regulatory directive that women fill at least 30 percent of board positions. Skye bank also did not comply because the CBN appointed all-male members to the board when it dissolved the Bank's board in 2016.[635] One would expect that the CBN should have at least complied with its directive on board gender diversity by constituting a board with at least 30 percent of women. Table C3 Appendix C also shows no changes in the number of females who occupied the top positions of COBs/CEOs for the third year running.

Table C4 Appendix C shows data for the 2018 fiscal year. The figures revealed that only six DMBs complied with the directive to appoint 30 percent or more female representation on their board. The six DMBs are Access Bank 33.33 per cent, Citibank 38.46 per cent, FCMB 36.36 per cent, GTBank 30.76 per cent, Stanbic-IBTC 37.5 per cent and Wema Bank 45.45 per cent. Jaiz Bank remained the only DMB with no female representation on its board for four consecutive years. It is also evident from Table C4 Appendix C that women occupying the top positions of COBs/CEOs in Nigerian DMBs remained the same for the fourth consecutive year. So, Access Bank, First Bank and GTBank continued to have women as their COBs, while Chartered Standard Bank and Unity Bank were the only two DMBs with female CEOs. The socio-political environment in Nigeria is a contributing factor that militates against board gender diversity, particularly women's representation on the boards of DMBs. As stated above, Nigeria is a patriarchal society where most people tend to undermine women's ability to contribute to economic development against the backdrop of many Nigerian women who have excelled in various professional careers. This cultural belief extends to the banking sector, as evident in the level of non-compliance with CBN's regulatory requirement to promote gender diversity in the Board of DMBs. The level of non-compliance, as indicated by figures in Table

[635]CBN Press Release, 'Central Bank of Nigeria makes Board and Management Changes at Skye Bank Plc, available:<https://www.cbn.gov.ng/out/2016/ccd/cbn%20press%20statement%20on%20skye%20bankjuly%20040716.pdf > accessed 24 September 2021

C1 – C4 in Appendix C, is relatively high. Tables C1 and C2 in Appendix C show that 20 percent of board members for Nigerian DMBs were women as of 2015 and 2016. Table C3 and C4 Appendix C show that 21 percent of board members for Nigerian DMBs were women as of 2017 and 2018, respectively. Therefore, the overall number of women on the Board of Nigerian DMBs is still below the 30 per cent threshold set by CBN nine years after introducing the Nigerian Sustainable Banking Principles.[636]

6.4.7 Executive Compensation

Executive compensation in the banking sector has generated many ferocious debates in recent times, particularly in the wake of the global financial crisis of 2007-2009, as already discussed in chapter four of this thesis.[637] Both codes dealt with, to some extent, executive compensation in the Nigerian banking sector. The SEC code states that executive directors' remuneration should be determined based on the director's skills and experience, and only non-executive directors shall determine executive directors' pay.[638] On the other hand, the CBN code requires all DMBs to have a remuneration policy for executive directors, and DMBs must disclose the policy in the banks' annual reports.[639] Like the SEC code, the CBN code also states that only non-executive directors can determine executive directors' pay.[640] Based on the above provisions, this thesis argues that there is no uniformity within the same DMB in the executive directors' remuneration; executive compensation varies from one director to another due to several factors such as each director's experience, qualifications, and expertise. Both codes are

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[636]Implementation of Sustainable Banking Principles by Banks, Discount Houses and Development Finance Institutions in Nigeria, CBN Circular Ref No. FPR/DIR/CIR/GEN/01/33, 24 September 2012 available at:< https://www.cbn.gov.ng/out/2012/ccd/circular-nsbp.pdf>

[637] **Error! Bookmark not defined.**, see also, House of Commons Treasury Committee, Banking Crisis: reforming corporate governance and pay in the city, Ninth Report of Session 2008–09, 12 May 2009, p8, available at: <https://publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/519/519.pdf >accessed 24 September 2021

[638] Section 14.2 – 14.3, Securities and Exchange Commission of Nigeria, Code of Corporate Governance for Public Companies 2011, p.9

[639] Section 2.7.4 – 2.7.5, Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014

[640] Ibid

silent on the limit of the executive director's remuneration; unlike in the UK, where there is a separate remuneration code for banks, the PRA and FCA Remuneration Codes are designed to reduce excessive risk-taking in the banking sector.[641] It is argued that though the thesis does not expect the SEC and CBN codes to impose a cap on executive remuneration, however, they must provide a safeguard against the risks created by the way remuneration arrangements are structured. Although the CBN code requires DMBs to disclose the banks' remuneration policy in the annual reports to shareholders, there is no requirement that the remuneration policy is subject to shareholders' approval. It is expected that shareholders will vote on the remuneration of executive directors during the general meeting even though it is not stated expressly in the code. However, CAMA 2020 provides that DMBs shall determine the executive directors' remuneration in general meetings.[642] Therefore, even though the non-executive directors determine the remuneration of executive directors, one would argue that because non-executive directors are appointed based on connections, a CEO who is a majority shareholder can influence executive directors' pay. Although CAMA 2020 purported to offer some safeguard by suggesting that shareholders in general meetings should approve executive directors' remuneration,[643] this thesis argues that this is a mere formality. Because the non-executive directors are appointed based on connections, the majority shareholder will ensure that they approve the remuneration packages, especially if the DMB in question is a family-owned bank.

Directors can claim expenses incurred in attending meetings, including hotel expenses, travelling expenses, and feeding expenses. Both codes have no provision to control the maximum claim for such expenses. There is a need to limit the maximum amount claimed as expenses because of corruption, as expenses claims are avenues through which directors could

[641] PRA/FCA Senior Management Arrangements Systems and Controls sourcebook, Chapter 19A, available at: < https://www.handbook.fca.org.uk/handbook/SYSC/19A/?view=chapter> accessed 10 May 2022
[642] Section 257 CAMA 2020
[643] Ibid

perpetrate fraud against the banks.[644] There are no provisions in CAMA 2020, CBN code or SEC code prohibiting performance-related compensation to directors. The agency theory argues that if directors' compensation is not linked directly to firm value by shareholders, directors may lack incentives to maximise shareholders' interests, or they may seek to consume the perquisites at the firm's expense.[645] Therefore, this thesis argues that the payment of bonuses directly linked to short-term performance is one reason directors embark on excessive risk-taking and, if not checked, it can lead to bank failure.[646] Excessive risk-taking in the banking sector arises when the board encourages directors and senior management to engage in risky ventures due to performance-related benefits to be derived in the short run.[647] For example, such situations arise when strategic decisions by directors are motivated by the consideration of their bonuses, short-term share price movements, or shareholders' short-run interests rather than the interest of the bank and stakeholders such as employees and customers in the long run.[648]

The common practice in the Nigerian banking sector is that directors are paid bonuses randomly that may have no bearing on bank size, return on assets, and financial or non-financial performance.[649] For example, Zenith Bank pays its non-executive directors a productivity bonus, which is usually paid at the end of every financial year.[650] It is argued that since there

[644] Olaoye Olatunji, Dada Adekola, 'Analysis of Frauds in Banks: Nigeria's Experience,' European Journal of Business and Management, Vol.6, No.31, 2014, pp.90-99
[645] Keith Harvey, Ronald Shrieves. 'Executive Compensation Structure and Corporate Governance Choices,' Journal of Financial Research Vol 24 (4) 2001, pp 495–512, p497
[646] Raghuram Rajan, 'The Credit Crisis and Cycle-Proof Regulation,' Federal Reserve Bank of St. Louis Review, September/October 2009, Part 1, pp. 397-402, available at: https://doi.org/10.20955/r.91.397-402
[647] Hamid Mehran, Alan Morrison, Joel Shapiro, Corporate Governance and Banks: What Have We Learned From the Financial Crisis? In: Mathias Dewatripont, Xavier Freixas, (eds.) The Crisis Aftermath: New Regulatory Paradigms, Centre for Economic Policy Research, London 2012, p.11
[648] Ibid
[649] Appah Ebimobowei, Tebepah Sekeme Felix, Awuji Charles Evans, 'Directors' Compensation and Financial Performance of Deposit Money Banks in Nigeria,' World Journal of Finance and Investment Research Vol. 5 No. 1 2020, pp. 61 - 76
[650]Zenith Bank Plc Annual Report December 31, 2018, p. 36 available at:< https://www.zenithbank.com/media/2755/2018-annual-report.pdf> accessed 24 September 2021,

are no set criteria to qualify for the productivity bonus other than attendance at board and committee meetings, the payment of the productivity bonus is a way of depleting the banks' resources and compromising the independence of the non-executive directors.[651] The SEC code warns that remuneration paid to non-executive directors should not be such that would compromise their independence, and making such random payment is in breach of the code. In dealing with non-executive directors' remuneration,[652] the CBN code divided it into two key components, the directors' fee and sitting allowances for attending board and committee meetings. Besides the above fees, non-executive directors may claim expenses such as travel and hotel expenses incurred because of attending board or committees' meetings; however, this can only be claimed where the banks have not initially covered such expenses.

The CBN code states that non-executive directors are not entitled to other benefits or salaries. For example, they cannot receive share options or bonuses other than directors' fees and sitting allowances for board and committee meetings.[653] The CBN code failed to set a maximum threshold on the non-executive directors' fees like the SEC code. It also failed to put a cap on the maximum amount non-executive directors can claim as expenses, thereby creating a loophole for exploitation by the directors.[654] This thesis argues that the practice of paying productivity bonuses to non-executive directors by DMBs breaches the CBN code[655] because 'productivity bonus' does not fall into any categories of compensation that non-executive directors are supposed to receive as stipulated by the codes. The categories of compensation that non-executive directors are entitled to are directors' fees, sitting allowances for board or

[651]Section 14.6 'Securities and Exchange Commission of Nigeria, Code of Corporate Governance for Public Companies 2011, p.10
[652] Section 2.7.7, Code of Corporate Governance for Banks and Discount Houses and the Guidelines for Whistle Blowing in the Nigerian Banking Sector 2014
[653] Ibid
[654] Olaoye Olatunji, Dada Adekola, 'Analysis of Frauds in Banks: Nigeria's Experience,' European Journal of Business and Management, Vol.6, No.31, 2014, pp.90-99
[655]Zenith Bank Plc Annual Report December 31, 2018, p. 36 available at: https://www.zenithbank.com/media/2755/2018-annual-report.pdf accessed on 24 September 2021,

committee meetings, and reimbursement of any expenses incurred during the attendance of meetings, such as travel and hotel expenses.

6.4.8 External Auditors

To ensure transparency and accountability of the board, from an agency perspective, external auditors are an essential mechanism of corporate governance.[656] To some extent, external auditors' roles regarding corporate governance were stated in CAMA 2020. For example, section 407(1) (a) (b) stated that the auditors are required to report that proper accounting by the banks and that the bank's balance sheet is an accurate reflection of the accounting records and return of the bank.[657] For the auditors to carry out their function effectively, every bank's auditor shall access the bank's books of accounts, vouchers, and information or explanation to enable them to discharge their duties.[658] The external auditors must consider the correctness of the information in the directors' annual reports for the fiscal year the accounts are being prepared; if there are any inconsistencies, the auditors shall state that fact in their reports.[659]

As previously stated in chapter four, the role of the external auditors in ensuring market discipline is in the public interest. External auditors must scrutinise the bank's account to protect all stakeholders' interests, as such information will enable them to make informed decisions. However, there may be instances where directors are not transparent in disclosures to external auditors. Specific material facts are concealed from the auditors, and such misleading disclosures will hinder the auditors' ability to give an accurate opinion of the banks' actual financial position. For example, where directors maintain two separate books of account and only provide one to the auditors, the second one, which reflects the banks' actual financial

[656] Jill Solomon, 'Corporate Governance and Accountability,' (4th edn Chichester, UK, John Wiley and Sons, Inc) 2013. P167
[657] Section 407 (1) (a) (b) CAMA 2020
[658] Ibid Section 407 (3)
[659] Ibid Section 407 (5)

position, is hidden from the auditors.[660] Auditors may also conspire with the directors to misrepresent the bank's financial position.[661] A firm of auditors called Akintola Williams Deloitte was indicted for colluding with the board of directors of Afribank to overstate the bank's accounts intentionally.[662] Other accounting firms like KPMG, PricewaterhouseCoopers and Ernst and Young have been implicated in allegations of financial misappropriation, false accounting, deliberate financial engineering, and financial misstatements of audited accounts of DMBs in Nigeria.[663] The above auditing firms audited the financial reports of the Nigerian DMBs that collapsed in 2009. Therefore, beyond the provisions of auditory functions in the codes, there is no mention of any punishment for an auditor engaging in various malpractices. However, the common law has broadened the categories of persons external auditors owe these duties to.[664] They include shareholders and other stakeholders who suffer loss or damage because of the auditor's negligence. Despite the above right that other stakeholders have in suing the auditors, the threshold required for success is extremely high. The plaintiffs must show that the auditors knew that the financial statements would be sent to them, and they are likely to rely on it in entering into a transaction to their detriment. One expects to see several cases concerning auditors' liability in the Nigerian banking sector, considering the role auditors have played in the 2009 banking crisis; however, there are no cases in this regard.

Thus far, this thesis has examined corporate governance in the Nigerian banking sector using the mechanisms identified in Chapter four. It has explored the role of the board of directors as

[660]Chijioke Nelson, 'Investigations uncover serial alleged frauds by Skye Bank Plc's managers,' The Guardian Newspaper 14 November 2018 available at: https://guardian.ng/business-services/investigations-uncover-serial-alleged-frauds-by-skye-bank-plcs-managers/ accessed 24 September 2021

[661]Owolabi Bakare, 'The unethical practices of accountants and auditors and the compromising stance of professional bodies in the corporate world: Evidence from corporate Nigeria, Accounting Forum, 31:3, pp. 277-303, p.279, available at:< https://www.tandfonline.com/doi/pdf/10.1016/j.accfor.2007.06.001> accessed 24 September 2021

[662]Ibid

[663]Julius Otusanya, Sarah Lauwo, 'The Role of Auditors in the Nigerian Banking Crisis,' Accountancy Business and the Public Interest, Vol. 9, 2010, pp.159 -204, p.179

[664] Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] A.C. 465

a corporate governance mechanism in the Nigerian banking sector by analysing its key characteristics, such as Board Appointment, Board Size, Board Independence, Board Committees, Board Gender Diversity, Board Composition, Executive Remuneration and External Auditors. The analysis in this section shows that the corporate governance framework in the Nigerian banking sector is shareholder centric in nature. As stated previously in chapter four, one way of ensuring that other stakeholders' interests are recognised and protected is through CSR; therefore, this thesis examines the CSR practice in the Nigerian banking sector in the next section below.

6.5 Corporate Social Responsibility in the Nigerian Banking Sector

As stated above, CSR ensures stakeholders are recognised and their interests protected; consequently, this thesis investigates how the CSR regulatory framework in Nigeria has helped promote stakeholders' recognition and protection of stakeholders' interests in the banking sector.

6.5.1 Regulatory Framework for CSR in Nigerian Banks

A member of the Nigerian Senate, Mr Chukwumerije had in 2008 sponsored a CSR Senate Bill No.27 seeking to establish a Corporate Social Responsibility Commission.[665] The bill was to have a uniform CSR framework that requires companies to spend a minimum of 3.5 percent of their gross profits on CSR initiatives.[666] The bill faced many criticisms, especially from corporations questioning the rationale for regulating CSR, even though some countries have introduced a specific form of legislated CSR. For example, the Indian Companies Act 2013, introduced a new form of CSR regulatory framework that mandates listed companies to spend

[665]Adaeze Okoye, 'Exploring the relationship between corporate social responsibility, law and development in an African context: Should government be responsible for ensuring corporate responsibility?' International Journal of Law and Management, Volume 54, Number 5, 2012, pp. 364-378 p.371

[666] Ibid

at least two percent of their average net profits of the preceding three years on their annual CSR activities in India.[667] Indonesia had, in 2007, amended its Companies and Investment Law to enable it to regulate its CSR activities.[668] As stated in chapter four of this thesis, CSR in the Nigerian context differs from how CSR is perceived in western contexts due to Nigeria's socio-economic developmental challenges. CSR in a western context may focus on consumer protection, fair trade, green marketing, climate change, and socially responsible investments. However, CSR in Nigeria may need to address poverty eradication, infrastructural development, healthcare provision, financial inclusion, gender equality, and access to education because of the socio-economic developmental challenges in the country, which have resulted from the inability of the government to provide basic amenities for its citizens. Therefore, as good corporate citizens, DMBs are required to contribute to Nigerian society on many fronts by helping to alleviate the plight of the citizens through the provision of social and infrastructural facilities, amongst others.

Apart from the above CSR bill introduced in 2008, there have been other attempts to regulate CSR in Nigeria; one of such initiatives is the Corporate Social Responsibility Bill 2015, House of Representatives Bill No.117.[669] The bill made it mandatory for companies having a net profit of N500 million during any financial year[670] to spend at least one percent of their average net profits of the preceding three years on yearly CSR activities in Nigeria.[671] This 2015 bill was first introduced to the House of Representatives on 8 December 2015. It was read for the second time on 15 December 2015 and referred to the House Committees on Commerce and Justice

[667] S135 Indian Company Act 2013
[668] Armand Maris, 'Compulsory CSR: Indonesia takes a tough stance but clarity on definitions is lacking,' available at: < https://www.ipra.org/news/itle/compulsory-csr-indonesia-takes-a-tough-stance-but-clarity-on-definitions-is-lacking/> accessed 24 September 2021
[669] CSR (Special Provisions, etc.) Bill, 2015
[670] S.1 CSR (Special Provisions, etc.) Bill, 2015
[671] S.3 CSR (Special Provisions, etc.) Bill, 2015

for further deliberation. However, like its 2008 predecessor, the bill failed to make it to the third reading.

Another effort worthy of mention is the Financial Reporting Council of Nigeria Act (Amendment) Bill 2018, House of Representatives Bill No.1314.[672] The bill seeks to compel companies to adopt CSR in their corporate policies. The bill proposed that a mandatory percentage of the companies earning an average of N50 million and above in profits in three succeeding years be spent on CSR.[673] The 2018 bill was presented before the House of Representatives for the first reading on 7 February 2018 and the second on 5 July 2018. After the second reading, the bill was referred to the Committee on Commerce for further deliberation; however, like the previous ones, this bill did not make it past the committee stage. As it presently stands, the statutory framework for CSR in Nigeria is derived from the provision of s.43 CAMA 2020. This section gives the companies the status of a natural person with the power to make donations in furtherance of their business or objects in as much as the companies' memorandum or any other existing laws do not prohibit it.[674] The effect of the above provision is that CSR is seen as a form of corporate philanthropy. In other words, the above provision suggests that engaging in CSR in the Nigerian banking sector is nothing more than banks doing some voluntary good to the society as good corporate citizens. In light of the above, the next section examines the CSR initiative in the Nigerian banking sector.

[672] Financial Reporting Council of Nigeria Act (Amendment) Bill 2018
[673] Section 49 (h) Financial Reporting Council of Nigeria Act (Amendment) Bill 2018
[674] Section 43 (1)(2) CAMA 2020

6.5.2 Stakeholders and CSR Practice of DMBs in Nigeria

All the DMBs are part of the Nigerian society, and as successful businesses, they are expected to engage in CSR for the benefit of stakeholders.[675] CSR continues to be perceived by DMBs in Nigeria as a voluntary philanthropic exercise by creating an environment that benefits their employees, depositors, host communities, and investors. All the Nigerian banks claim to engage in their CSR initiative based on Carroll's CSR pyramid. Carroll explains CSR from four angles of responsibility by corporations. At the bedrock of the pyramid is economic responsibility, which means that the banks must be profitable; however, this thesis argues that economic responsibility transcends beyond profit maximisation for the benefit of shareholders. Stakeholder engagement by empowering women to participate in financial and commercial activities falls within the banks' economic responsibility parameters. Next on the pyramid is legal responsibility, which means banks should obey the law. Therefore, this thesis argues that obeying the laws means compliance with all regulations, including full compliance with the corporate governance codes and regulatory directives. The third responsibility on the pyramid is the ethical responsibility, which means that banks must be fair, just, and transparent in all circumstances; being ethical in how the DMBs operate means that the banks must always consider the impact of their operation on the environment. Occupying the least on the pyramid is philanthropic responsibility; as good corporate citizens, banks are expected to give back to society. There are many benefits for the banks to engage in CSR; besides the fact that such CSR activities enhance their reputation and legitimacy, they also gain the trust of other stakeholders. CSR will help in the recognition of stakeholders and protection of stakeholders' interests. The data in Appendix D shows the CSR initiatives of DMBs in Nigeria regarding their overall spending on CSR activities compared to the profit after tax. It was necessary to

[675]Zenith Bank Website available at: https://www.zenithbank.com/csr/, GT Bank Website available at: https://www.gtbank.com/about/corporate-social-responsibility> Fidelity Bank Website, available at: https://csr.fidelitybank.ng/about/, UBA Website available at: https://www.ubagroup.com/uba-foundation/ Access Bank Website available at: https://www.accessbankplc.com/pages/sustainable-banking/our-community-investments/Community-Support.aspx> WEMA Bank Website available at: <http://www.wemabank.com/csr/>

make this comparison, especially when the various legislative attempts have failed to ensure that banks spend a certain percentage of their annual net profit on CSR. This comparison will undoubtedly help decide the likelihood of DMBs engaging in any mandatory form of CSR, particularly as it relates to having a minimum percentage of their profit before tax spent on CSR initiatives. Some might argue that imposing such a percentage on DMBs to spend on CSR negates CSR objectives; however, CSR is context-dependent.[676] There is an ongoing debate on whether there should be a legislated form of CSR.[677] Several countries have embraced some form of legislated CSR by recommending that a certain percentage of companies' profits be spent on CSR. For example, India, Indonesia, the Philippines, and the UAE all have mandated CSR forms.[678]

Table D1 – D4 Appendix D shows that the average spending on CSR initiatives by DMBs in Nigeria between 2007 to 2018 is less than one percent of their profit after tax. While this may seem laudable, this thesis argues that the amount is relatively too low considering the profits made by these DMBs within those years. Besides the fact that monies spent by DMBs on CSR initiatives are relatively low, a significant cause of concern is how the monies have been spent. The trend amongst DMBs is to disburse the monies across various CSR initiatives such as healthcare, sports, education, intervention projects and conferences.[679] This is an insignificant

[676] Adaeze Okoye, 'Exploring the relationship between corporate social responsibility, law and development in an African context: Should government be responsible for ensuring corporate responsibility?' International Journal of Law and Management, Volume 54, Number 5, 2012, pp. 364-378 p.367

[677] Doreen McBarnet, 'Corporate Social Responsibility Beyond Law, Through Law, for Law,' 27 March 2009, University of Edinburgh School of Law Working Paper No. 2009/03, Available at: https://ssrn.com/abstract=1369305 or http://dx.doi.org/10.2139/ssrn.1369305

[678] Rajat, Panwar, Shweta Nawani, Vivek Pandey, 'Legislated CSR: A Brief Introduction,' Corporate Social Responsibility Business and Society 360, Vol. 2, 2018, Emerald Publishing Limited, Bingley, pp. 133-146. https://doi.org/10.1108/S2514-175920180000002004

[679] Zenith Bank Website available at: https://www.zenithbank.com/csr/, GT Bank Website available at: https://www.gtbank.com/about/corporate-social-responsibility> Fidelity Bank Website, available at: https://csr.fidelitybank.ng/about/, UBA Website available at: https://www.ubagroup.com/uba-foundation/ Access Bank Website available at: https://www.accessbankplc.com/pages/sustainable-banking/our-community-investments/Community-Support.aspx> WEMA Bank Website available at: <http://www.wemabank.com/csr/>

amount considering the role CSR is expected to play in addressing Nigeria's socio-economic developmental challenges. As previously stated in chapter four of this thesis, CSR in the African context differs from how CSR is perceived in developed economies. Therefore, for DMBs' CSR initiatives to yield the desired outcome, particularly alleviating extreme poverty by 2030, more must be done regarding the percentage of their net profit allocated to CSR initiatives and the nature of the projects being embarked on.[680] CSR initiatives in Nigeria should not only be meaningful but should also be impactful. Therefore, for banks to contribute towards attaining sustainable development goals, particularly the eradication of extreme poverty, CSR must address the shortage of infrastructural development, human capacity building, financial inclusion, and women's empowerment. [681]CSR must be understood differently from its interpretation under the Anglo-Saxon model.[682] A more stakeholder-oriented CSR with government participation to provide a regulatory framework for implementing and enforcing DMB CSR obligations is extremely important.[683] Redefining a framework where CSR is embedded in the corporate governance regulatory framework of DMBs in the Nigerian banking sector is indispensable.[684] This thesis addresses it through the proposed Functional Stakeholder Model, discussed in the next chapter.

6.6 Conclusion

This chapter examined the corporate governance model in the Nigerian banking sector. As the corporate governance model, applicable companies in Nigeria examined in the preceding chapter revealed a limited recognition of stakeholders and protection of stakeholder interests.

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[680] United Nation Sustainable Development Goals, available at: < https://www.un.org/sustainabledevelopment/poverty/> accessed 23 September 2021

[681] Victor Ediagbonya, 'Incorporating CSR in Corporate Governance of Banking Institutions in a Challenging Institutional Context: A Case Study of Nigeria.' In: David Crowther, Shahla Seifi, (eds) Governance and Sustainability. Approaches to Global Sustainability, Markets, and Governance. Springer, Singapore, 2020 pp.21-41

[682] Ibid

[683] Ibid

[684] Ibid

This chapter draws on the institutional theory in analysing the corporate governance regulatory framework in the Nigerian banking sector, which is based on the Anglo-Saxon corporate governance model. It examined the extent to which the framework allows for the recognition of stakeholders and the protection of stakeholders' interests. It began by analysing the corporate governance regulatory framework in the Nigerian banking sector. It argues that the legal framework of corporate governance in the Nigerian banking sector is a combination of both statute and ancillary corporate governance codes developed and issued by the relevant regulatory and supervisory bodies.

The thesis argued that CAMA, SEC code, and CBN code, as applied in the Nigerian banking sector, demonstrate a limited stakeholders' recognition and protection of stakeholders' interests. The corporate governance framework in the Nigerian banking sector is designed to protect and enhance shareholders' value. The chapter has identified three deficiencies in how the current regulatory framework purports to allow for stakeholders' recognition and the protection of stakeholders' interests.

First, though several inconsistencies exist between CAMA, SEC code and CBN code,[685] the fundamental problem is non-compliance with the codes. One of the significant challenges with corporate governance regulation is the rate at which DMBs breach the provisions of the codes with impunity, despite both codes stating that compliance with its provisions is mandatory. Therefore, the thesis argued that there is a problem with the enforcement of the codes.

[685] **Error! Bookmark not defined.** An example of such inconsistencies is the requirement for an independent director; one independent director is required under the SEC code. The CBN code requires banks to have at least two independent directors. Under CAMA, companies must have at least three independent directors.

Second, the Nigerian banking sector's CSR initiatives are also problematic. As shown in the analysis in this chapter, the general perception of CSR within the Nigerian banking sector is nothing more than philanthropy. DMBs see CSR just as a way of giving back to society without any form of obligation. Several attempts have been made to regulate CSR, where banks must contribute a particular percentage of their profit to CSR activities. These attempts have failed to materialise due to the inability of the legislators to arrive at a consensus. Nigerian DMBs carry out several charitable activities in the name of CSR, including healthcare, sports, intervention projects, and education. To an extent, these initiatives are laudable; however, this thesis argues that the amount spent is still relatively low compared to the level of profits these DMBs make year on year. The average amount spent on CSR initiatives by all DMBs in Nigeria between 2007 to 2018 is less than one percent of their net profit. This is a minimal amount considering the socio-economic developmental challenges in Nigeria, which CSR is expected to address. CSR should be meaningful and impactful; therefore, spending a negligible percentage of their net profit on several CSR activities will not achieve the desired result.

The third challenge in implementing effective corporate governance in the Nigerian banking sector is the quality of information disclosure. While several provisions in CAMA and the codes require DMBs to make full and transparent disclosure, the information given by DMBs in most cases is very minimal. Monitoring and enforcing corporate governance regulation in the Nigerian banking sector is also a cause for concern. There is a need for an alternative model of corporate governance that requires adequate monitoring, enforcement, and sanctioning regime.

Therefore, taking stock of the above challenges, the next chapter proposes the Functional Stakeholders Model of corporate governance, which aims to address the current deficiencies

that have prevented the implementation of a practical corporate governance framework in the Nigerian banking sector.

Chapter Seven

TOWARDS A FUNCTIONAL STAKEHOLDER MODEL (FSM) OF CORPORATE GOVERNANCE FOR THE NIGERIAN BANKING SECTOR

7.1 Introduction

In Chapter five, this thesis examined the corporate governance model applicable to companies in Nigeria to determine the extent to which the model allows for stakeholders' recognition and protection of stakeholder interests. Nigerian companies practice a corporate governance system rooted in the Anglo-Saxon model that promotes shareholders' interests over and above other stakeholders. Nigeria inherited this corporate governance system from Britain because Nigeria was a former British colony.[686] CAMA, the principal legislation applicable to all companies in Nigeria, is a replica of the English Companies Act 2006.[687] It is argued that the shareholder primacy model is embedded in CAMA 2020, as several provisions support shareholder primacy. For example, CAMA provides that every company holds a general meeting of its shareholders within six months of incorporation;[688] there is no provision in the CAMA requiring that other non-shareholder stakeholders meet within six months of incorporation.

Another provision of CAMA that supports the recognition of shareholders and protection of their interests above other stakeholders is s.305 CAMA, which requires directors to act in the interests of shareholders.[689] Although directors owe a fiduciary duty to the company, their primary aim is to protect and enhance shareholders' value when discharging that duty.[690]

[686] Boniface Ahunwan, 'Corporate Governance in Nigeria,' Journal of Business Ethics 37 (3): (2002), pp.269 - 287
[687] Elewechi Okike, 'Corporate Governance in Nigeria: The status quo,' Corporate Governance an International Review 15(2) 2007, pp.173-193
[688] S.235 (1) CAMA 2020
[689] S.305 CAMA 2020
[690] Ibid

CAMA provides that directors' interests should not conflict with that of shareholders[691] and that only shareholders are entitled to bring both personal and representative action against the directors, the company, or any other third party.[692] In support of shareholders' primacy, CAMA 2020 provides thus: shareholders are entitled to receive financial statements as of right;[693] shareholders are entitled to be furnished on demand and without charge with a copy of the bank's last financial statements;[694] auditors are to report to shareholders on the accounts they examined,[695] and it also provides for a division of powers between shareholders in general meeting and the board of directors.[696]

Nevertheless, some limited provisions in CAMA purport to recognise stakeholders and protect stakeholders' interests. For example, under s.305(3)(4), CAMA, directors are to consider the impact of the company's operations on the environment in the community and directors are also required to consider employees' interests when performing their functions.[697] However, s.305(9) CAMA 2020 took away the power of enforcement from these stakeholders by stating that only the shareholders can enforce against the directors for breach of duty.[698] Therefore, although there is limited stakeholder recognition under CAMA, CAMA and other corporate governance codes in Nigeria are underpinned by the Anglo Saxon corporate governance framework, which puts shareholders' interests over the interests of key stakeholders such as employees and customers.

[691] S.306 CAMA 2020
[692] S.334 CAMA 2020
[693] S.387 CAMA 2020
[694] S.392 CAMA 2020
[695] S.404 CAMA 2020
[696] S.87(1) CAMA 2020
[697] S.305 (3)(4) CAMA 2020
[698] S305 (9) CAMA 2020

The corporate governance framework applicable in the banking sector examined in chapter six explored the extent to which stakeholders are recognised and their interests protected under the Nigerian corporate governance paradigm. The thesis examined the SEC code and the CBN code. Like CAMA, both codes are underpinned by the Anglo Saxon corporate governance framework, which puts shareholders' interests over the interests of key stakeholders such as employees and customers. Therefore, this chapter aims to improve the recognition and protection of stakeholders and stakeholders' interests in the Nigerian banking sector by proposing an alternative framework, the Functional Stakeholders Model of corporate governance. The thesis draws on the institutional and stakeholder theories of corporate governance. The institutional theory will consider the institutional arrangement in Nigeria, particularly related to the challenges of implementing effective corporate governance identified in chapters five and six. On the other hand, the stakeholder's theory was used to identify relevant stakeholders in the Nigerian banking sector who are instrumental in promoting effective corporate governance in DMBs.

The chapter begins by making a case for a change of corporate governance direction for Nigerian DMBs. It argues that the current corporate governance framework has failed to recognise stakeholders and protect stakeholders' interests. Subsequently, the chapter proposes an alternative corporate governance framework in the Nigerian banking sector. It establishes the Functional Stakeholder Model tailored toward the Nigerian banking sector. It argues that adopting and implementing the Functional Stakeholder Model in the Nigerian banking sector will help recognise stakeholders and protect stakeholders' interests. The second section of this chapter explores the potential of the Functional Stakeholder Model; it summarises the key components of the Functional Stakeholder Model. The third section dealt with the meaning and components of the Functional Stakeholders Model. The fourth section addresses the role of the

board of directors as a mechanism under the Functional Stakeholder Model. The fifth section analyses the role of CSR in the Functional Stakeholder Model; it argues that improving CSR practices and embedding mandatory CSR obligations in the corporate governance of banks will further enhance stakeholders' recognition and protection of stakeholders' interests. The sixth section of this chapter explores the enforcement mechanism for the Functional Stakeholders Model. It argues that corporate governance has been weak in the Nigerian banking sector due to poor enforcement mechanisms. The thesis suggests an alternative enforcement regime through the Functional Stakeholder Model by engaging key stakeholders who will superintend the enforcement framework of the proposed model. The last part of this chapter summarises the key discussions in this chapter.

7.2 A Case for Change of Corporate Governance Direction for Nigerian Banks

From the discussions in chapters five and six, the corporate governance model in Nigerian companies generally and in the Nigerian banking sector, in particular, is premised on the shareholders' primacy model. The shareholders' primacy model is based on several erroneous assumptions, making it normatively indefensible. Because of its many criticisms, the shareholders' primacy model has been rebranded as the ESV model. The ESV model, which purports to recognise some stakeholders and their interests, requires directors to have regard to the interests of some specific stakeholders, such as employees and customers when promoting the company's objective for the benefit of its shareholders as a whole.[699] However, this thesis argues that though the ESV model requires directors to have regard to employees' and customers' interests, it is the codification of the common law objective of the company profits maximisation for shareholders' benefit and nothing more.

[699] S.172, UK Companies Act 2006

Furthermore, the ESV model has been criticised for imposing a subjective standard by requiring directors to act in good faith, which appears to be counterproductive to the stakeholders listed in the section.[700] It does not appear to set any standard for directors to follow.[701] All that matters is for the directors to show that they acted in good faith regardless of their decision. Besides these shortcomings and others already discussed in chapter three,[702] this thesis argues that the shareholders' primacy model is not designed to flourish in countries with challenging institutional environments like Nigeria. This thesis further argues that there must be functioning and enabling institutional arrangements for the shareholders' model to thrive. For example, the corporate governance framework in the UK is based on the shareholders' model. Its relative success depends on its strong legal system, robust capital markets, and active civil societies participation.

On the other hand, literature on corporate governance has presented the stakeholder model as a normatively attractive alternative to the shareholder-oriented model. However, in a bid to remedy the criticisms of the shareholder-oriented model, the stakeholder theorists have developed a theoretical framework that is not only confusing but impracticable.[703] It is argued that the confusion arises from the difficulty in stakeholders' identification and how to balance their interests adequately.[704] Thomas Clarke argues that the stakeholder theory is intellectually appealing in its practical application; however, it gives the management excessive liberty to manoeuvre the process due to its multiple stakeholders' responsibilities.[705] Furthermore, the

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[700] Victor Ediagbonya, 'The Scope of Directors Duties under the Provision of Section 172 of Companies Act of UK, Corporate Law,' Corporate Governance Journal, 6 June 2017 available at: < http://dx.doi.org/10.2139/ssrn.2982033>

[701] Ibid

[702] Chapter 3, Paragraph 3.34

[703] Henry Hansmann, Reinier Kraakman, 'The End of History for Corporate Law' Discussion Paper No. 280 3/2000, The Centre for Law, Economics, and Business, Harvard Law School Cambridge, MA, p.7 available at:<http://www.law.harvard.edu/programs/olin_center/papers/pdf/280.pdf> accessed 21 August 2020

[704] Ibid p.8

[705] Thomas Clarke, 'International Corporate Governance A comparative approach' (Routledge, Abingdon, Oxon 2007. p.29

broad stakeholder model is also inadequate for promoting effective corporate governance in the Nigerian banking sector because of its many criticisms and Nigeria's challenging and non-enabling institutional environment. Virginia Ho argued that the theoretical framework which underpins the corporate governance model should transcend beyond the shareholders – stakeholders divide.[706] This is particularly true of a country like Nigeria, faced with several challenges, including faulty legal transplantation, the multiplicity of regulations, systemic corruption, nepotism, tribalism, gender imbalances, and inadequate enforcement mechanisms revealed in chapters five and six.

Keay also argued that the stakeholder theory is naïve, superficial, and unrealistic. He further states that the theory is dangerous and wholly unjustified because it undermines private property rights, denies agents' duties to principals, and destroys wealth.[707] Similarly, the shareholder theory also undermines other social actors in the corporation apart from the shareholders. Consequently, both theories are inadequate for promoting effective corporate governance in today's business world in general and Nigeria in particular.[708] Therefore, there is a need to develop an alternative corporate governance model that allows for recognising stakeholders and protecting stakeholders' interests in the Nigerian banking sector,[709] as the interest of the shareholders alone should not be the overriding purpose for which the banks exist. As discussed in chapter two of this thesis, the banks have a key role in realising an inclusive, equitable and sustainable economy in the countries where they operate.

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[706] Virginia Harper Ho, 'Enlightened Shareholder Value: Corporate Governance beyond the Shareholder-Stakeholder Divide' (2010) 36 J Corp L 59

[707] Andrew Keay, Stakeholder Theory in Corporate Law: Has It Got What It Takes? 9 Rich. J. Global L. & Bus. 249 (2010). Available at: http://scholarship.richmond.edu/global/vol9/iss3/2

[708] Andrew Keay, 'The Corporate Objective Corporations, Globalisation, and the Law' (Edward Elgar Publishing Ltd, Cheltenham, UK, 2011) p.16

[709] Ibid p.18

Furthermore, the interest of the shareholders should be secondary to those of the depositors because it is the depositors that guarantee the continued existence of these banks; without their patronage, the banks will be out of business. It is argued that apart from shareholders, there are other stakeholders whom the banks must recognise and protect their interests, for example, depositors, employees, creditors, government, customers, and local communities. These are the key stakeholders in the Nigerian banking sector which the FSM framework is built on. It is therefore imperative to consider the justification of the FSM.

The theoretical justifications for banking regulation, the positive and normative theories of banking regulation, were examined in chapter two. The aim was to demonstrate that these theories, particularly the market failure theories, which is a form of positive theory and the interest group theories, particularly those that concern stakeholders' interests in regulation, which is a form of the normative theory, provided the rationale for banking regulation. The analysis highlighted the fundamental assumptions of the positivist theory of banking regulation that government intervention through regulation is necessary because of market failures. The positivist theorists believe that no perfect market exists due to information asymmetries, negative externalities, risk culture, and moral hazards. These are examples of market failures that have been discussed in Chapter two, forming the primary justification for banking regulation.

The findings in Chapters five and six show that government interventions have not entirely resolved poor corporate governance in the Nigerian banking sector. The problems continue regardless of the interventionist approach to ensure a sound and safe banking system. This thesis acknowledges that government intervention through regulation is justified when the right corporate governance model has the required legal backing. The FSM draws on the assumption

of the positive and the normative theories of banking regulation to justify applying the model in the Nigerian banking sector as it addresses the core issues that border on market failure. For example, information asymmetry is a fundamental problem for external stakeholders, such as customers dealing with the banks. These stakeholders are not employees, or board members will have difficulty dealing with the banks because of the limited information at their disposal, as banking operations are entrenched in secrecy. Chapter six reveals that most Nigerian banks do not provide full and honest disclosure as the law requires. Therefore, the FSM incorporates an enforcement mechanism to ensure banks regularly disclose financial and non-financial information to stakeholders. This ensures that stakeholders' interests are protected because access to relevant information will enable stakeholders to make informed decisions. Providing such information to all stakeholders enhances the board's accountability and transparency.

As stated in Chapter four, the OECD guidelines for corporate governance influenced the drafting of CBN and SEC codes. Despite the CBN and SEC corporate governance codes purporting to adopt the OECD guidelines, the codes have not yielded the desired result. This thesis argues that the OECD guidelines also have limitations because the guidelines suggested applying soft law by implementing voluntary codes.[710] The voluntariness originates through the use of the comply or explain approach.[711] Many European countries have adopted the comply or explain mechanism; for example, the UK, Belgium, and Germany use the comply or explain approach.[712] Some countries in Asia have also adopted the comply and explain

[710] Ibid
[711] Ibid
[712] Paul Sanderson, David Seidl, John Roberts, Bernhard. Krieger, 'Flexible or not? The Comply-or-Explain Principle in UK and German Corporate Governance' (2010) Working Papers, Centre for Business Research, University of Cambridge

approach; for example, in Singapore, the corporate governance code is based on the comply or explain approach.[713]

Despite the flexibility of the comply or explain regulatory approach, such as allowing different banks to adopt the code based on the size and nature of their business, this thesis argues that such an approach will give banks the freedom to choose and implement the most advantageous provisions of the codes. A simple way to avoid discharging their obligation under the codes would be to explain why they have not complied with those provisions. However, scholars have raised serious concerns about the quality of the explanations given by many corporations to avoid compliance with relevant provisions of the codes.[714] Andrew Keay argued that despite the incontrovertible benefits of the comply or explain approach, it had been criticised heavily, and there is the need for reform in this area of law.[715] Therefore, the FSM is not based on the OECD recommendation, which suggests applying soft law by adopting the comply or explain approach. The finding in chapter six revealed that most Nigerian banks do not comply with the codes; if the comply or explain regulatory framework is adopted, most banks will prefer to explain the reason for not complying as that may seem like the easy way out.

Because there is no convergence of institutional environment, adopting an international framework in the way they are is problematic, especially if the success of such a framework depends on the availability of functional institutions. Banks in Nigeria operate in a challenging institutional environment. The Basel guidelines are international standards that banks are

[713] Singapore Code of Corporate Governance 2018, available at: < https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Corporate-Governance-of-Listed-Companies/Code-of-Corporate-Governance-6-Aug-2018.pdf> accessed 27 August 2020
[714] Sergakis Konstantinos, 'EU Corporate Governance: A New Supervisory Mechanism for the Comply or Explain Principle? European Company and Financial Law Review, 2013, vol. 10, issue 3, 394-431
[715] Andrew Keay, 'Comply or Explain in Corporate Governance Codes: In Need of Greater Regulatory Oversight?' (2014) Legal Studies, Vol. 34 No. 2, 2014, pp. 279–304

expected to adopt; however, adopting the guidelines without any amendments and without considering the institutional voids in the country would also be problematic. To a certain extent, the Basel guidelines differ from the OECD guidelines, as the former is a sector-specific guideline aimed at the banking sector, unlike the latter, which applies to banks and non-banking corporations. Both guidelines acknowledge the need for an effective board to promote sound corporate governance. However, the requirement for an effective board for banking and non-banking institutions would not necessarily be the same; for example, in terms of board composition, qualification, responsibilities and practices, the requirement in the banking sector will be higher than that of non-bank corporations. Banks are subjected to higher requirements because of the risky nature of the banking business, as previously discussed in chapter two. Based on the above argument, the Basel guidelines are more relevant to the banking sector; however, both can still be useful as a guide in designing the FSM.

Analysis of corporate governance's legal and regulatory framework in the banking sector under the Anglo-Saxon model has as its primary goal the use of self-regulation as a mechanism by applying the corporate governance code. Kershaw has argued in favour of self-regulation in corporate law because of its benefits over government regulation.[716] He believes that, apart from cost, self-regulation is a tool for addressing information asymmetries that affects the relationship between the regulators and the regulated constituencies.[717] However, as mentioned in chapter two, no one regulatory approach is best at achieving effective corporate governance in the Nigerian banking sector. Therefore, FSM proposes a hybrid regulatory approach to protect stakeholders by balancing their respective interests.

[716] David Kershaw, 'Corporate Law and Self-Regulation,' in Jeffrey Gordon, Wolf-Georg Ringe (eds) The Oxford Handbook of Corporate Law and Governance (Oxford University Press, Oxford, 2018) p.869
[717] Ibid

7.3 Potentials of the Functional Stakeholder Model

Before embarking on the discussion on the functions and components of the FSM framework, it is necessary to summarise the key elements of the FSM to provide an insight into the potentials of the model. The Functional Stakeholders Model acknowledges the importance of international standards for promoting effective corporate governance in the banking sector. These international standards, such as the OECD guidelines and Basel principles, highlighted the need for transparency, responsibility, accountability, stakeholders' engagement, and financial and non-financial disclosures in the banking sector. The above principles/guidelines are undoubtedly fundamental in promoting effective corporate governance in the banking sector; however, the country's institutional environment must also be considered where these principles and guidelines are to be implemented. Therefore, where the institutional environment is challenging, as in the case of Nigeria, the international principles/guidelines need to be modified due to the institutional voids in the country, as its application should be context-dependent.

The FSM argues that several factors are required to ensure board effectiveness in the Nigerian banking sector due to the challenging institutional environment. One of those factors is to have an inclusive board, as a more inclusive board composed of both shareholders' and other stakeholders' representatives is a more effective board. Such a board will effectively ensure that it balances the interests of all stakeholders. In addition, engaging non-shareholder stakeholders like customers, employees, auditors, and bankers' associations should promote good corporate governance in the Nigerian banking sector. Therefore, the FSM is an important framework in ensuring that the board of directors and management of banks are accountable to all other stakeholders; it is a framework designed to balance the interests of all stakeholders in the Nigerian banking sector, including that of the shareholders.

Apart from having an effective board, an adequate enforcement mechanism is also a core component of effective corporate governance. As such, the FSM provides appropriate accountability mechanisms[718] that consider the institutional voids in Nigeria. Furthermore, having such an enforcement mechanism will ensure that all stakeholders' interests are adequately protected.

As stated above, the FSM draws on the non-enabling institutional environment in Nigeria to design a model that will help promote effective corporate governance in the Nigerian banking sector. It identifies key stakeholders in the banking sector that will help promote effective corporate governance. It argues that although Nigerian banks' stakeholders' group is too broad, engaging all the potential stakeholders in the corporate governance framework will be problematic and an exercise in futility. It will be challenging to incorporate the entire stakeholders' group into the corporate governance framework in the banking sector because of the number of stakeholders involved. Therefore, FSM had to devise a means of identifying those relevant stakeholders who will best serve the interest of all stakeholders either by their inclusion on the board of directors or by giving them some powers of enforcement of the corporate governance code in the Nigerian banking sector. As a result, the FSM identified relevant stakeholders, including debtholders, employees, bankers' associations, Attorney Generals, legal practitioners, judges, and customers in host communities, as the stakeholders that will help achieve effective corporate in the Nigerian banking sector.

Another innovation of the FSM is the relevance of CSR in the model; the model identified CSR as a core component to solving the problem of the limited stakeholders' recognition and

[718] Andrew Keay, Joan Loughrey, 'The Framework for Board Accountability in Corporate Governance' (2015) Legal Studies, 35 (2). 252 - 279. ISSN 0261-3875 available at: https://doi.org/10.1111/lest.12058, accessed 29 September 2021

protection of their various interests. It argues that CSR should be embedded into the corporate governance framework of banks in Nigeria. It suggested many ways of incorporating CSR in the corporate governance of banks, from having mandatory CSR training by making it part of the curriculum for bankers and having monthly training in CSR as part of the Continuous Professional Development requirement of the banks. Besides recommending a legislated form of CSR mandating banks to spend a certain amount of their profit after tax on CSR projects, the FSM advocates for DMBs to engage the customers in host communities on the CSR projects, they intend to embark upon. As a safeguard to ensure that banks' CSR obligation is discharged effectively, the FSM recommends creating a mandatory CSR committee of the board with the primary responsibility of ensuring that the banks comply with their CSR obligations.

7.4 Meaning and Components of the Functional Stakeholder Model

This thesis now proposes a corporate governance model for the Nigerian banking sector known as the Functional Stakeholder Model (FSM); this is not a hybrid model that combines two theoretical models of corporate governance. Attempting to combine the shareholder's primacy model with the stakeholder's model would be an exercise in futility. Both models have heavily been criticised, and in the light of discussions in chapters five and six, the existing models are inappropriate for the Nigerian banking sector. Instead, the FSM is a more practical corporate governance model that will improve stakeholders' recognition and protection of stakeholders' interests in the Nigerian banking sector. The challenges of implementing effective corporate governance in the Nigeria banking sector, as evident from the findings in chapters five and six, include the multiplicity of codes, multiple regulatory agencies, lack of effective sanctions, lack of accountability, ineffective board, poor judicial administration system, inadequate enforcement regime, and corruption.

Before delving into what constitutes the FSM, it is helpful to explore the meaning of functional stakeholder. The word 'functional' originates from the functionalist theoretical perspective, also called functionalism, which posits that society is a social system primarily composed of different stakeholders working together to promote and protect the interest of all the stakeholders.[719] Functionalism is a general idea that can be implemented in different ways; the essence of functional analysis is the part-whole relationship with the part being understood in terms of its contribution to the whole.[720] The functionalist theorists argue that society is primarily composed of social institutions, each designed to fill different needs by working together to maintain a state of balance and social equilibrium for all stakeholders.[721]

The functional theoretical perspective emphasises the interconnectedness of society by focusing on how each part can affect and is affected by other parts.[722] Emile Durkheim, one of the pioneer proponents of the functionalist theory, argued that division of labour is key to regulating modern societies; with the division of labour, stakeholders contribute to the functioning of the social body by performing their individual assigned tasks.[723] According to Durkheim, collective consciousness, values, and rules are critical to a functioning society. Therefore, the stakeholders in performing their tasks help create a value consensus of shared common goals that help society function properly.[724] For Durkheim, societies needed to create a sense of social solidarity, making stakeholders feel a sense of belonging. Such a belief helps create social order through a commitment to shared value consensus.[725] Another renowned

[719] Jonathan Turner, 'Functionalism,' In the Wiley-Blackwell Encyclopaedia of Social Theory, B.S. Turner (Ed.) 2017 available at: https://doi.org/10.1002/9781118430873.est0135
[720] Wes Sharrock, John Hughes, Peter Martin, 'Understanding Modern Sociology' (SAGE Publications Ltd London, UK, 2003) p.15
[721] Jonathan Turner, Alexandra Maryanski, Functionalism' (The Benjamin/Cummings Publishing Company Philippines 1979) p.13
[722] Ibid
[723] Ibid
[724] Ibid
[725] Ibid

functionalist theorist, Talcott Parsons, who built on the work of Durkheim, Parsons sought to answer the question: how is social order possible?[726] Parsons argued that social order is possible through a central value system that provides the framework for socially acceptable behaviours. Social order is only possible if all stakeholders accept the norms and values as the fundamental guiding principle that binds the society together.[727]

Like every other theory, the functionalist theorists have been criticised for portraying societies as basically harmonious.[728] This thesis argues that the tendency to ask what conditions incline a system toward integration and equilibrium does not necessarily exclude all possible breakdowns and the disturbance of equilibrium.[729] Therefore, this thesis discounts the above criticism because the critics had erroneously mistaken the functionalist theorists' abstract theoretical system for an empirical description of actual societies.[730]

Stakeholders have been discussed extensively in chapters three and four of this thesis. The thesis adopted the definition of stakeholders postulated by Edward Freeman, who defined stakeholders as any group or individual who can affect or is affected by the achievement of the organisation's objectives.[731] Scholars have attempted to classify the stakeholders' group along the line of instrumental versus critical or narrow versus broad distinctions.[732] Stakeholders are instrumental if they are intended to support the realisation of the overall corporate objective of the bank; here, stakeholders' engagement is viewed as a means to an end.[733] A critical view of

[726] Wes Sharrock, John Hughes, Peter Martin, 'Understanding Modern Sociology' (SAGE Publications Ltd London, UK, 2003) p.54
[727] Ibid
[728] Ibid p.53
[729] Ibid
[730] Ibid
[731] Edward Freeman, 'Strategic Management: A Stakeholder Approach (Boston Pitman, 1984) p.34
[732] Amanda Gregory, Jonathan Atkins, Gerald Midgley, Anthony Hodgson, 'Stakeholder identification and engagement in problem structuring interventions' European Journal of Operational Research (2019) 283 (1) 321-340. https://doi.org/10.1016/j.ejor.2019.10.044
[733] Ibid

the stakeholder groups is premised on the assumption that values must be given explicit consideration.[734] This deals with values that matter to the organisations, and such values may not be effectively balanced; the organisation may take some values more seriously than others. It is imperative to identify what values matter more to the entire stakeholders, and balancing the choices can help achieve the desired result. The narrow stakeholders' view generally concerns individuals in an organisation who make its operation possible by interacting with the organisation.[735] The broad stakeholders' view is premised on the notion that all stakeholders are actually or potentially affected by the organisation's operations and not just those directly interacting with the organisation.[736]

Adopting the broad stakeholders' view may be problematic as those who can affect or are affected by the achievement of the organisation's objectives are not easily identifiable in certain organisations because their business networks keep expanding due to the interconnectedness between businesses. For example, Business A relies on Business B for its supplies, Business B also relies on Business C for its supplies, and Business C relies on Business D for its supplies. All the businesses in the supply chain have various stakeholders, so the list keeps expanding because of the size of the business network. Therefore, this thesis argues that in most corporations, stakeholders will generally include shareholders, investors, creditors, customers, suppliers, government, corporate regulators and supervisors, business partners, competitors, media, host communities, employees, financial institutions, and public interest groups.

Some scholars have argued that in addressing corporate governance in the banking sector, only those who bear some form of risk resulting from having invested some form of capital, human

[734] Ibid
[735] Ibid
[736] Ibid

or financial, will qualify as relevant stakeholders.[737] However, FSM adopts the classification of stakeholders by Rodriguez, Ricart, and Sanchez, who divide stakeholders into consubstantial, contractual, and contextual.[738] Consubstantial stakeholders are essential for the company to exist; they include shareholders, creditors, investors, employees, and business partners.[739] Contractual stakeholders are those the company has some form of a contractual relationship with, like the banks, subcontractors, suppliers, and customers.[740] Finally, contextual stakeholders represent the social and natural system in which the company operates, and they are host communities, society, the environment, government and regulators.[741]

Based on the above, the FSM has identified the following stakeholders covering the three categories of stakeholders identified above as relevant stakeholders that will help achieve effective corporate governance in the Nigerian banking sector: employees, debtholders, customers, bankers' associations, the Attorney-General, lawyers, judges, host community, banking regulators and public interest groups. This thesis develops the FSM to address poor corporate governance in the Nigerian banking sector, taking Nigeria's socio-cultural, economic, and political environment into account. The FSM is premised on the assumption that the bank should be run for stakeholders' benefit and not just to maximise shareholder profits. The FSM model did not include shareholders as part of those who will promote effective corporate governance, not because they are not relevant stakeholders but because the existing laws already offer them enough recognition and protection. For example, they have the power to appoint and remove directors. This model aims to advocate ways to improve stakeholders'

[737] Andrew Keay, Stakeholder Theory in Corporate Law: Has It Got What It Takes? 9 Rich. J. Global L. & Bus. 249 (2010). Available at: http://scholarship.richmond.edu/global/vol.9/iss3/2
[738] Miguel Rodriguez, Joan Ricart, Pablo Sanchez, Sustainable Development and the Sustainability of Competitive Advantage: A Dynamic and Sustainable View of the Firm. Creativity and Innovation Management, 11, 3, 2002, pp.135-146, p.140
[739] Ibid
[740] Ibid
[741] Ibid

recognition and protect stakeholders' interests in the Nigerian banking sector.[742] It is worth considering the roles and the nature of the stakeholders' involvement in the FSM in detail to establish how they can contribute to effective corporate governance in the Nigerian banking sector.

7.5 Board Composition under the Functional Stakeholders Model

As previously stated, the OECD guidelines and the Basel principles acknowledge the need for an effective board to promote sound corporate governance in the banking sector. This thesis argues that, for the board to be effective, it must be independent of the manipulation or influence of a domineering CEO/COB. Due to the unique nature of banks, it has become imperative to reconsider the board's composition. The first criterion for having an effective board is the board's independence, which is the number of independent directors the board has. As evident from the finding in chapter six, CAMA, CBN, and SEC codes have conflicting requirements for independent directors; however, the FSM advocates for a board with more independent directors. Studies on independent boards that examined the effects of the number or proportion of independent directors suggest that a sufficient number of independent directors is required to effect change.[743] Besides the different skills, qualifications, experiences, and expertise they will bring to the board, having more independent directors on the board will ensure effective monitoring of the management team for the benefit of all stakeholders.[744] This thesis argues that a board with more independent directors will be more sensitive in promoting and protecting stakeholders' interests because of the various backgrounds of the independent

[742] Richard Johnson, Daniel Greening, 'The Effects of Corporate Governance and Institutional Ownership Types on Corporate Social Performance', The Academy of Management Journal Vol. 42, No. 5, 1999. p.564

[743] Bin Srinidhi, Ye Sun, Hao Zhang, Shiqiang Chen, 'How do female directors improve board governance? A mechanism based on norm changes' Journal of Contemporary Accounting and Economic, Volume 16, Issue 1, April 2020, available at: https://doi.org/10.1016/j.jcae.2019.100181

[744] Silvia Ayuso, Antonio Argandoña, 'Responsible Corporate Governance: Towards a Stakeholder Board of Directors? IESE Business School Working Paper No. 701, July 2007, available at:< https://core.ac.uk/download/pdf/6536252.pdf> accessed 25 September 2021

directors and the fact that their incentives are not compromised or dependent on the banks' management. Independent directors are most likely to understand the changing demands and needs of the various stakeholders in the banking sector and will strive to balance all stakeholders' interests. Therefore, this thesis argues that independent directors will not be afraid to advocate any costly or unpopular decisions, especially regarding compliance issues, because they are not dependent on the CEO/COB or management for their incentives.[745]

Another component of the FSM is that it advocates for board gender diversity, which to a certain extent is linked to the board's independence discussed above. It is evident from the findings in chapter six that despite the CBN directives mandating DMBs to have at least 30 percent of women's representation on their boards and 40 percent of top management positions by December 2014,[746] almost all DMBs were always in breach of that requirement. Besides, the clamour for more gender balance on the banks' boards is based primarily on the normative grounds of equity and fairness; a board with gender balance is more likely to monitor management because having more women on the board increases board independence.[747] In addition, this thesis argues that having more women directors on the board is more likely to enhance the board implementation of CSR strategies, as this is one way of recognising stakeholders and protecting stakeholders' interests.[748] Carter, D' Souza, Simkins and Simpson argued that a board with more gender balance is unlikely to collude with CEOs and managements to subvert all stakeholders' interests compared to a homogenous board.[749]

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[745] Ibid

[746] CBN, 'Nigerian Sustainable Banking Principles,' Central Bank of Nigeria July 2012, p.19, available at:< https://www.cbn.gov.ng/out/2012/ccd/circular-nsbp.pdf> accessed 25 September 2021

[747] David Carter, Frank D'Souza, Betty Simkins, Gary Simpson, 'The Gender and Ethnic Diversity of US Boards and Board Committees and Firm Financial Performance,' Corporate Governance: An International Review, 2010, 18(5): pp.396–414

[748] Nabil Ibrahim, John Angelidis, 'Effect of Board Members Gender on Corporate Social Responsiveness Orientation. Journal of Applied Business Research V. 10, No. 1, 1 Jan 1994, p. 35-40

[749] David Carter, Frank D'Souza, Betty Simkins, Gary Simpson, 'The Gender and Ethnic Diversity of US Boards and Board Committees and Firm Financial Performance,' Corporate Governance: An International Review, 2010, 18(5): pp.396–414

Therefore, FSM advocates for a legislated female directorship quota on banks' boards. The Nigerian DMBs boards should be composed of at least 40 percent of women to ensure the board's independence. A board with such a quota of female directorship is more sensitive to favouring CSR strategies to promote and protect all stakeholders' interests and not only the interest of shareholders.[750]

The next component to consider as part of board composition under the FSM is stakeholders' directorship. It is evident from the findings in chapters five and six that under the shareholders' primacy value model or the enlightened shareholders' value, apart from shareholders, there is no provision for allowing non-shareholder stakeholders on the board. The agency theory does not offer any argument favouring adding stakeholders' directors to the board, as the primary purpose of having the board in the first instance is to align the interest of shareholders with that of directors. Moreover, the agency theorists argued that having non-shareholder stakeholders on the board will raise another type of conflicts, such as recognising stakeholders and protecting stakeholders' interests over that shareholders and management.[751] Under the Continental European Stakeholder's Model examined in chapter four, employees' representatives and creditors, such as banks or their representatives, sit on the supervisory board.

However, the FSM does not advocate for a dual board system as practised under the Continental European Stakeholders' Model; this thesis argues for stakeholders' directors, such as creditors or their representatives and employees or their representatives, to sit as directors

[750] Richard Bernardi, Veronica Threadgill, 'Women Directors and Corporate Social Responsibility,' Electronic Journal of Business Ethics and Organization Studies, 2010, Vol. 15, No. 2, pp.15-21, Eunjung Hyun, Daegyu Yang, Hojin Jung, Kihoon Hong, 'Women on Boards and Corporate Social Responsibility,' Sustainability Journal, Vol. 8(4), pp. 1-26, Alison Cook, Christy Glass, 'Women on Corporate Boards: Do They Advance Corporate Social Responsibility?' Human Relations Vol 71, Issue 7, pp. 897–924

[751] ibid

on the Nigerian DMBs boards. Employee representation on the board of directors has been a topical issue recently.[752] Recent reforms in the UK have been geared toward employees' participation in companies' corporate governance. As a consubstantial stakeholders, employees are key stakeholders in the banks; as previously discussed in chapter four, amongst other things, they invest their human resources to ensure that the banks remain a going concern. Making employees or their representatives sit on the board of directors will ensure that employees' voices are heard at the top level, promoting mutual trust and giving employees a sense of belonging.[753] Employee participation on the board is a common feature in Continental European countries, irrespective of the board structure. For example, Germany operates a dual board system comprising the management board and the supervisory board; one-third to half of the supervisory board comprises employees.[754] In contrast, Denmark operates a single-tier board system and has its boards comprising one-third of employee representatives.[755]

Employees have been identified as a consubstantial stakeholders in the Nigerian DMBs under the proposed FSM. They use their skills and experience to ensure that the banks remain a going concern. As a workforce, they invest their human resources to ensure that the banks succeed, making them one of the residual risk bearers in the bank. The FSM suggests that involving employees as board directors is a fundamental step in ensuring effective corporate governance in the banking sector. This is one way to ensure adequate recognition of stakeholders and protection of stakeholders' interests.

[752]Charlotte Villiers, Corporate Governance, Employee Voice and the Interests of Employees: The Broken Promise of a 'World Leading Package of Corporate Reforms', Industrial Law Journal, dwaa017, https://doi.org/10.1093/indlaw/dwaa017
[753] Ibid
[754] Thomas Steger, Context, enactment and contribution of employee voice in the boardroom: Evidence from large German companies. Int. J. of Business Governance and Ethics. (2011) 6. 111 - 134. Available at: <10.1504/IJBGE.2011.039965> accessed 25 September 2021
[755] Ibid

Employees' engagement in the corporate governance framework of Nigerian DMBs can be achieved by allowing employees to directly elect a minimum of two representatives and a maximum of three representatives from amongst themselves to sit on the board as executive directors. This excludes top management staff; even though they are bank employees based on their contracts, they may already be sitting on the board as executive directors because of their positions.[756] So, management staff cannot stand as employees' directors or vote for employees standing for that position under the FSM. This ensures that management does not influence those likely to be elected as employees' directors, as anything contrary can erode the board's independence. Employees who are not in a managerial position will be eligible for election as the employee's representative to sit on the board for a maximum of two terms of four years per term. This ensures that employees directors are not excluded from aspiring to managerial positions. They can resign at any time from the position of employee directors to pursue such ambition should they be interested. Furthermore, having employees serve a maximum of two terms of four years each will ensure that other employees can be elected as employee directors to sit on the board. Rotation of employees' directors would help provide a fresh perspective on decision making.

This thesis argues that including employees' representatives as directors on boards of DMBs will not only provide a unique opportunity for employees' voices to be heard in the boardroom. However, such inclusion will also help protect all stakeholder interests. Moreover, besides the skills and expertise that the employees directors can bring to the board, as insiders, employees directors can provide exclusive bank information when undertaking various board responsibilities, thereby eradicating information asymmetry and improving board efficiency.[757]

[756] Longe v First Bank of Nig Plc (2010) 6 NWLR (Pt.1189) 1 S.C.
[757] Inger Hagen, Morten Huse, 'Do employee representatives make a difference on corporate boards? Examples from Norway in Gunnar Folke Schuappert (ed) Perspective of Corporate Governance (Nomos Verlagsgesellschaft in Baden-Baden Germany 2007), p.156 – 181

Another stakeholder's director who can help protect stakeholders and stakeholders' interests is the creditor. This thesis argues that creditors are less risk-prone than shareholders; having them directly on the board or indirectly through representatives will help mitigate excessive risk-taking by the executive directors and senior management.[758] As a result, FSM identifies creditors as consubstantial stakeholders in the Nigerian banking sectors because they provide finance for the continuous existence of the banks. There are two broad categories of creditors: the secured and unsecured creditors; however, having both creditors sit on the board may lead to duplication and conflict of interest. For example, a secured creditor like banks and other financial institutions may not have the same level of concern as a fixed deposit account operator with a considerable sum. The secured creditors' investments are secured if the bank becomes insolvent as the current legal framework prioritises the secured creditors over unsecured creditors and shareholders.[759]

FSM advocates for appointing a particular category of unsecured creditors, the debtholders, as directors to sit on the board of Nigerian DMBs over other unsecured creditors. It might be helpful to distinguish between debtholders and ordinary depositors. In general terms, a depositor is a bank customer who operates a current or saving account and can access their monies anytime upon demand.[760] If depositors have concerns about the bank's solvency, they will withdraw their deposits simultaneously, especially if their deposits are above the threshold covered by the deposit insurance scheme.[761] Such withdrawals can get to a point where the bank may eventually run out of cash.

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[758] Klaus Hopt, Corporate Governance of Banks and Financial Institutions: Economic Theory, Supervisory Practice, Evidence and Policy, (2020) ECGI Working Paper Series in Law, Working Paper N° 507/2020, p.10 available at:< http://ssrn.com/abstract_id=3553780> accessed 25 September 2021
[759] Section 657(6)(a) CAMA 2020
[760] Rajkama Iyerl, Manju Puri. 'Understanding Bank Runs: The Importance of Depositor-Bank Relationships and Networks.' The American Economic Review, Vol. 102, no. 4, 2012, pp. 1414–1445
[761] Ibid

On the other hand, a debtholder is a bank customer that operates a fixed-term deposit account. A fixed-term deposit account refers to a sum of money deposited at a bank that fixed deposit cannot be withdrawn before maturity. However, the money can be withdrawn or rolled over for another term at the end of the fixed term. So, the longer the term, the better the interest on the money.

The FSM advocates for debtholders to be appointed as stakeholder's directors so long as their deposits are within a minimum of two years of maturity from the time of appointment to the board. Their inclusion on the board is for risk management, which will benefit all stakeholders. Because they know they cannot get their money until the maturity date, they are likely to mitigate the risk taken by executive directors and management. They would focus on ensuring that executive directors act responsibly; they would not just be concerned with the short-term profit. Such excessive risk-taking to make short-term profits would usually negatively affect the bank in the long run. However, some could argue that debtholders may be reluctant to checkmate directors' excessive risk-taking drive because they know that their deposits will be covered by deposit insurance in the event of a bank failure.[762] This can be particularly true of banks in developed economies, for example, in the UK, the maximum claim for deposit insurance compensation is £85,000 per customer in a bank regardless of the number of accounts held by the customer, and in the case of a joint account, the maximum amount that can be claimed is £170,000.[763] However, deposit insurance compensation paid to a bank customer in Nigeria is limited to ₦500,000 (approximately £1000).[764] This compensation amount is not enough incentive for debtholders to be reluctant to ensure effective risk management for the

[762] Robert Eisenbeis, George Kaufman, 'Deposit Insurance Issue in the Post-2008 Crisis World' in Allen Berger, Philip Molyneux, John Wilson (ed) The Oxford Handbook of Banking (2nd Edition Oxford University Press, Oxford 2015) p. 537
[763] Financial Service Compensation Scheme, 'Compensation Limit', available at:< https://www.fscs.org.uk/what-we-cover/banks-building-societies/ >accessed 29 September 2021
[764] Section 20(1)(b) NDIC Act 2006

benefit of all stakeholders. Debtholders will not be indifferent to ensuring effective risk management; getting the deposit insurance compensation usually takes much time because of bureaucracies and bottlenecks compared to the time it takes for their fixed-term deposits to mature.

This thesis argues that because of the maximum deposit insurance compensation, depositors are eligible to claim in the event of bank failure in Nigeria; debtholders are like depositors without deposit insurance because such compensation, in most cases, is relatively insignificant compared to the amount they have in the bank. As a result, FSM envisages that debtholders elected by creditors to sit on the board as their representatives will protect all stakeholders' interests by ensuring effective monitoring and supervision of executive directors. Eisenbeis and Kaufman argued that in the absence of a deposit insurance scheme, having depositors like creditors monitor and supervise the banks' performance would put management on the check as the threat to charge higher interests on the credits provided or withdrawal of funding will induce managers to act responsibly.[765] However, this thesis suggests that such a threat by the creditors could lead to boardroom squabble. Therefore, FSM will limit debtholders directors from unnecessarily increasing the interests they charge on their deposits. In addition, debtholders cannot withdraw their money until the maturity date, so it is unlikely to cause a bank run because the banks will be prepared to pay them when their money becomes due.

7.6 Role of CSR in the Functional Stakeholder Model

CSR is a fundamental component of the FSM; as previously discussed in chapter four, CSR must be embedded in the corporate governance framework to enhance stakeholders'

[765] Robert Eisenbeis, George Kaufman, 'Deposit Insurance Issue in the Post-2008 Crisis World' in Allen Berger, Philip Molyneux, John Wilson (ed) The Oxford Handbook of Banking (2nd Edition Oxford University Press, Oxford 2015) p.538

recognition and protect their interests. The FSM advocates for a form of legislated CSR that must consider Nigeria's socio-cultural, economic, and political environment. Besides all stakeholders identified as relevant stakeholders above who will help protect stakeholders' interests in the Nigerian banking sector, the bankers' association, customers in the host communities, and government are contextual stakeholders because of being affected by the banks' operation. These contextual stakeholders will help implement the CSR element of the FSM, which is geared toward stakeholders' recognition and protection of stakeholders' interests.

The Chartered Institute of Bankers in Nigeria (CIBN) is a professional organisation for bankers in Nigeria. The findings in chapter six show that the CIBN has no defined role in promoting an effective corporate governance framework in the Nigerian banking sector. Nevertheless, CIBN is charged with some responsibilities such as keeping the register of bankers in Nigeria, designing the bankers' training curriculum, conducting professional examinations and promoting ethical standards and professionalism among practitioners of the banking profession in Nigeria.[766] The FSM builds on the current responsibilities of CIBN in ensuring that the association becomes more involved in promoting effective corporate governance in the Nigerian banking sector. Since it is CIBN responsibility to determine the knowledge and skills required for those seeking to become bankers, it must ensure that CSR is a core part of the curriculum. This would ensure that student members from the very beginning are acquainted with the importance of CSR as a fundamental component of the corporate governance framework in the banking sector. The FSM further suggests that organising training in CSR should be the responsibility of CIBN. Banking practitioners registered with CIBN will be

[766] CIBN, 'Our Principal Responsibilities', available at: https://www.cibng.org/institute-brief#corporate-info accessed 25 September 2021

required to undergo a mandatory 12 hours of Continuous Profession Development (CPD) training in CSR every fiscal year. This training should cover at least one hour every month to keep bankers up to date with their responsibility in ensuring that all stakeholders are properly engaged and their interests protected.

There is a limited stakeholders' engagement with banks' CSR, as evident from the findings in chapter six. Nigerian banks have undertaken CSR initiatives from a philanthropic perspective to give back to society.[767] However, the Nigerian DMBs embark on CSR without thoughtful consideration of the link between purposeful CSR and the attainments of Sustainable Development Goals, particularly in an environment where basic human needs and infrastructural facilities are inadequate. Nigerian DMBs' CSR initiatives deviate from societal expectations because the societal expectation is for the CSR initiatives to address the socio-economic developmental challenges in the country through poverty alleviation, healthcare provision, infrastructure development and education. However, the average spending on CSR by DMBs is less than 1 percent of their profit after tax, making it difficult for CSR to meet the societal expectation of the Nigerian people, especially in the host communities where the banks carry out their operations.

Consequently, the FSM recommends establishing the CSR Committee as a mandatory board committee that will engage with customers in host communities by implementing periodic consultations. CSR projects should be people-driven; after due consultation with this stakeholder group, the CSR committee will select the CSR projects that are realisable based on the bank's resources. The CSR committee will then prepare a contract between customers and

[767] Amaeshi, Kenneth, Bongo Adi, Chris Ogbechie, Olufemi Amao, 'Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?' The Journal of Corporate Citizenship, Corporate Social Responsibility in Emerging Economies (Winter 2006), pp. 83-99

the bank. The contract will show that the banks intend to be bound by it and not a mere gratuitous promise by intending to engage in the CSR projects as a philanthropic gesture. Therefore, the banks would be in breach if they failed to deliver their responsibilities under the contract. This thesis argues that because remedies for the breaches of contracts are stipulated in the law, customers can develop legitimate expectations of remedial action regarding any breach by the banks regarding the agreed projects.

The findings in chapter six revealed that several attempts were made to have a legislated CSR; however, all the attempts failed because of a lack of consensus among the legislators. Drawing on the Indian experience, FSM proposes that there should be a CSR provision mandating banks to spend at least three percent of their average profits after tax in the preceding three years on CSR projects.[768] In addition, the CSR committee must provide regular updates regarding the CSR consultations and projects they have embarked upon in that fiscal year. The CSR committee must produce a detailed CSR report as part of the banks' annual report. The CSR report will include the composition of the CSR committee, CSR consultations for the year, selected CSR activities for the year, the funding earmarked for the CSR projects, whether the minimum threshold has been met and the due date for completion of the projects if not already completed.

Consequently, the FSM will broaden the scope of corporate governance in the Nigerian banking sector by making CSR reporting an integral part of strategic management disclosure in the Nigerian banking sector. As a result, banks will not only be required to report on their CSR projects in annual reports; it will also become a binding contract between customers and the banks. Failure to execute the agreed CSR projects or any related matter in breach of the

[768] S135 Indian Company Act 2013

CSR contracts can be enforceable through the courts by the Attorney General on behalf of the customers. For example, in the *People v Grasso,*[769] the Attorney General of the State of New York brought an action on behalf of customers against Richard Grasso, the former Chairman of the New York Stock Exchange, for receiving excessive compensation. The case concerned a fundamental breakdown of the corporate governance predicated upon numerous breaches of fiduciary duty when Mr Grasso handpicked members of the compensation committee who determined his compensation by ignoring the benchmark set for calculating executive compensation when calculating Grasso compensation.[770] Although this case was decided in Mr Grasso's favour due to a legal loophole, the court found the compensation paid to Mr Grasso was unreasonable.[771] Therefore, in Nigeria, due to the challenging institutional context, the Attorney General is well equipped to bring an action on behalf of customers if the DMBs fall short of their CSR obligation. As evident from the findings in chapter six, Nigerian DMBs engage in CSR to give back to society. DMBs view CSR more like a charitable cause, not legally binding. The current corporate governance framework does not support customers' enforceability of CSR initiatives. The customers are more often than not subjected to DMBs' philanthropic responsibility without adequate stakeholders' engagement, which has caused the problem. As discussed in chapter two of this thesis, enforcement is a core component of banking regulation. As evident from the finding in chapter six, there are several issues with the current enforcement mechanism; therefore, the proposed FSM adopts an alternative enforcement framework that will help in promoting effective corporate governance in the Nigerian banking sector. The proposed enforcement framework is addressed in the next section of this chapter.

[769] People v Grasso, 2007 N.Y. Slip. Op. 3990
[770] Ibid
[771] Ibid

7.7 Enforcement Mechanisms for the Functional Stakeholders Model

This thesis recommends a new corporate governance code for the banking sector. This will provide adequate legal and regulatory backing for the application and enforcement of the proposed FSM. The new code will clearly state the responsibilities and duties of the board in terms of its CSR obligations and concretise them through legislation to ensure greater regulatory efficiency. The corporate governance code will contain the standards the banks are expected to comply with and, in the event of non-compliance, what remedies are available and how they will be enforced. Therefore, in terms of the enforcement mechanism, the FSM identifies the following contextual stakeholders: the bankers' association, the Attorney General, legal practitioners, courts, and customers in host communities. Their various powers, as well as their responsibilities, are discussed below.

To ensure effective compliance with corporate governance regulation in the banking sector, the CIBN will have additional enforcement powers to regulate the banks. CIBN will maintain a dedicated whistleblowing telephone line that will enable stakeholders who may suspect any code breaches to register their complaints without fear of their identity being exposed. As evident from the discussions in chapter six, stakeholders are reluctant to complain because of the lack of any statutory framework to protect whistleblowers in the Nigerian banking sector. Therefore, if stakeholders complain to the CIBN directly, such complaints will be duly investigated by a dedicated committee of the CIBN. Suppose any directors or management staff falls short of the standard required of a banker as stated in the banker's code of conduct; in that case, CIBN shall discipline those involved in line with its powers under its code of conduct.[772]

[772] Code of Conduct in the Nigerian Banking Industry: Professional Code of Ethics and Business Conduct, available at: https://www.cibng.org/files/resourceDownloads/1559753366resourcehub-codes.pdf accessed 28 September 2021

The Attorney-General under the Nigerian constitution has unfettered powers; the FSM advocates harnessing the powers in furtherance of the public's interest, particularly employees and customers who suffer the most when banks fail. The powers of the federal and state Attorney-Generals are respectively provided for under s.174 and 211 of Nigeria's 1999 Constitution (CFRN).[773] The Attorney-General can institute and undertake criminal proceedings before any court in Nigeria against any person and can take over and continue any criminal proceedings before any court in Nigeria where a different authority or person has initiated such proceedings.[774] Furthermore, the Attorney-General has the power to discontinue any proceeding at any time before the court enters judgment.[775] This thesis argues that despite the Attorney General's unfettered powers under the Constitution, there are no records of when the Attorney General has used such power in dealing with erring directors and senior management staff in the Nigerian banking sector.

Therefore, the FSM advocates for the Attorney-General as the number one law officer[776] of the federation and the states respectively, to take the lead in prosecuting banks' directors and management staff indicted for various corporate malfeasants resulting from the breach of the new code. Although the Attorney-General's powers to institute proceedings are expressly stated in s.174 and s.211 of the CFRN,[777] the FSM further reiterates that responsibility by mandating the Attorney-General to take action against banks' directors involved in corporate malfeasants. The likelihood of a prosecution by the Attorney-General will help ensure a sound and safe banking system for the general good of all stakeholders. However, if the Attorney-General

[773]Sections 174 and 211 CFRN 1999 (as amended)
[774] Ibid
[775] Ibid
[776] State v S.O. Ilori & Ors (S.C. 42/1982) [1983] NGSC 37 (25 February 1983)
[777] Sections 174 and 211 CFRN 1999 (as amended)

cannot prosecute, they can grant a fiat to any legal practitioner who has shown an interest in initiating such prosecution.[778]

For the Attorney-General to deliver on the above responsibility concerning the corporate governance of the Nigerian banking sector, the FSM recommends that banks be mandated to produce a detailed corporate governance report for the office of the Attorney-General every quarter. The Attorney-General shall study the report to ensure full compliance with the corporate governance framework for the banking sector. Where there is any breach, the Attorney-General shall institute proceedings against those directors and the management staff of the affected bank or permit any legal practitioner who has shown an interest in carrying out such prosecution to do so.[779]

As stated in chapter four of this thesis, a strong audit process is fundamental for effective corporate governance in the banking sector.[780] Therefore, to effectively strengthen the Nigerian banking sector's audit process, the FSM suggests that external auditors should be mandated to file annual audit reports with the Attorney-General's office. External auditors are expected to highlight irregularities and discuss such concerns with the Attorney-General. The new corporate governance framework under the FSM provides for external auditors' liability. They will be criminally liable if they cannot deliver their responsibilities with due diligence and a high professional standard. In those circumstances, the Attorney General shall institute proceedings against them; however, if the Attorney-General cannot prosecute because of other

[778] Section 56(1) Federal High Court Act Cap F12 2004
[779] Ibid
[780] ICAEW, 'Audit of Banks: Lessons from the Crisis' 2010 available at: < https://www.icaew.com/-/media/corporate/archive/files/technical/financial-services/audit-of-banks-lessons-from-the-crisis.ashx?la=en> accessed on 14 June 2021

commitments, they must grant a fiat to any legal practitioner who has shown an interest in initiating such prosecution.[781]

Other contextual stakeholders that should be accorded the power to enforce the corporate governance code in the Nigerian banking sector are other banks' customers who are not fixed deposits account holders. They are identified as relevant stakeholders in the Nigerian banking sector not because they only contribute to the banks' capital by maintaining savings and current accounts; however, if the banks fail, the government uses public funds to bail the banks out.[782] Therefore, this thesis argues that such banks' customers should be allowed to enforce corporate governance codes in the Nigerian banking sector.

The rights available to the above group of customers under the FSM code will include the power to request detailed corporate governance reports from the DMBs, attend board meetings of DMBs, and the right to sue directors and senior management of Nigerian DMBs for breach of the code. The banks will generally have 20 working days to respond to a request for the corporate governance report, and for a request to be valid under the FSM code, it must be in writing. If there are any concerns after receiving the report, the customer can request to attend the board meeting where their concerns will be addressed. Their role is that of an observer by ensuring their complaint was given the required attention. Suppose they still have some concerns; in that case, a formal complaint should be made to the bank in writing, and the bank has eight weeks to deal with such a complaint. The customer must submit a complaint to CIBN and the Attorney General within one month of receiving the bank's final response to their complaint or from the end of the eight weeks if they have not received any response from the

[781] Section 56(1) Federal High Court Act Cap F12 2004
[782] Deinibiteim Harry, Winston Madume, 'State Intervention/Bailout and Economic Stabilisation in Nigeria: Some Lessons from the US', Mediterranean Journal of Social Sciences Vol 9 No 3 May 2018, pp.71-78

bank. As prescribed by the FSM code, the CIBN and the Attorney-General will have three months to resolve the issue from the date they received the complaint. The FSM has prescribed disciplinary actions and sanctions against the directors who are found culpable of the breach of the corporate governance code; such actions would deter others from engaging in illegal and unethical conduct. However, suppose the matter is not dealt with as stated above or within the timeframe stipulated. In that case, the customer is at liberty to approach the court for a writ of mandamus compelling the Attorney-General to commence proceedings against directors and senior management staff in breach of the corporate governance regulations.[783]

The courts also have a fundamental role in enforcing corporate governance in the Nigerian banking sector. Because of Nigeria's current legal and institutional framework, matters usually take several years to be heard. The reason for matters taken this long depends on several factors. For example, the courts are still writing in longhand which has resulted in several backlogs of cases over the years; usually, cases take between fifteen to twenty years to be heard. This is from the first trial at the High Court to the conclusion of the final appeal by the Supreme Court.[784] Another reason for the backlogs is that the courts entertain all disputes, including land, crime, civil and family matters; as a result, they are overwhelmed with these different cases, making it difficult for the courts to deal with these matters efficiently due to lack of specialisation.[785] Therefore, the FSM advocates establishing a specialised court to deal specifically with banking regulatory matters. A similar system of having a specialised court

[783] Fawehinmi v Akilu (1987) 4 NWLR (Part 67) 797 SC, A.G. Anambra State v. Nwobodo (1992) 7NWLR (Pt 256) 711
[784] Comfort Ani, 'Towards Eradicating the Problem of Delay in Criminal Justice Administration in Nigeria' Legalpedia online 29 May 2020, available at: https://legalpediaonline.com/eradicating-the-problem-of-delay-in-criminal-justice-administration-in-nigeria/
[785] Enefiok Essien, 'The Jurisdiction of State High Courts in Nigeria,' Journal of African Law Vol 44, No. 2, 2000, pp. 264-71

was established in 1994, following a series of banking failures that undermined the soundness of the financial system as a whole.

The Federal Military Government promulgated the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree Number 18 of 1994, which provided for the establishment of the Failed Banks Tribunal to deal exclusively with banking law and related matters.[786] Barely two years of the Failed Banks Tribunal commencement, eight directors were convicted, while over 200 others, including directors, senior management staff and their accomplices, were detained and prosecuted for offences relating to fraud which caused the Nigerian banking crisis.[787] So, the tribunal was very effective because of its exclusive jurisdiction to deal with banking-related fraud cases. Therefore, establishing a specialised court such as the Failed Bank Tribunal will help to protect all stakeholders' interests. For instance, suppose a banking licence is revoked, like during the Nigerian banking crisis in 2009, when nine DMBs had their licences revoked. Even if shareholders challenge the revocation, having a specialised court in place is likely to speed up the process, and depositors would get their compensation under the deposit insurance scheme on time; unlike presently, cases take a long time to be resolved by the ordinary courts.

The Failed Banks Tribunal mentioned above was dissolved in 1999, following Nigeria's return to civil rule.[788] Subsequently, all banking related matters were transferred to the Federal High Court[789] and States High Court if those matters are related to customers' and bankers' relationships.[790] Some might argue that it is needless to have another separate court to deal with

[786] Failed Bank Decree No. 18, 1994
[787] Chibuike Uche, 'The Nigerian failed banks decree: a critique,' Journal of International Banking Law 1996, Vol. 11 Issue (10), pp. 436-441
[788] Tribunals (Certain Consequential Amendments, etc.) Decree No 62 1999 Laws of the Federation of Nigeria
[789] Section 251(1) CFRN 1999 (as amended)
[790] Section 271(1) CFRN 1999 (as amended)

banking regulation and ancillary matters. The above augment may seem plausible; however, the High Courts are overwhelmed by the different cases before the courts. Judges are still writing in long hands, there are not enough Judges to deal with these cases, and most importantly, lawyers to the litigants exploit the loopholes in the law to prolong the proceedings. For example, a prevalent tactic used by defence lawyers is to raise preliminary objections challenging the court's jurisdiction to entertain the matters.[791] The court would have to decide whether it has jurisdiction because jurisdiction is fundamental to deciding cases. After all, jurisdiction is sacrosanct, no matter how sound the court's judgment is; if it has no jurisdiction, such judgment is invalid and of no effect.[792] If an act is void, then it is in law a nullity; it is not only bad but incurably bad because you cannot put something on nothing and expect it to stay there; it will collapse.[793]

If the court dismissed the preliminary objections claiming to have jurisdiction, the lawyer for the defendants would then file an appeal to the Court of Appeal, praying the court for, amongst other things, a stay of proceeding pending the determination of the appeal.[794] If the outcome of the appeal is not favourable to the appellant, they would further appeal to the Supreme Court, which in most cases dismisses the appeal. As these are interlocutory appeals, the cases are sent back to the original courts to continue hearing the substantive matters. The above process usually takes several years from when the matters were first mentioned at the High Courts and when the Supreme Court dismissed the interlocutory appeals. An excellent example is

[791] Olayinka Aileru, 'Preventing delay tactics in criminal trials in Nigeria,' The Punch Newspaper, 7 April 2016 available at: <https://punchng.com/preventing-delay-tactics-in-criminal-trials-in-nigeria/> accessed 29 September 2021
[792] Madukolu v Nkemdilim 1962 All NLR (Part 4)
[793] As par Lord Denning in Macfoy v. United African Company Ltd. (1961) 3 W.L.R.
[794] United Spinners (Nig) Ltd v. Chartered Bank [2001] 14 NWLR (Pt. 732) 195 at 214

Akingbola's case which has dragged on for over ten years due to the abovementioned reasons.[795]

Therefore, this thesis argues that establishing a specialised court to deal with banking law matters will eradicate the problem of determining which courts have jurisdiction. From the onset, all the lawyers to litigants in the Nigerian banking sector know that just one court deals with banking law matters, so there would be no need to raise preliminary objections challenging the court's jurisdiction. In addition, establishing a banking law specific court will help reduce the workloads of the High Courts. It will also lead to the specialisation of Judges who can dispense with cases before them in a timely and efficient manner due to their specialisation in banking law.[796]

7.8 Conclusion

The chapter aimed to introduce ways of improving stakeholders' recognition and protection of stakeholders' interests in the Nigerian banking sector by proposing an alternative corporate governance framework, the 'Functional Stakeholder Model.' The findings from chapters five and six revealed the nature of the corporate governance model applicable to companies generally and DMBs more precisely. The discussions in the preceding chapters show that Nigerian corporate governance is premised on shareholders' primacy inherited from the UK due to Nigeria being a former British colony. The shareholders' primacy model in the Nigerian banking sector revealed the limited stakeholder recognition and protection of stakeholders' interests.

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[795] Felix Omohomhion, Supreme Court Dismisses Akingbola's Appeal, Orders Case back to High Court, BussinessDay Newspaper, 18 May 2018, available at: < https://businessday.ng/uncategorized/article/supreme-court-dismisses-akingbolas-appeal-orders-case-back-high-court/> accessed 29 September 2021

[796] Adeyemo, F. (2017) Towards the creation of a specialist tribunal for banking law in Nigeria. Financial Regulation International, 20 (7). pp. 18-20.

As a result, the thesis proposed an alternative corporate governance model for the Nigerian banking sector premised on the stakeholder and institutional theories to improve stakeholders' recognition and protection of stakeholders' interests. The FSM advocated for including non-shareholder stakeholders, for example, employees and debtholders, on the board, as their inclusion on the board can help promote effective corporate governance in the Nigerian banking sector. Furthermore, apart from the board composition, which is aimed at balancing the interest of all stakeholders, the FSM proposed an alternative enforcement regime by giving enforcement power to other stakeholders, such as the Attorney-General, CIBN, and customers in host communities.

Another feature of FSM is the incorporation of CSR into the corporate governance framework of banks in Nigeria. The thesis argues that a CSR mechanism incorporated into the bank's corporate governance framework will further align the interests of all stakeholders. This thesis proposes the establishment of a CSR committee of the board; the committee will consult with relevant stakeholders and agree with them for the benefit of all stakeholders. To ensure that CSR initiatives are meaningful and impactful, FSM recommended that at least two percent of the bank's profit after tax for the preceding three years be spent on the agreed CSR projects. Furthermore, this thesis proposes the establishment of a specialised court to deal with banking law related matters. This will help promote stakeholders' interests as such a court will facilitate Judges' specialism, occasioning speedy dispensation of cases before the court.

The next chapter concludes this thesis. It summarises the thesis's findings, including the recommendations for improving the limited stakeholders’ recognition and protection of stakeholders’ interests in the Nigerian banking sector. In addition, the chapter highlights the

original contributions and significance of the study to the theory and practice of banking regulation, comparative corporate governance, and CSR.

Chapter Eight

CONCLUSIONS, RECOMMENDATIONS AND DIRECTIONS

8.1 Overview

This thesis aimed to examine the corporate governance regulation in Nigeria, particularly as it pertains to the Nigerian banking sector. Its aim was also to determine the extent to which the corporate governance framework in the Nigerian banking industry allows for the recognition of stakeholders and protection of stakeholders' interests, given that Nigeria practices the Anglo-Saxon corporate governance model designed always to enhance shareholder value. The thesis argues that the relative success of the Anglo-Saxon model in the UK is premised on the presence of functioning institutions. However, because of the challenging institutional environment in Nigeria, implementing the Anglo-Saxon model in the Nigerian banking sector has not effectively prevented the series of banking failures.

The general literature on corporate governance focuses on the different variations of corporate governance models, the Anglo-Saxon model, underpinned by the shareholder's theory, the Continental European model, and the Japanese *Keiretsu* system, both underpinned by the stakeholder's theory. Nigeria inherited the Anglo-Saxon model because of its relationship with Britain as a formal colony.[797] However, a more practical issue of corporate governance in Nigeria is the failure and nonexistence of formal institutions like those present in the Anglo-Saxon and Continental European countries. The institutional voids inherent in the country are connected with the poor corporate governance in the Nigerian banking sector despite the many banking reforms. In recent times, one of the high points in corporate governance discourse is whether directors should be accountable to all stakeholders and not just only shareholders.

[797] Kami Rwegasira, Corporate Governance in Emerging Capital Markets: whither Africa? Corporate Governance: An International Review, 2000, vol. 8, issue 3, 258-267

The shareholder's primacy theory underpins the Anglo-Saxon corporate governance model. The shareholders' theorists argued that directors should be accountable to only the shareholders because they bear the residual risk in the company. Directors are to promote the company's objective by maximising profit for the benefit of shareholders, and this has been the traditional view of the corporation.[798] According to Hansmann and Kraakman, it is not the position of corporate law to protect the interests of other stakeholders apart from shareholders; other stakeholders could seek to protect their interests through other spheres of law.[799] For example, they argued that directors should not be accountable to employees because employees could avail themselves of the protection offered by employment, contract, pension and health and safety laws.

In contrast, stakeholders theorists contended that such a claim that corporate law should protect shareholders' interests alone is untenable in this era of globalisation.[800] Because employment, contract, pension, and health and safety laws are inadequate to regulate the corporation's relationship with non-shareholder stakeholders.[801] They argued that corporate law must protect the interest of all stakeholders.[802] There is also the problem in identifying the stakeholder group in the corporation. The shareholder theorists have argued that the stakeholder concept is more confusing because of the myriad definitions of stakeholders in management literature.[803] As a result, the stakeholder theory is unreliable and should be rejected.[804]

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[798]Henry Hansmann, Reinier Kraakman, 'The end of history for corporate law', Yale Law School Working Paper No. 235; NYU Working Paper No. 013; Harvard Law School Discussion Paper No. 280; Yale SOM Working Paper No. ICF-00-09, January 2000.
[799] Ibid
[800] Cynthia Williams, 'Corporate Social Responsibility in an Era of Globalisation,' University of California Davis Law Review Vol 35, 2002, pp.705-778
[801] Ibid
[802] Ibid
[803] Samantha Miles, 'Stakeholder: Essentially Contested or Just Confused? Journal of Business Ethics, Vol. 108, No. 3, July 2012, pp. 285-298, Roberts Phillips, Edward Freeman, Andrew Wicks. 'What Stakeholder Theory Is Not.' Business Ethics Quarterly Vol. 13, No. 4, Oct. 2003, pp. 479-502.
[804]Ibid

There are several kinds of research on corporate governance in Nigeria; however, there are only a few on corporate governance in the Nigerian banking sector. In addition, none of that research has focused on stakeholders' recognition and protection of stakeholders' interests, considering the challenging institutional environment in Nigeria, thereby evidencing the gap in the literature. This thesis sought to answer two questions arising from this gap in the literature:

1. Are the persistent banking failures in Nigeria linked to corporate governance?
2. How can the functional stakeholder model help promote effective corporate governance in the Nigerian banking sector?

The answers to the main questions in this thesis were gained by answering a series of subsidiary questions thus:

a. What is the relationship between banking regulation and corporate governance?
b. What is corporate governance, and why does corporate governance matter?
c. What are the determinants of effective corporate governance in the banking sector?
d. To what extent are stakeholders recognised and their interests protected under Nigeria's corporate governance regulatory framework?
e. What are the challenges of implementing an effective corporate governance framework in the Nigerian banking sector?
f. How can effective corporate governance be undertaken in the Nigerian banking sector?

The main objective of the research was to explore the extent to which the Anglo-Saxon corporate governance model in the Nigerian banking sector allows for the recognition of stakeholders and the protection of stakeholders' interests. The research also intended to propose

ways of improving stakeholders' recognition and protection of stakeholders' interests in the corporate governance framework in the Nigerian banking sector.

In light of the above objectives, the thesis answered the two main research questions by exploring the six subsidiary questions thus:

Chapter two of the thesis attempted to delineate banking regulation's conceptual and theoretical issues. As a result, the public interest theory and the private interest theory of banking regulation were examined. It argues that because of the unique nature of banks, there is a need for government intervention in the public's interests. The chapter also examined the approaches and strategies for banking regulation; while it identified corporate governance as a core component of prudential regulation, it argued that a hybrid regulatory approach is needed for banking regulation to be effective.

The thesis attempted to delineate the conceptual and theoretical issues underpinning effective corporate governance in chapter three. The chapter examined the dominant theories of corporate governance, the agency theory, stakeholder theory, enlightened shareholders value, stewardship theory, and institutional theory. The chapter explored the advantages and disadvantages of the above theories and adopted the stakeholder and the institutional theories to guide the discussions in this thesis.

In chapter four, the thesis addressed stakeholders in bank governance, corporate governance models in the banking sector, and the various mechanisms for promoting effective corporate governance in the banking sector. It argues that despite evidence suggesting the relative success of the Anglo-Saxon model in developed economies, it is not a case of one size fits all, as the application of corporate governance in any country is context-dependent. It argued that the Anglo-Saxon model is designed to promote shareholders' interest, and its success in the

UK is premised on the existence of functional institutions. The thesis further argued that one way to ensure stakeholders' recognition and protection of stakeholders' interests is by embedding CSR in the corporate governance framework of banks.

In chapter five, the thesis evaluated the corporate governance framework applicable to companies in Nigeria. It argues that as evident in CAMA and other subsidiary legislation, the corporate governance model applicable to companies in Nigeria is always designed to enhance shareholders' value. Several provisions of CAMA, NCCG code, PENCOM Code, NAICOM Code, and CCGTI demonstrate limited stakeholders recognition and protection of stakeholders' interests, as those provisions tend to protect shareholders' value.

In chapter six, the thesis attempted to examine the corporate governance practice in the Nigerian banking sector to establish the extent to which it allows for the recognition of stakeholders and protection of stakeholders' interests. It began by offering an overview of the corporate governance framework in Nigeria. It distinguished between the provisions of the CBN and SEC codes. It argued that both codes differ substantially, leaving DMBs with the problem of which code to adhere to. The thesis argued that the corporate governance model in the banking sector is designed to promote shareholders' interests. It explored the role of CSR in the corporate governance framework in the banking sector and whether the CSR initiatives are implemented to protect stakeholders' interests.

In chapter seven, the thesis attempted to propose an alternative corporate governance model to the Anglo-Saxon Model, which considers Nigeria's institutional voids. The proposed FSM draws on institutional and stakeholder theories because the corporate governance framework should be context-dependent due to Nigeria's challenging institutional contexts. In addition,

contrary to the argument that the corporation must be managed for shareholders alone, the thesis argued that directors must be accountable to all stakeholders because of the interconnectedness of banks, as bank failures affect both shareholders and other stakeholders. The thesis further argued for incorporating CSR in the corporate governance framework in the Nigerian banking sector as such integration will help advance stakeholder's recognition and protection of stakeholders' interests.

In chapter eight, the thesis summarised the findings and recommendations. It also highlighted the thesis's contribution to the literature on comparative corporate governance, corporate social responsibility, and banking regulation.

8.2. Summary of Findings

This thesis investigated the corporate governance framework in the Nigerian banking sector to determine the extent the corporate governance framework allows for the recognition of shareholders and the protection of shareholders' interests. The first main question this thesis sought to answer was whether a linkage existed between the persistent banks' failures and the corporate governance framework in the Nigerian banking sector. Given that the key factors responsible for the persistent banking failures in Nigeria are all related to poor corporate governance,[805] the thesis provides the following findings:

Relationship between banking regulation and corporate governance

The thesis explored the relationship between corporate governance and banking regulation. The thesis analysed the two fundamental theories for banking regulation: the public interest

[805] Chukwuemeka Soludo, Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century. Being An Address delivered to the Special Meeting of Bankers Committee held on 6th July 2004 at the CBN H/Q, Abuja, available at: <https://www.bis.org/review/r040727g.pdf> accessed 29 September 2021

theory and the private interest theory. The aim was to justify banking regulation in the first place and what form the regulation should take. The role of banks in the economy of any nation was examined. The research revealed that banks are unique due to their function in society. For example, besides the banks' traditional role of providing payments and portfolio services, they transform illiquidity assets into liquid liabilities. The banks' functions make them volatile and susceptible to runs, therefore justifying the need to regulate them differently.

Regarding how banking regulation should be carried out, the research examined the strategy for banking regulation, namely, system regulation, conduct regulation and prudential regulation. The research revealed that corporate governance is a core component of prudential and conduct regulations because corporate governance focuses on risk management by mitigating the excessive risk-taking appetite of directors and senior management, which led to the various banking failures. The discussion in chapter two sought to answer the question: in whose interest should banking regulation be carried out? The research revealed that contrary to the argument that banking regulation, particularly corporate governance, should serve the private interest and should take the form of self-regulation, there is a need for government intervention through the command-and-control approach. The thesis used the findings from the argument of the public interest theorists to justify the need for government regulatory interventions. The public interest theorists argued that government regulatory interventions must allocate scarce resources to benefit individuals and shared interests.[806] Given the above, this thesis considers banking interventionist regulation justified based on public interests and the nature of banking business characterised in secrecy.

[806] Johan den Hertog, 'General Theories of Regulation,' Economic Institute / CLAV, Utrecht University 1999 p 225

Corporate governance and why it matters

Having established that corporate governance is a core component of banking regulation, this subsidiary question was addressed in chapter three of the thesis. In answering the question, the thesis critically examined the meaning and conceptualisation of the concept of corporate governance. The research revealed that though corporate governance has been a topical issue in the post-financial crisis of 2007-2009, there is no convergence of the definition of the concept despite this popularity. Consequently, scholars have offered various definitions to suit the different contexts in which the subject is perceived.

The research revealed that the most popular definition of corporate governance is by Sir Adrian Cadbury. He defined corporate governance as a system by which a company is directed and controlled.[807] This definition is popular because most countries' corporate governance codes use it when defining corporate governance. Despite this popularity, the thesis argued that Cadbury's definition aims to promote the private interest of maximising profit for the benefit of shareholders. The thesis also considered other definitions of corporate governance, particularly the one offered by the OECD, which defined corporate governance as *'a set of relationships between a company's management, its board, its shareholders and other stakeholders.'*[808] The thesis argued that this definition is more inclusive as it recognises other stakeholders in the corporation apart from the shareholders. This definition aligns with this thesis's overarching theme: stakeholders' recognition and protection of stakeholders' interests.

[807] Adrian Cadbury, Report of the Committee on the Financial Aspects of Corporate Governance 1992 - Gee – London, see http://www.ecgi.org/codes/documents/cadbury.pdf, accessed 29 September 2021
[807] Shleifer Andrei, Robert Vishny, 1997, A Survey of Corporate Governance. The Journal of Finance 52, no. 2: pp737
[808] OECD, G20/OECD 'Principles of Corporate Governance,' (OECD Publishing, Paris, 2015) p.9

Furthermore, the thesis also examined the definition offered by Preston, which revealed that corporate governance could be positioned within the institutional context. Preston defined corporate governance as 'the set of institutional arrangements that legitimates and directs the corporation in performing its functions.'[809] Based on the two last definitions, the thesis proposed a new definition of corporate governance thus: corporate governance is the institutional arrangements that shape the interlinked relationships between various stakeholders in the corporation, thereby creating checks and balances to promote all stakeholders' interests.

The thesis explored the dominant theories underpinning corporate governance: agency theory, stewardship theory, shareholder's primacy theory, enlightened shareholders' value theory, stakeholders' theory, and institutional theory. The thesis revealed that even though the agency theory is fundamental in understanding corporate governance, it has some fundamental flaws. The agency theory seems to have neglected other stakeholders in the corporation. It is based on the relationship between two individuals in the corporation, the shareholders knowns as the principal and the directors known as the agent, thereby neglecting other stakeholders in the corporation.

The thesis further revealed that the stakeholders' and institutional theories would best address the limited stakeholders' recognition and protection of stakeholders' interests in the Nigerian banking sector. The stakeholders' theory enables the researcher to consider key stakeholders within the banking sector. In contrast, the institutional theory allows the researcher to consider the institutional arrangement of the country where the corporate governance framework will be implemented.

[809] James Post, Lee Perston, Sybille Sach, 'Redefining the Corporation: Stakeholder Management and Organisational Wealth, (Stanford University Press, Stanford California 2002) p. 18

Determinants of effective corporate governance in the banking sector

Having established the conceptualisation of corporate governance and why it matters, the fourth chapter addressed the third subsidiary question, the determinants of effective corporate governance in the banking sector. The thesis examined the meaning and conceptualisation of the term effective corporate governance. It revealed that this term, effective corporate governance, has become popular recently. The thesis revealed that the re-conceptualisation of the term is evident in discourse amongst scholars, corporate law practitioners, policymakers, and even governments who now adopted the term 'effective corporate governance in their codes.'[810] The thesis argued that despite this new trend in describing corporate governance, the newly coined concept of effective corporate governance was not defined anywhere in corporate governance literature.

The common perception amongst academics and corporate law practitioners is that effective corporate governance means good corporate governance.[811] The research revealed that for corporate governance to be effective, four cardinal principles must underpin it: fairness, transparency, accountability, and responsibility.[812] The research revealed that these principles formed the basis for the international standard for corporate governance for banks. It compared the two dominant international frameworks for corporate governance in the banking sector: the Basel principles and the OECD principles, and it argued that in implementing the above international standards for corporate governance in banks, there is the need to consider the legal, economic, social, and cultural circumstances in that jurisdiction. The thesis further

[810] Melinda Timea Fülöp, 'Why Do We Need Effective Corporate Governance?'. *Int Adv Econ Res* 20, 2014, pp.227–228, available at:< https://doi.org/10.1007/s11294-013-9430-3> accessed 14 September 2021
[811] Ibid
[812] Ira Millstein, Michel Albert, Adrian Cadbury, Robert Denham, Dieter Fedddersen, Nobuo Tateisi, 'Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets: A Report to the OECD by the Business Sector Advisory Group on Corporate Governance, OECD Publishing, Paris, 1998 https://doi.org/10.1787/9789264162709-en

argued that for corporate governance to be effective, it must recognise stakeholders and protect their interests.

In addition, the research considered the stakeholders in the banking sector, and the research revealed that stakeholders in the banking sector include shareholders, employees, creditors, government, corporate regulators, customers, local communities, public interest groups and trade unions. Consequently, the thesis argued that corporate governance in the banking sector should protect key stakeholders' interests. The thesis examined the regulatory approaches to corporate governance in the banking sector, namely the Anglo-Saxon model, underpinned by the shareholder's theory, the Continental European model, and the Japanese *Keiretsu* system, both underpinned by the stakeholder's theory. It revealed that the Anglo-Saxon model maximises shareholders' value, thereby endangering other stakeholders' interests.

The thesis further revealed that one way of ensuring stakeholders' recognition and protection of stakeholders' interests is by embedding CSR in the corporate governance framework. It argued that CSR responsibility varies from one jurisdiction to another, as CSR activities are not globalised but context-dependent.[813] The thesis revealed that CSR in the African context differs from how CSR is generally perceived in developed economies. For example, in Nigeria, the thesis argued that banks have a responsibility to help develop infrastructural and social amenities because of the country's socio-political and economic challenges.[814] Lastly, the thesis examined the institutional mechanisms for bank governance, namely ownership structure, board structure, system regulation and the market for corporate control. The thesis revealed

[813] Adaeze Okoye, 'Exploring the relationship between corporate social responsibility, law and development in an African context: Should government be responsible for ensuring corporate responsibility?' International Journal of Law and Management, Volume 54, Number 5, 2012, pp. 364-378 p.367
[814] Ibid

that the board of directors is crucial in achieving effective corporate governance in the banking sector.

Recognition of stakeholders and protection of stakeholders' interests in Nigeria's corporate governance regulatory framework

The thesis addressed the above subsidiary question in chapter five by critically analysing the corporate governance framework applicable to companies generally in Nigeria. The thesis traced the origin of the corporate governance model in Nigeria; the thesis revealed that Nigeria inherited its corporate governance framework from the UK because of their historical past. As a former British colony, Nigeria inherited the corporate law of England through the received law of Statute of General Application (SOGA).

The research revealed that shareholders' primacy underpins CAMA, the principal legislation that governs corporate law in Nigeria. This is evident in several statutory provisions embedded in CAMA. For example, CAMA requires the company to hold a statutory meeting of shareholders within six months of its incorporation.[815] CAMA also requires directors to act in the company's best interest; in discharging their fiduciary duty to the company, directors are to act in the interests of shareholders.[816] There seems to be a limited stakeholders' provision in CAMA requiring directors to consider employees' and customers' interests and also to consider the impact of the company's operations on the environment when performing their functions.[817] However, the thesis revealed that s.305(9) CAMA took enforcement power away from the above stakeholders by stating that only shareholders can commence proceedings against directors for breach of duty.[818]

[815] S.235 CAMA 2020
[816] S.305 (3)(4) CAMA 2020
[817] S.305(3)(4) CAMA 2020
[818] S.305(9) CAMA 2020

The thesis revealed that many corporate governance codes apply to companies in Nigeria besides CAMA. The thesis examined the NCCG 2018,[819] which applies to all companies operating in Nigeria, irrespective of the sector. It revealed that the NCCG did not attempt to repeal other corporate governance codes. The PENCOM code still applies to pension operators, the NAICOM code still applies to insurance operators, and the CCGTI still governs the telecommunication sector. Shareholders' primacy underpins the above codes, as evident from the relevant provisions of these codes that they are also designed always to promote shareholders' interest. Although various corporate governance codes apply to Nigerian companies, the thesis argued that none of these codes is explicitly designed to recognise stakeholders and protect stakeholders' interests. Therefore, the corporate governance model that applies to companies in Nigeria shows a limited stakeholders' recognition and protection of stakeholders' interests.

Challenges of implementing an effective corporate governance framework in Nigeria's banking sector

The above subsidiary question was addressed in chapter six of this thesis by critically analysing the corporate governance framework in the Nigerian banking sector. It argued that the current corporate governance framework in the Nigerian banking sector is designed mainly to promote shareholders' value and does little or nothing regarding other stakeholders' groups that may affect or are affected by the Nigerian banks' corporate objective. The thesis argued that shareholders' primacy is embedded in CAMA and other codes applicable to the banking sector. It revealed that CAMA, SEC and CBN codes are designed to promote shareholders' interests over and above the interests of other stakeholders. CAMA, SEC code and CBN code contain numerous provisions that always support shareholders' values maximisation, so other

[819] NCCG 2018

stakeholders' recognition and protection of their interests are inadequate in those above legal and regulatory frameworks.

The thesis highlighted the precarious state of the Nigerian banking system from the late 1990s to the early 2000s, which necessitated Soludo's reform agenda in 2004 to consolidate/recapitalise commercial banks in Nigeria to create a sound banking system.[820] So as a follow-up, the CBN issued the Code of Corporate Governance for Banks in Nigeria Post Consolidation on 5 January 2006.[821] However, the corporate governance code did not prevent persistent failures in the Nigerian banking sector. The thesis argued that the consolidation/recapitalisation of commercial banks in Nigeria, with the minimum requirement of ₦25 billion (approximately $164.64 million), did not create a sound banking system due to the numerous banking failures after the exercise. The thesis revealed that the CBN corporate governance code is modelled on the UK corporate governance code underpinned by the shareholder's primacy model. The thesis argued that the discrepancies between the SEC Code and CBN Code made it challenging to ensure compliance; it further argued that because of the self-regulatory nature of both the SEC and the CBN codes, there is a high non-compliance rate. The research revealed that some provisions of both codes in most cases were not complied with, and there were no severe consequences for such breaches despite the powers available to CBN under BOFIA to sanction DMBs.[822]

The research revealed that in 2009, the Nigerian banking sector suffered significantly because of its lending to the oil and gas sector. As a result, by the end of December 2009, the Nigerian

[820] Chukwuemeka Soludo, Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century. Being An Address delivered to the Special Meeting of Bankers Committee held on 6th July 2004 at the CBN H/Q, Abuja, available at: <https://www.bis.org/review/r040727g.pdf> accessed 29 September 2021

[821] CBN, 'Code for Corporate Governance for Banks in Nigeria Post Consolidation' 2006

[822] S.12(g) BOFIA, 2020

banks' lending exposure to the oil and gas sector was ₦1.6 trillion (approximately $11.35 billion), which led to concern over the banks' liquidity and the quality of the banks' assets. Following Sanusi Lamido's appointment on 3 June 2009 as the CBN governor, the CBN and NDIC conducted a joint examination of the Nigerian banks, which revealed that nine of the twenty-four DMBs were in distress due to liquidity crises caused by poor corporate governance practices. The thesis identified systemic corruption as a significant problem responsible for the Nigerian banking crisis of 2009. Consequently, to avert the systemic failure of the entire financial system, the CBN, in conjunction with NDIC, had to bail out the nine distressed banks by injecting the sum of ₦620 billion (approximately $4.27 billion).

The thesis argued that some influential CEOs/COBs take advantage of the lapses in the corporate governance regulatory framework to perpetrate all manners of fraud. It further argued that the CEOs/COBs might not be able to engage in such fraudulent practices where DMBs' boards were genuinely independent, and the external auditors had acted with due diligence. The research revealed that the appointments of independent directors are influenced by the COBs/CEOs and, at times, by the shareholders, which raises the question of how truly independent are independent directors? The thesis also revealed that most DMBs' boards of directors operated without having the correct number of independent directors. At the same time, there are discrepancies between CAMA, SEC code and CBN code on the minimum numbers of independent directors. The SEC code required publicly listed companies to have at least one independent director, while the CBN code mandated banks to have at least two independent directors and lastly, CAMA provided that public companies should have at least three independent directors.[823] The research revealed that most DMBs had no independent directors on their board. There seems to be no consequence for such non-compliance, even

[823] S.275(3) CAMA 2020

though the codes specified that compliance with the requirement of the codes was mandatory. The thesis argued that banks could escape sanction for non-compliance with the codes mentioned above because of the lack of appropriate enforcement mechanisms.

The thesis also revealed the issue of the regulators' lack of preparedness and competence. CBN governors, for instance, are usually appointed from the DMBs, which may affect their independence and willingness to regulate the banks effectively. Before being appointed as governors of CBN, most of them were previous CEOs' DMBs. They probably would have breached provisions of the codes or had embarked on certain activities responsible for the present shortcomings of these banks. In addition, their appointment may have been influenced by highly placed politicians or very influential individuals in society who interfere in how they carry out their functions. The thesis argued that such influences from people of high social status and the political elite erode the independence of the Governor of CBN in particular and the CBN as an establishment in general.

The research also highlighted the problem associated with the investigation and prosecution of directors and senior management staff of banks that have been indicted. The EFCC and ICPC are government agencies responsible for such prosecution; however, it is doubtful whether they have made enough progress. This is not due to the volume of cases they investigate and prosecute because of the interwoven nature of their functions; there are usually clashes between both agencies, which tend to slow down the pace of prosecution. There is also the issue of political interference from the political elites who meddles in how the agencies should discharge their functions. The EFCC has been accused of not discharging its duties effectively and embarking on selected prosecutions. The thesis also identified the present flaws in the judicial system in Nigeria as a hindrance to the effective prosecution of directors and senior

management staff of DMBs indicted for various offences. Cases keep dragging on in the Nigerian courts because lawyers exploit the legal loopholes by unnecessarily challenging the jurisdiction of the courts, seeking unending adjournments, and filing different processes. As a result, matters tend to linger on for a considerable amount of time; in most cases, matters go on for more than a decade. For example, the thesis argued that the case of Akingbola, the formal director of Intercontinental Bank, had been dragging on in the Nigerian courts for years despite the English court finding him guilty of misappropriation of the fund for close to ten years now.[824]

Furthermore, the research also examined the Nigerian Sustainable Banking Principles, particularly the requirement concerning gender diversity on the board.[825] The research revealed that most DMBs failed to comply with CBN directives that dealt with women's economic empowerment, mandating DMBs to have at least 30 percent of women representation on their boards and 40 percent of top management positions. The research also revealed that although DMBs are required to disclose this in their annual reports, there is no appropriate mechanism for enforcement. This also raises the question of the nature of disclosure made by DMBs; one would wonder whether such disclosures are full and transparent for all stakeholders' benefit.

Finally, the research examined the nature of CSR activities by the Nigerian DMBs, as this is one way of recognising stakeholders and protecting stakeholders' interests. The thesis revealed that DMBs do not appropriately engage in CSR because they do not see CSR as an obligation but rather a philanthropic act of giving back to society, which more or less is viewed as a charitable cause. The thesis argued that CSR is more than just a charitable cause; given the

[824] Access Bank Plc v Akingbola & Ors (2012) EWHC 2148 (Comm)
[825] CBN, 'Nigerian Sustainable Banking Principles,' Central Bank of Nigeria July 2012 available at:< https://www.cbn.gov.ng/out/2012/ccd/circular-nsbp.pdf> accessed 29 September 2021

developmental challenges in Africa, CSR is more of an obligation rather than merely giving back to society. Though there have been attempts to have a legislated CSR, all attempts have failed to materialise. Therefore, spending such minimal amounts on their CSR projects, which in most cases is less than one percent of their profit after tax, will not help meet Nigeria's development needs. The thesis argued that CSR would not address Nigeria's socio-economic developmental challenges considering the number of projects each DMB claimed to have spent such a small percentage of its profits on. The thesis also revealed that stakeholders, like customers in host communities, are not adequately engaged by DMBs when embarking on their CSR projects.

8.3 Summary of Recommendations

Before discussing the recommendations in detail, it is necessary to give a brief description of the key elements of the FSM. Stakeholder involvement is key under the FSM; the model allows for non-shareholder stakeholder directorships such as employees and debtholders inclusion in the board of directors. This is crucial in realising stakeholders' recognition and protection of stakeholders' interests that underpin the FSM. Another vital element of the FSM is incorporating CSR into the corporate governance framework of DMBs. The FSM has incorporated CSR into the corporate governance of DMBs in the following ways: mandating DMBs to spend a certain percentage of their profits on CSR projects, making CSR a compulsory module in the bankers' training curriculum, and mandating banks to have a CSR committee of the Board. Another fundamental element of the FSM is that it gives enforcement powers to stakeholders, such as lawyers, customers, CIBN and the Attorney General of the Federation and States. Also, as part of the FSM enforcement mechanism framework is establishing a specialised court to deal with banking law cases. Having given a brief description of the key elements of the FSM, this thesis now summarises its recommendations as follows.

Given the limited stakeholder recognition and protection of stakeholders' interests in the corporate governance framework in the Nigerian banking sector, this thesis addressed the last subsidiary question, how can effective corporate governance be undertaken in the Nigerian banking sector. In answering the question, the thesis made the following recommendations considering the challenges of implementing effective corporate governance in the Nigerian banking sector identified and discussed in chapter six. The thesis in chapter seven proposed an alternative corporate governance framework known as the Functional stakeholder Model of corporate governance for the Nigerian banking sector. The thesis recommends the involvement of key stakeholders like debtholders, employees, federal and state Attorney-Generals, professional bankers' associations, the CIBN and other stakeholders, particularly customers without a fixed deposit account, to promote effective corporate governance in the Nigerian banking sector.

The thesis acknowledged that an efficient board is a prerequisite for effective corporate governance in the Nigerian banking sector. It argued that the board must be appropriately composed to deliver on its responsibilities. The thesis further argued that appointments of debtholders on the board of directors would mitigate the excessive risk-taking of the executive directors and management staff. Although the thesis supports a single board system, it recommends the inclusion of employees as stakeholders' directors on the board of DMBs. It argued that appointing employees on the board of DMBs will help promote the interests of all stakeholders. Having employees directors will ensure that employees' voices are heard in the boardrooms. The thesis argued that besides the skills and competence employees' directors would bring to the board, they as insiders possess valuable information that might assist the board in its decision-making process, unlike outsiders who may have little or no information

on the bank. Therefore, having employees on the board of DMBs will help solve information asymmetry, which is one cause of market failure.

Furthermore, the thesis argued that because of the weak enforcement regime by the regulators, especially the CBN, the federal and state Attorney-Generals should be given enforcement powers, such as the power to commence proceedings against directors and remove directors where they have been found culpable. The thesis argued that though the Attorney-Generals have such power to prosecute criminal matters,[826] they are complacent in prosecuting corporate law matters. The thesis also recommends that where the Attorney-General cannot prosecute, such powers can be given to any legal practitioner willing to prosecute the matter upon application to the Attorney-General. The thesis argued that if the Attorney-Generals are specifically mandated to deal with banks' fraud and board of directors' malfeasance, DMBs directors will sit up as they are unlikely to escape prosecutions. They are aware that if the Attorney-General cannot prosecute them for any reason, several other legal practitioners will apply for a fiat to commence a prosecution against them.

The thesis further recommended that other customers apart from debtholders should be given some rights, such as compliant rights/enforcement rights; such powers will enable them to sue directors that may breach the code. The thesis also suggested contracting enforcement action to third parties' organisations; for example, public agencies and members of the host community that are bank customers could be given the right to attend board meetings and be given the power to make public interest claims.

[826] Ss 174 (1)(a), 211 (1)(a) CFRN 1999 (an amended)

The thesis recognises the role of CSR in the African context in addressing the country's socio-economic developmental challenges through poverty alleviation, healthcare provision, infrastructure development, and education. The thesis further argued that CSR is a medium for recognising stakeholders and protecting stakeholders' interests. Therefore, the thesis recommends incorporating CSR into the corporate governance framework of the Nigerian banking sector as such will help improve the quality of information disclosure in the banking sector, thereby maximising stakeholders' value, which also includes shareholders and their interests. The thesis recommended setting up a mandatory CSR committee of the board as a corporate governance mechanism to ensure that key stakeholders' interests are appropriately aligned. Findings from chapter six reveal that information disclosure was still very sketchy because banks are reluctant to provide information to stakeholders, especially on their CSR activities. The thesis recommends that corporate governance reports provide adequate information on how DMBs engage with relevant stakeholders to plan and execute the banks' CSR projects. The thesis recommends that DMBs have a dedicated CSR Committee of the board, which will make timely governance and CSR disclosures for the benefit of all stakeholders. The thesis also recommends the inclusion of CSR in the bankers' training curriculum to enable them to inculcate the right attitude towards the importance of CSR as a mechanism for promoting the interest of all stakeholders. The thesis further recommended that the CIBN provide regular CSR training as part of the banks' CPD requirement; all bankers registered with CIBN must undergo 12 hours of CSR training every fiscal year, translating to at least an hour of CSR training monthly. Such frequent training will enable the banks to focus on CSR commitments, especially the board's role in setting the right tone for the CSR direction of the bank.

In addition, besides the thesis recommending a board with more independent directors, it also supports having more women on the board. It argues that board gender diversity is one way of ensuring the board's independence. There should be a fair percentage of women's representation on the board, as research shows that women are less likely to engage in excessive risk-taking.[827] Having more women on the board will improve the bank's performance and help mitigate excessive risk-taking, which is likely to occur if the board members are predominantly male.[828]

The thesis also recommends reviewing the extant laws that govern corporate governance in the Nigerian banking sector, particularly corporate governance codes applicable to the banking sector. It argues that harmonising the codes will eradicate the discrepancies evident in the various codes applicable in the banking sector and will most likely ensure compliance with the code's requirements rather than shuttling between codes to see which code has the minimalist requirements.

Furthermore, the thesis recommends that for proper enforcement of corporate governance in the Nigerian banking sector, there is the need to establish a specialist banking law court that will deal with banking regulation and other related matters. It argues that the present framework with the Federal and States High Courts dealing with banking regulation and other related matters is not fit for purpose. The Federal and States High courts are slow, expensive, and ineffective in resolving banking law cases. These matters often take a long time to reach trial because of the multitude of cases before the Federal and States High Courts, which deal with various kinds of cases in different areas of law. The time it takes for cases to be heard in the

[827] Bin Srinidhi, Ye Sun, Hao Zhang, Shiqiang Chen, 'How do female directors improve board governance? A mechanism based on norm changes' Journal of Contemporary Accounting and Economic, Volume 16, Issue 1, April 2020, available at: https://doi.org/10.1016/j.jcae.2019.100181
[828] Ibid

Federal and States High Courts delays the payment of compensation to depositors in the event of a banking crisis.[829] However, establishing a specialised court solely to deal with banking regulation and other related matters will ensure that the cases are delivered timely by knowledgeable, independent, and impartial judges.

8.4. Original Contributions and Significance of the Thesis

This thesis has made significant original contributions to the discourse on comparative corporate governance and regulations, particularly as it relates to financial institutions and stakeholders. The key contributions made by this thesis are the use of various theories of corporate governance to address the issue of poor corporate governance in the Nigerian banking sector; the use of various corporate governance mechanisms to analyse the corporate governance challenges in the Nigerian banking sector, and developing an alternative framework by embedding CSR in the corporate governance framework of the Nigerian DMBs. The above original contributions this thesis has made to academic discourse require further discussion.

From a theoretical standpoint, this thesis has contributed to research in corporate governance using three different theories, namely shareholder's theory, institutional theory, and stakeholder's theory, to explain corporate governance with deeper insight. Several pieces of research on corporate governance have focused their discussion on using the dominant shareholders' theory; for example, most work by Chris Ogbechie has focussed on the

[829] Umaru Ibrahim, 'The Challenges to Deposit Insurance Law and Practice' Keynote address delivered at The Sensitization Seminar for Court of Appeal Justices Held On 12th December 2018 at the Court of Appeal Complex, Abuja, available at:< https://ndic.gov.ng/keynote-address-delivered-by-alhaji-umaru-ibrahim-fcib-mni-md-ceo-of-nigeria-deposit-insurance-corporation-ndic-at-the-sensitization-seminar-for-court-of-appeal-justices-held-on-12th-december-20/> accessed 29 September 2021

effectiveness of the shareholders' theory in Nigerian companies.[830] In contrast, scholars like Adegbite have taken a different view from using the dominant shareholder's theory to adopting the institutional theory in their analysis of Nigeria's corporate governance framework.[831] Nevertheless, what is common in existing scholarship on corporate governance in Nigeria is that most of the research only focused on one corporate governance theory at any given time, as evident from the work of Ahunwan,[832] Okike,[833] Ogbechie,[834] and Adegbite.[835] This thesis contributes to the existing literature on corporate governance in the Nigerian banking sector, particularly since the 2007–2009 financial crisis. To the best of the researcher's knowledge, this is the first research to use the shareholder's theory, stakeholder's theory and institutional theory as the theoretical framework underpinning the study of corporate governance in the Nigerian banking sector.

The significance of using three different theories of corporate governance lies in the fact that various theories are needed to explain the limited stakeholder's recognition and protection of stakeholders' interests and how to enhance stakeholders' interests in the Nigerian banking sector. Using the institutional theory enabled the researcher to consider the institutional environment in Nigeria. The shareholder's theory underpins the Anglo-Saxon corporate governance model transplanted to the Nigerian banking sector to maximise profits for shareholders' benefit.

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[830] Chris Ogbechie, Corporate Governance Practices and Leadership in Nigeria,' June 7, 2019, available at: < https://ssrn.com/abstract=3400913>, Chris Ogbechie, *Dimitrios* Koufopoulos, Corporate governance practices in publicly quoted companies in Nigeria. International Journal of Business Governance and Ethics, Vol. 3 (4) 2007 pp.350-381.

[831] Adegbite (n 25) (n 26)

[832] Boniface Ahunwan, 'Corporate Governance in Nigeria,' Journal of Business Ethics 37 (3): (2002), pp.269 - 287

[833] Elewechi Okike, 'Corporate Governance in Nigeria: The status quo,' Corporate Governance an International Review 15(2) 2007, pp.173-193

[834] Chris Ogbechie, Corporate Governance Practices and Leadership in Nigeria,' June 7, 2019, available at: < https://ssrn.com/abstract=3400913> accessed 29 September 2021

[835] Adegbite (n 25) (n 26)

The Anglo-Saxon corporate governance model practised in Nigeria failed to consider the challenging institutional environment in Nigeria. The research used stakeholder's theory to understand the different stakeholders in the banking sector and how to protect stakeholders' interests because of the uniqueness of banks and the persistent failure in the Nigerian banking sector. The thesis also used the institutional and stakeholder theories to identify and analyse the challenges of poor corporate governance in the Nigerian banking sector. In addition, the thesis used the stakeholder's theory to address the limited stakeholders' recognition and protection of stakeholders' interests.

The thesis has contributed to corporate governance discourse in the banking sector by establishing a nexus between corporate governance and banking regulation by identifying corporate governance as a core component of prudential regulation. The thesis acknowledged that the nature of the banking business is submerged in risk-taking because the banks collect deposits from depositors. They are expected to maintain a certain liquidity ratio while the excess monies are advanced as loans to customers or/and invested in other businesses in return for profits. The thesis shed light on using corporate governance to mitigate excessive risk-taking by the board of directors and senior management.

The thesis's original contribution also stems from using the corporate governance mechanisms to analyse the corporate governance challenges in the Nigerian banking sector. The multifaceted research methodologies adopted in the thesis enabled the researcher to engage in a comparative analytical discussion of corporate governance in more than one jurisdiction. As a result, providing a deeper understanding of various mechanisms that could help improve stakeholders' recognition and protect stakeholders' interests in the Nigerian banking sector.

In order to improve the corporate governance practice in the Nigerian banking sector, this thesis proposed the FSM. The FSM selected stakeholders capable of promoting effective corporate governance and drawing on the institutional theory; the thesis considered the peculiarities prevalent in Nigeria, which is absent in the UK, where the Anglo-Saxon corporate governance model was transplanted from. The FSM has proposed the inclusion of non-shareholder stakeholders in the board of DMBs, such as debtholders and employees; as drivers of effective corporate governance, their inclusion will ensure that key stakeholders are recognised, and their interests are equally protected. The thesis has also made an original contribution by incorporating CSR into the corporate governance framework of Nigerian DMBs. The thesis suggested several ways in which CSR can be embedded into the corporate governance framework of banks to promote stakeholders' recognition and protection of stakeholders' interests. Another original contribution of this thesis is proposing alternative enforcement mechanisms for corporate governance in the Nigerian banking sector. The FSM has advocated for some stakeholders like the Attorney General of the Federation and the States, lawyers, CIBN, and members of the public who are customers to be given enforcement power. Despite various reforms, the CBN Nigeria's primary banking regulator has failed to meet its banking regulatory responsibilities because of the persistent banking failure in recent times. The CBN is more reactive rather than proactive, as evident from the series of bailouts that have taken place in recent times. The FSM proposal of giving enforcement powers to other stakeholders means that CBN can focus on its other functions.

The findings and recommendations from this thesis should be of immense benefit to DMBs in Nigeria and other countries with similar institutional environments. It will enable them to understand the challenges mitigating against implementing effective corporate governance in the banking sector and their responsibility to protect stakeholders' interests, particularly

through CSR. The findings and recommendations will also be relevant to policymakers and the government. It will allow them to understand the lack of compliance with the codes and extant regulations to strengthen the law to ensure effective compliance. It will also be relevant to lawmakers in developing new legislation that will benefit all stakeholders, particularly as it relates to CSR. The findings and recommendations of this thesis will be of significant benefit to external auditors. It will assist them in understanding their role in the corporate governance framework of banks by ensuring that every audited financial statement accurately reflects the banks' financial position. This thesis will provide external auditors with the understanding that they are liable if they fail to give an accurate and fair opinion of the banks' financial position. This study will also be important to academia interested in further research in comparative corporate governance, corporate social responsibility, and banking regulation.

8.5 Final Remarks

The research reported in this thesis has explored the extent to which the corporate governance framework in the Nigerian banking sector allows for the recognition of stakeholders and the protection of stakeholders' interests. From the onset, this thesis did not attempt to solve all the problems in the Nigerian banking sector and has not solved all the problems; however, it has addressed the limited stakeholder recognition and protection of stakeholders' interests in the Nigerian banking sector.

Although this thesis has used DMBs in Nigeria as a case study, the FSM can readily be applied in banks in challenging institutional contexts because the plight of customers and employees are the same in the event of banking failures in any retail bank in a challenging institutional environment. Given the above, further research is essential regarding the potential of implementing the FSM in a broader context within the Nigerian financial system and other

countries with similar challenging institutional contexts. Research to determine the FSM's practicability in the insurance companies, pension funds, and primary mortgage institutions would complement the findings in this thesis.

Further research is also needed to enlarge the scope of stakeholders' recognition and protection of stakeholders' interests if the FSM is to be adopted and implemented in global south countries with similar challenging institutional environments to Nigeria because, as argued throughout this thesis, the actual scope, adoption, and implementation of any corporate governance framework need to be context-dependent.

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APPENDIX A

OWNERSHIP STRUCTURE OF NIGERIAN DMBs 2007 – 2018

Table A1 2007 - 2009

S/N	BANKS	OWNERSHIP STRUCTURE (%) 2007			OWNERSHIP STRUCTURE (%) 2008			OWNERSHIP STRUCTURE (%) 2009		
		Govt	Prvt	Fgn	Govt	Prvt	Fgn	Govt	Prvt	Fgn
1	Access Bank Nigeria Plc	--	96.42	3.58	0.01	92.02	7.97	9.7	77.87	12.43
2	Afribank Nigeria Plc	10	90	--	--	100	--	--	100	--
3	Bank PHB Plc		84.7	15.3	--	91.65	8.35	3.05	90.67	6.28
4	Diamond Bank Plc	--	78.3	21.7	0.03	83	16.97	0.64	85.6	13.76
5	Ecobank Nigeria Plc	--	28.7	71.3	--	28.7	71.3	--	28.7	71.3
6	Equatorial Trust Bank Ltd	--	100	--	--	100	--	--	100	--
7	Fidelity Bank Plc	--	100	--	--	100	--	--	100	--
8	First Bank of Nigeria Plc	0.36	98.06	1.58		99.76	0.24	0.82	99.04	0.14
9	First City Monument Bank Plc	8.72	75.81	15.47	2.48	78.52	19	0.47	81.34	18.19
10	First Inland Bank Plc / FinBank Plc	10.6	89.4	--	6.3	93.7	--	12.73	87.27	--
11	Guaranty Trust Bank Plc	0.18	74.75	25.07	--	92.41	7.59	0.23	86.73	13.04
12	Intercontinental Bank Plc	0.04	92.26	7.70	0.01	92.28	7.71	0.02	94.22	5.76
13	Nigeria International Bank Ltd /Citibank Nigeria Ltd	--	18.1	81.9	--	18.1	81.9	--	18.1	81.9
14	Oceanic Bank Plc	9.95	90.05	--	5.6	88	6.4	5.75	90.4	3.85
15	Skye Bank Plc	5.75	94.25	--	5.75	94.25	--	0.32	97.14	2.54
16	Spring Bank Plc	--	100	--	--	100	--	12.33	83.39	4.28
17	Stanbic IBTC	--	49.99	50.01	--	49.9	50.1	0.24	47.70	52.06
18	Standard Chartered Bank Ltd	--	--	100	--	--	100	--	--	100
19	Sterling Bank Plc	2.87	83.58	13.55	0.05	82.01	17.94	3.02	79.51	17.47
20	Union Bank Plc	--	100	--	--	100	--	--	100	--

21	**United Bank for Africa Plc**	**4.27**	**90.43**	**5.30**	**3.05**	**94.6**	**2.35**	**4**	**86**	**10**
22	**Unity Bank Plc**	**63**	**36.96**	**0.04**	**68.70**	**31.27**	**0.03**	**70.06**	**29.9**	**0.04**
23	**Wema Bank Plc**	**13.54**	**86.46**	**--**	**10**	**90**	**--**	**--**	**100**	**--**
24	**Zenith Bank Plc**	**2.3**	**95.38**	**2.32**	**3.03**	**96.96**	**0.01**	**2.84**	**97.16**	**--**

Source: Data obtained from NDIC Annual Report for 2007, 2008 and 2009

Table A2 2010 - 2012

S/N	**BANKS**	**OWNERSHIP STRUCTURE (%) 2010**			**OWNERSHIP STRUCTURE (%) 2011**			**OWNERSHIP STRUCTURE (%) 2012**		
		Govt	**Prvt**	**Fgn**	**Govt**	**Prvt**	**Fgn**	**Govt**	**Prvt**	**Fgn**
1	**Access Bank Nigeria Plc**	**1**	**99**	**--**	**1**	**99**	**--**	**1**	**99**	**--**
2	**Afribank Nigeria Plc /Mainstream Bank Ltd from 2011**	**--**	**100**	**--**	**100**	**--**	**--**	**100**	**--**	**--**
3	**Bank PHB Plc / Keystone Bank Ltd from 2011**	**--**	**100**	**--**	**100**	**--**	**--**	**100**	**--**	**--**
4	**Diamond Bank Plc**	**--**	**100**	**--**	**--**	**100**	**--**	**0.16**	**99.7**	**0.14**
5	**Ecobank Nigeria Plc**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
6	**Equatorial Trust Bank Ltd**	**--**	**100**	**--**	**Merged with Sterling Bank**					
7	**Fidelity Bank Plc**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
8	**First Bank of Nigeria Plc**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
9	**First City Monument Bank Plc**	**0.47**	**99.53**	**--**	**--**	**100**	**--**	**0.47**	**99.53**	**--**
10	**First Inland Bank Plc / FinBank Plc**	**--**	**100**	**--**	**Merged with FCMB**					
11	**Guaranty Trust Bank Plc**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
12	**Intercontinental Bank Plc**	**--**	**100**	**--**	**Merged with Access Bank Plc**					
13	**Nigeria International Bank Ltd /Citibank Nigeria Ltd**	**--**	**18.1**	**81.9**	**--**	**18.1**	**81.9**	**--**	**18.1**	**81.9**
14	**Oceanic Bank Plc**	**5.3**	**94.7**	**--**	**Merged with Ecobank**					
15	**Skye Bank Plc**	**1**	**50**	**49**	**1**	**50**	**49**	**1**	**50**	**49**
16	**Spring Bank Plc / Enterprise Bank Ltd from 2011**	**12.33**	**83.39**	**4.28**	**100**	**--**	**--**	**100**	**--**	**--**

17	Stanbic IBTC	--	100	--	--	47.31	52.69	--	46.8	53.2
18	Standard Chartered Bank Ltd	--	-	100	--	--	100	--	--	100
19	Sterling Bank Plc	--	100	--	2.55	78.64	18.8	0.43	83.42	16.15
20	Union Bank Plc	--	100	--	19	21	60	20	15	65
21	United Bank for Africa Plc	3.27	96.73	--	2.77	97.23	--	2.75	97.25	--
22	Unity Bank Plc	33.58	66.42	--	35	65	--	30.4	69.6	--
23	Wema Bank Plc	2.8	97.2	--	10	90	--	10	90	--
24	Zenith Bank Plc	2.8	97.2	--	2.8	97.2	--	2.6	97.4	--

Source: Data obtained from NDIC Annual Reports for 2010, 2011 and 2012

Table A3 2013 - 2015

S/N	BANKS	OWNERSHIP STRUCTURE (%) 2013			OWNERSHIP STRUCTURE (%) 2014			OWNERSHIP STRUCTURE (%) 2015		
		Govt	Prvt	Fgn	Govt	Prvt	Fgn	Govt	Prvt	Fgn
1	Access Bank Nigeria Plc	0.50	64.28	35.22	0.21	59.57	40.22	4.4	75	20.6
2	Citibank Nigeria Plc	--	18.1	81.9	--	18.1	81.9	--	18.1	81.9
3	Diamond Bank Plc	0.60	86.06	13.34	0.23	91.11	8.66	0.14	62.78	37.08
4	Ecobank Nigeria Plc	--	--	100	--	--	100	--	--	100
5	Enterprise Bank Ltd	100	--	--	100	--	--	Acquired by Heritage Bank Ltd		
6	FSDH Merchant Bank Ltd	--	90.61	9.39	--	90.61	9.39	--	90.61	9.39
7	Fidelity Bank Plc	0.37	99.5	0.13	0.37	99.5	0.13	0.01	99.83	0.16
8	First Bank of Nigeria Plc	--	100	--	--	100	--	--	100	--
9	First City Monument Bank Plc	0.47	99.53	--	--	100	--	--	100	--
10	Guaranty Trust Bank Plc	0.26	96.86	2.88	0.2	85.5	14.3	0.15	87.06	12.79
11	Heritage Bank Ltd	--	99.92	0.08	--	100	--	--	100	--
12	Jaiz Bank Plc	0.43	99.56	00.1	9	83	8	0.43	99.56	0.01
13	Keystone Bank Ltd	100	--	--	100	--	--	100	--	--
14	Mainstreet Bank Ltd	100	--	--	100	--	--	Acquired by Skye Bank		
15	Rand Merchant Bank Ltd	--	--	100	--	--	100	--	--	100

16	**Skye Bank Plc**	**0.50**	**97.08**	**2.42**	**--**	**100**	**--**	**--**	**100**	**--**
17	**Stanbic IBTC**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
18	**Standard Chartered Bank Ltd**	**--**	**--**	**100**	**--**	**--**	**100**	**--**	**0.01**	**99.99**
19	**Sterling Bank Plc**	**0.29**	**80.45**	**19.26**	**0.19**	**61**	**38.81**	**0.15**	**60.98**	**38.87**
20	**Union Bank Plc**	**20.04**	**14.96**	**65**	**--**	**35**	**65**	**0.47**	**13.63**	**85.93**
21	**United Bank for Africa Plc**	**2.75**	**97.25**	**--**	**1.4**	**98.6**	**--**	**2**	**73**	**25**
22	**Unity Bank Plc**	**31.12**	**68.87**	**0.01**	**8.91**	**91.04**	**0.05**	**8.34**	**91.66**	**--**
23	**Wema Bank Plc**	**10**	**90**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
24	**Zenith Bank Plc**	**3**	**97**	**--**	**1.4**	**98.6**	**--**	**1.32**	**97.78**	**0.9**
25	**Coronation Merchant Bank**	**--**	**--**	**--**	**--**	**--**	**--**	**20**	**80**	**--**
26	**FBN Merchant Bank Ltd**	**--**	**--**	**--**	**--**	**--**	**--**	**--**	**100**	**--**

Source: Data obtained from NDIC Annual Report for 2013, 2014 and 2015

Table A4 2016 - 2018

S/N	**BANKS**	**OWNERSHIP STRUCTURE (%) 2016**			**OWNERSHIP STRUCTURE (%) 2017**			**OWNERSHIP STRUCTURE (%) 2018**		
		Govt	**Prvt**	**Fgn**	**Govt**	**Prvt**	**Fgn**	**Govt**	**Prvt**	**Fgn**
1	**Access Bank Nigeria Plc**	**0.07**	**88.04**	**11.89**	**0.07**	**91.14**	**8.79**	**0.19**	**94.5**	**5.31**
2	**Citibank Nigeria Plc**	**--**	**18.1**	**81.9**	**--**	**18.1**	**81.9**	**--**	**18.1**	**81.9**
3	**Coronation Merchant Bank Ltd**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
4	**Diamond Bank Plc**	**0.04**	**70.37**	**29.59**	**0.2**	**69.68**	**30.12**	**0.04**	**69.8**	**30.16**
5	**Ecobank Nigeria Plc**	**--**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**
6	**FSDH Merchant Bank Ltd**	**--**	**67.36**	**32.64**	**--**	**67.36**	**32.64**	**--**	**67.36**	**32.64**
7	**Fidelity Bank Plc**	**0.01**	**99.89**	**0.1**	**--**	**100**	**--**	**--**	**100**	**--**
8	**First Bank of Nigeria Plc**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
9	**FBN Merchant Bank Ltd**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
10	**First City Monument Bank Plc**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
11	**Guaranty Trust Bank Plc**	**0.02**	**85.83**	**14.15**	**0.14**	**85.81**	**14.05**	**0.11**	**87.09**	**12.08**

12	**Heritage Bank Ltd**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
13	**Jaiz Bank Plc**	**12.34**	**79.16**	**8.5**	**11.5**	**80**	**8.5**	**9.83**	**81.66**	**8.51**
14	**Keystone Bank Ltd**	**100**	**--**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
15	**Rand Merchant Bank Ltd**	**--**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**
16	**Skye Bank Plc, Polaris Bank from 2018**	**0.39**	**97.37**	**2.24**	**0.39**	**97.36**	**2.25**	**100**	**--**	**--**
17	**Stanbic IBTC**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
18	**Standard Chartered Bank Ltd**	**--**	**--**	**100**	**--**	**0.01**	**99.99**	**--**	**0.01**	**99.99**
19	**Sterling Bank Plc**	**0.13**	**49.52**	**50.35**	**0.12**	**62.94**	**36.94**	**0.11**	**66.03**	**33.86**
20	**SunTrust Bank Plc**	**--**	**100**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
21	**Union Bank Plc**	**--**	**14.11**	**85.89**	**--**	**13.2**	**86.8**	**--**	**9.63**	**90.37**
22	**United Bank for Africa Plc**	**1**	**75.6**	**23.4**	**1**	**77**	**22**	**1**	**78**	**21**
23	**Unity Bank Plc**	**8.34**	**91.65**	**0.01**	**8.34**	**91.65**	**0.01**	**8**	**99.99**	**0.01**
24	**Wema Bank Plc**	**--**	**100**	**--**	**--**	**100**	**--**	**10**	**90**	**--**
25	**Zenith Bank Plc**	**1.32**	**97.78**	**0.9**	**2.49**	**97.46**	**0.05**	**0.65**	**99.3**	**0.05**
26	**Providus Bank Ltd**	**--**	**--**	**--**	**--**	**100**	**--**	**--**	**100**	**--**
27	**Nova Merchant Bank**	**--**	**--**	**--**	**--**	**--**	**--**	**--**	**50.49**	**49.51**

Source: Data obtained from NDIC Annual Report for 2016, 2017 and 2018

APPENDIX B

BOARD COMPOSITION 2007 - 2018

Table B1 2007 - 2009

ED = EXECUTIVE DIRECTORS, NED = NON-EXECUTIVE DIRECTORS, IND = INDEPENDENT DIRECTORS

S/N	BANKS	BOARD COMPOSITION 2007			BOARD COMPOSITION 2008			BOARD COMPOSITION 2009		
		ED	NED	IND	ED	NED	IND	ED	NED	IND
1	Access Bank Nigeria Plc	4	9	--	4	10	--	6	8	--
2	Afribank Nigeria Plc	4	7	--	6	4	--	6	4	--
3	Bank PHB Plc	4	12	--	4	6	--	1	8	--
4	Diamond Bank Plc	6	8	--	6	9	--	5	7	--
5	Ecobank Nigeria Plc	4	8	--	3	8	--	5	8	2
6	Equatorial Trust Bank Ltd	4	8	--	3	8	--	4	4	--
7	Fidelity Bank Plc	4	8	--	4	9	--	5	8	--
8	First Bank of Nigeria Plc	6	9	--	7	8	--	7	6	1
9	First City Monument Bank Plc	4	8	--	4	8	--	5	8	
10	First Inland Bank Plc / FinBank Plc	4	14	--	4	11	--	5	10	--
11	Guaranty Trust Bank Plc	5	6	--	6	8	--	6	6	2
12	Intercontinental Bank Plc	6	11	--	4	13	--	4	11	--
13	Nigeria International Bank Ltd /Citibank Nigeria Ltd	5	7	--	5	7	--	1	11	2
14	Oceanic Bank Plc	8	7	--	8	9	--	5	6	4
15	Skye Bank Plc	4	12	--	4	9	--	7	9	1
16	Spring Bank Plc	2	5	--	4	7	--	3	--	--
17	Stanbic IBTC	4	5	--	4	12	--	4	11	2
18	Standard Chartered Bank Ltd	3	6	--	3	4	--	2	3	4
19	Sterling Bank Plc	4	8	--	4	8	--	4	7	--
20	Union Bank Plc	8	7	--	8	9	--	5	9	--
21	United Bank for Africa Plc	8	9	--	8	12	--	9	9	2
22	Unity Bank Plc	4	10	--	5	9	--	5	10	--
23	Wema Bank Plc	2	4	--	4	2	--	3	3	--
24	Zenith Bank Plc	7	7	--	7	7	--	7	6	2

Board Composition: Data obtained from NDIC Annual Report for 2007, 2008 and 2009,

Table B2 2010 - 2012

S/N	BANKS	BOARD COMPOSITION 2010			BOARD COMPOSITION 2011			BOARD COMPOSITION 2012		
		ED	NED	IND	ED	NED	IND	ED	NED	IND
1	Access Bank Nigeria Plc	6	6	2	6	6	2	7	7	--
2	Afribank Nigeria Plc /Mainstream Bank Ltd from 2011	6	5	1	6	9	--	6	10	--
3	Bank PHB Plc / Keystone Bank Ltd from 2011	4	10	--	6	10	--	5	11	--
4	Diamond Bank Plc	5	7	--	6	9	1	6	8	2
5	Ecobank Nigeria Plc	6	7	1	5	2	2	6	7	2
6	Equatorial Trust Bank Ltd	4	7	--						
7	Fidelity Bank Plc	5	8	--	5	8	2	7	8	2
8	First Bank of Nigeria Plc	6	8	--	5	10	1	7	11	1
9	First City Monument Bank Plc	4	10	--	6	1	--	5	8	2
10	FinBank Plc	5	10	--						
11	Guaranty Trust Bank Plc	2	12	--	6	6	2	6	6	2
12	Intercontinental Bank Plc	5	11	--						
13	Citibank Nigeria Ltd	6	6	2	6	6	2	4	6	2
14	Oceanic Bank Plc	4	7	2						
15	Skye Bank Plc	6	9	1	6	3	1	6	8	2
16	Spring Bank Plc / Enterprise Bank Ltd from 2011	3	--	-	6	1	9	6	10	--
17	Stanbic IBTC	5	9	--	2	7	2	4	8	2
18	Standard Chartered Bank Ltd	3	4	4	4	3	4	4	5	2
19	Sterling Bank Plc	4	6	2	4	6	2	4	6	1
20	Union Bank Plc	5	9	--	5	9	--	4	9	--
21	United Bank for Africa Plc	8	12	--	10	7	2	8	8	2
22	Unity Bank Plc	6	9	--	6	8	2	6	9	2
23	Wema Bank Plc	3	4	--	3	7	--	4	7	1
24	Zenith Bank Plc	6	5	2	6	4	2	6	4	3

Source: Data obtained from NDIC Annual Report for 2010, 2011 and 2012

Table B3 2013 - 2015

S/N	BANKS	BOARD COMPOSITION 2013			BOARD COMPOSITION 2014			BOARD COMPOSITION 2015		
		ED	NED	IND	ED	NED	IND	ED	NED	IND
1	Access Bank Nigeria Plc	6	6	2	7	7	2	8	5	2
2	Citibank Nigeria Plc	5	5	2	6	5	2	5	5	1
3	Diamond Bank Plc	6	8	2	5	6	2	4	8	1
4	Ecobank Nigeria Plc	6	7	2	6	7	2	4	4	2
5	Enterprise Bank Ltd	6	9	--	6	9	--			
6	FSDH Merchant Bank Ltd	3	7	1	3	7	1	2	8	1
7	Fidelity Bank Plc	7	8	2	7	7	1	6	7	1
8	First Bank of Nigeria Plc	7	11	1	7	10	2	6	10	2
9	First City Monument Bank Plc	5	6	2	5	6	2	5	5	2
10	Guaranty Trust Bank Plc	6	6	2	6	6	2	6	5	3
11	Heritage Bank Ltd	4	5	--	3	5	1	6	5	2
12	Jaiz Bank Plc	2	12	2	3	11	2	2	11	2
13	Keystone Bank Ltd	4	10	--	6	9	--	6	9	--
14	Mainstreet Bank Ltd	6	8	--	6	8	--			
15	Rand Merchant Bank Ltd	2	7	2	2	5	3	2	3	3
16	Skye Bank Plc	6	9	2	4	7	2	8	7	2
17	Stanbic IBTC	4	8	2	4	5	2	5	5	2
18	Standard Chartered Bank Ltd	3	3	2	3	3	2	3	4	2
19	Sterling Bank Plc	4	5	1	4	6	3	6	6	3
20	Union Bank Plc	5	11	--	6	10	2	6	11	--
21	United Bank for Africa Plc	9	8	2	7	7	2	6	8	2
22	Unity Bank Plc	3	8	2	6	6	1	6	7	2
23	Wema Bank Plc	4	7	2	6	4	2	5	5	2
24	Zenith Bank Plc	4	4	3	4	7	1	3	6	1
25	Coronation Merchant Bank	--	--	--	--	--	--	1	4	2
26	FBN Merchant Bank Ltd	--	--	--	--	--	--	3	2	2

Source: Data obtained from NDIC Annual Report for 2013, 2014 and 2015

Table B4 2016 - 2018

S/N	BANKS	BOARD COMPOSITION 2016			BOARD COMPOSITION 2017			BOARD COMPOSITION 2018		
		ED	NED	IND	ED	NED	IND	ED	NED	IND
1	Access Bank Nigeria Plc	7	6	2	7	4	4	7	4	4
2	Citibank Nigeria Plc	5	6	1	5	6	2	5	5	2
3	Coronation Merchant Bank Ltd	1	4	2	2	8	--	3	8	--
4	Diamond Bank Plc	4	7	1	5	7	1	4	4	--
5	Ecobank Nigeria Plc	5	4	3	4	5	2	4	6	2
6	FSDH Merchant Bank Ltd	3	6	2	2	9	--	3	10	--
7	Fidelity Bank Plc	6	9	2	6	8	--	6	6	--
8	First Bank of Nigeria Plc	4	8	2	4	7	3	4	7	2
9	FBN Merchant Bank Ltd	4	1	2	2	4	1	2	5	1
10	First City Monument Bank Plc	5	5	2	4	7	--	4	7	--
11	Guaranty Trust Bank Plc	6	5	2	6	5	3	5	5	3
12	Heritage Bank Ltd	6	5	2	3	5	--	3	4	--
13	Jaiz Bank Plc	3	8	2	3	9	2	3	8	1
14	Keystone Bank Ltd	1	6	4	4	3	--	4	3	--
15	Rand Merchant Bank Ltd	2	6	3	2	5	3	1	7	6
16	Skye Bank Plc, Polaris Bank from 2018	7	5	--	3	5	--	3	5	--
17	Stanbic IBTC	4	5	1	4	4	1	3	4	1
18	Standard Chartered Bank Ltd	2	3	2	4	1	5	3	5	2
19	Sterling Bank Plc	6	6	3	5	6	3	4	6	2
20	SunTrust Bank Plc	2	3	3	1	8	--	2	5	3
21	Union Bank Plc	6	10	--	6	10	--	5	9	--
22	United Bank for Africa Plc	9	7	3	10	9	--	10	5	--
23	Unity Bank Plc	5	8	2	2	5	--	4	4	1
24	Wema Bank Plc	5	5	2	5	6	1	4	5	2
25	Zenith Bank Plc	3	5	3	6	3	3	6	3	3
26	Providus Bank Ltd	--	--	--	2	5	--	2	5	--
27	Nova Merchant Bank	--	--	--	--	--	--	2	6	--

Source: Data obtained from NDIC Annual Report for 2016, 2017 and 2018

APPENDIX C

BOARD GENDER DIVERSITY 2015 - 2018

Table C1 2015

S/N	BANKS	Board Gender Diversity in DMBs Board 2015					
		Total No of Board Members	No of Female Board Members	No of Male Board Members	Chairman / Vice Chairman	CEO	Percentage of Female Board Members
1	Access Bank Nigeria Plc	14	5	9	F	M	35.7
2	Citibank Nigeria Plc	12	3	9	M	M	25
3	Coronation Merchant Bank	7	2	5	M	M	28.57
4	Diamond Bank Plc	13	2	11	M	M	15.38
5	Ecobank Nigeria Plc	11	1	10	M	M	9.1
6	FBN Merchant Bank	7	1	6	M	M	14.28
7	FSDH Merchant Bank Ltd	11	4	7	M	M	36.36
8	Fidelity Bank Plc	15	2	13	M	M	13.33
9	First Bank of Nigeria Plc	18	2	16	F	M	11.11
10	First City Monument Bank Plc	12	2	10	M	M	16.66
11	Guaranty Trust Bank Plc	14	4	10	F	M	28.57
12	Heritage Bank Ltd	13	2	11	M	M	15.38
13	Jaiz Bank Plc	15	0	15	M	M	0
14	Keystone Bank Ltd	15	2	13	M	M	13.33
15	Rand Merchant Bank Ltd	8	1	7	M	M	12.5
16	Skye Bank Plc	17	5	12	M	M	29.41
17	Stanbic IBTC	12	3	9	M	M	25
18	Standard Chartered Bank Ltd	9	2	7	M	F	22.22
19	Sterling Bank Plc	15	3	12	M	M	20
20	Union Bank Plc	17	2	15	M	M	11.76

21	**United Bank for Africa Plc**	**16**	**4**	**12**	**M**	**M**	**25**
22	**Unity Bank Plc**	**15**	**5**	**10**	**M**	**F**	**33.33**
23	**Wema Bank Plc**	**12**	**4**	**8**	**M**	**M**	**33.33**
24	**Zenith Bank Plc**	**10**	**1**	**9**	**M**	**M**	**10**

Source: Data obtained from DMBs Annual Report for 2015

Table C2 2016

S/N	BANKS	Board Gender Diversity in DMBs Board 2016					
		Total No of Board Members	No of Female Board Members	No of Male Board Members	Chairman / Vice Chairman	CEO	Percentage of Female Board Members
1	**Access Bank Nigeria Plc**	**14**	**5**	**9**	**F**	**M**	**35.7**
2	**Citibank Nigeria Plc**	**12**	**4**	**8**	**M**	**M**	**33.33**
3	**Coronation Merchant Bank**	**7**	**2**	**5**	**M**	**M**	**28.57**
4	**Diamond Bank Plc**	**12**	**3**	**9**	**M**	**M**	**25**
5	**Ecobank Nigeria Plc**	**13**	**3**	**10**	**M**	**M**	**23.07**
6	**FBN Merchant Bank**	**7**	**1**	**6**	**M**	**M**	**14.28**
7	**FSDH Merchant Bank Ltd**	**8**	**2**	**6**	**M**	**M**	**25**
8	**Fidelity Bank Plc**	**18**	**3**	**15**	**M**	**M**	**16.66**
9	**First Bank of Nigeria Plc**	**16**	**3**	**13**	**F**	**M**	**18.75**
10	**First City Monument Bank Plc**	**12**	**3**	**9**	**M**	**M**	**25**
11	**Guaranty Trust Bank Plc**	**15**	**4**	**11**	**F**	**M**	**26.66**
12	**Heritage Bank Ltd**	**13**	**2**	**11**	**M**	**M**	**15.38**
13	**Jaiz Bank Plc**	**13**	**0**	**13**	**M**	**M**	**0**
14	**Keystone Bank Ltd**	**11**	**1**	**10**	**M**	**M**	**9.09**
15	**Rand Merchant Bank Ltd**	**11**	**1**	**10**	**M**	**M**	**9.09**
16	**Skye Bank Plc**	**12**	**2**	**10**	**M**	**M**	**16.66**
17	**Stanbic IBTC**	**10**	**1**	**9**	**M**	**M**	**10**

18	**Standard Chartered Bank Ltd**	**7**	**3**	**4**	**M**	**F**	**42.85**
19	**Sterling Bank Plc**	**15**	**4**	**11**	**M**	**M**	**26.66**
20	**SunTrust Bank**	**8**	**1**	**7**	**M**	**M**	**12.5**
21	**Union Bank Plc**	**16**	**2**	**14**	**M**	**M**	**12.5**
22	**United Bank for Africa Plc**	**19**	**3**	**16**	**M**	**M**	**15.78**
23	**Unity Bank Plc**	**15**	**4**	**12**	**M**	**F**	**26.66**
24	**Wema Bank Plc**	**12**	**4**	**8**	**M**	**M**	**33.33**
25	**Zenith Bank Plc**	**13**	**1**	**12**	**M**	**M**	**7.6**

Source: Data obtained from DMBs Annual Report for 2016

Table C3 2017

S/N	**BANKS**	**Board Gender Diversity in DMBs Board 2017**					
		Total No of Board Members	**No of Female Board Members**	**No of Male Board Members**	**Chairman / Vice Chairman**	**CEO**	**Percentage of Female Board Members**
1	**Access Bank Nigeria Plc**	**17**	**6**	**11**	**F**	**M**	**35.29**
2	**Citibank Nigeria Plc**	**13**	**5**	**8**	**M**	**M**	**38.46**
3	**Coronation Merchant Bank**	**10**	**3**	**7**	**M**	**M**	**30**
4	**Diamond Bank Plc**	**13**	**3**	**10**	**M**	**M**	**23.07**
5	**Ecobank Nigeria Plc**	**11**	**3**	**8**	**M**	**M**	**27.27**
6	**FBN Merchant Bank**	**7**	**1**	**6**	**M**	**M**	**14.28**
7	**FSDH Merchant Bank Ltd**	**11**	**4**	**7**	**M**	**M**	**36.36**
8	**Fidelity Bank Plc**	**14**	**1**	**13**	**M**	**M**	**7.14**
9	**First Bank of Nigeria Plc**	**14**	**3**	**11**	**F**	**M**	**21.42**
10	**First City Monument Bank Plc**	**11**	**4**	**7**	**M**	**M**	**36.36**
11	**Guaranty Trust Bank Plc**	**14**	**4**	**10**	**F**	**M**	**28.57**
12	**Heritage Bank Ltd**	**8**	**1**	**7**	**M**	**M**	**12.5**
13	**Jaiz Bank Plc**	**14**	**0**	**14**	**M**	**M**	**0**

14	**Keystone Bank Ltd**	**7**	**1**	**6**	**M**	**M**	**14.28**
15	**Providus Bank**	**7**	**2**	**5**	**M**	**M**	**28.57**
16	**Rand Merchant Bank Ltd**	**10**	**1**	**9**	**M**	**M**	**10**
17	**Skye Bank Plc**	**8**	**0**	**8**	**M**	**M**	**0**
18	**Stanbic IBTC**	**10**	**3**	**7**	**M**	**M**	**30**
19	**Standard Chartered Bank Ltd**	**10**	**2**	**8**	**M**	**F**	**20**
20	**Sterling Bank Plc**	**14**	**4**	**10**	**M**	**M**	**28.57**
21	**SunTrust Bank**	**9**	**1**	**8**	**M**	**M**	**11.11**
22	**Union Bank Plc**	**16**	**3**	**13**	**M**	**M**	**18.75**
23	**United Bank for Africa Plc**	**19**	**3**	**16**	**M**	**M**	**15.78**
24	**Unity Bank Plc**	**15**	**5**	**10**	**M**	**F**	**33.33**
25	**Wema Bank Plc**	**12**	**4**	**8**	**M**	**M**	**33.33**
26	**Zenith Bank Plc**	**12**	**1**	**11**	**M**	**M**	**8.33**

Source: Data obtained from DMBs Annual Report for 2017

Table C4 2018

S/N	**BANKS**	**Board Gender Diversity in DMBs Board 2018**					
		Total No of Board Members	**No of Female Board Members**	**No of Male Board Members**	**Chairman / Vice Chairman**	**CEO**	**Percentage of Female Board Members**
1	**Access Bank Nigeria Plc**	**15**	**5**	**10**	**F**	**M**	**33.33**
2	**Citibank Nigeria Plc**	**13**	**5**	**8**	**M**	**M**	**38.46**
3	**Coronation Merchant Bank**	**11**	**3**	**8**	**M**	**M**	**27.27**
4	**Diamond Bank Plc**	**14**	**4**	**10**	**M**	**M**	**28.57**
5	**Ecobank Nigeria Plc**	**12**	**3**	**9**	**M**	**M**	**25**
6	**FBN Merchant Bank**	**8**	**1**	**7**	**M**	**M**	**12.5**
7	**FSDH Merchant Bank Ltd**	**13**	**2**	**11**	**M**	**M**	**15.38**
8	**Fidelity Bank Plc**	**12**	**3**	**9**	**M**	**M**	**25**
9	**First Bank of Nigeria Plc**	**13**	**3**	**10**	**F**	**M**	**23.07**

10	**First City Monument Bank Plc**	**11**	**4**	**7**	**M**	**M**	**36.36**
11	**Guaranty Trust Bank Plc**	**13**	**4**	**9**	**F**	**M**	**30.76**
12	**Heritage Bank Ltd**	**7**	**1**	**6**	**M**	**M**	**14.28**
13	**Jaiz Bank Plc**	**14**	**0**	**14**	**M**	**M**	**0**
14	**Keystone Bank Ltd**	**7**	**1**	**6**	**M**	**M**	**14.28**
15	**Nova Merchant Bank Ltd**	**8**	**2**	**6**	**M**	**M**	**25**
16	**Rand Merchant Bank Ltd**	**14**	**2**	**12**	**M**	**M**	**14.28**
17	**Polaris Bank Plc**	**8**	**0**	**8**	**M**	**M**	**0**
18	**Providus Bank**	**7**	**2**	**5**	**M**	**M**	**28.57**
19	**Stanbic IBTC**	**8**	**3**	**5**	**M**	**M**	**37.5**
20	**Standard Chartered Bank Ltd**	**10**	**2**	**8**	**M**	**F**	**22.22**
21	**Sterling Bank Plc**	**12**	**3**	**9**	**M**	**M**	**25**
22	**SunTrust Bank**	**10**	**1**	**9**	**M**	**M**	**10**
23	**Union Bank Plc**	**14**	**2**	**12**	**M**	**M**	**14.28**
24	**United Bank for Africa Plc**	**15**	**2**	**13**	**M**	**M**	**13.33**
25	**Unity Bank Plc**	**9**	**2**	**7**	**M**	**F**	**22.22**
26	**Wema Bank Plc**	**11**	**5**	**6**	**M**	**M**	**45.45**
27	**Zenith Bank Plc**	**13**	**1**	**12**	**M**	**M**	**7.69**

Source: Data obtained from DMBs Annual Report for 2018

APPENDIX D

BANKS SPENDING ON CSR INITIATIVES 2007 - 2018

Table D1 2007 - 2009

S/N	BANKS	CSR Initiatives 2007			CSR Initiatives 2008			CSR Initiatives 2009		
		Net Profit	CSR Amt	CSR %	Net Profit	CSR Amt	CSR %	Net Profit	CSR Amt	CSR %
1	Access Bank Nigeria Plc	N6bn	N45m	0.75	N16bn	N160 m	1	N20bn	N322 m	1.6
2	Afribank Nigeria Plc	N5.19bn	__	__	N10.03 bn	N4.17 m	0.4	N– 230bn	___	__
3	Bank PHB Plc			--			--			--
4	Diamond Bank Plc			--			--			--
5	Ecobank Nigeria Plc			--			--			
6	Equitorial Trust Bank Ltd			--			--			--
7	Fidelity Bank Plc			--			--			--
8	First Bank of Nigeria Plc			--			--			
9	First City Monument Bank Plc			--			--			
10	First Inland Bank Plc / FinBank Plc			--			--			--
11	Guaranty Trust Bank Plc			--			--			
12	Intercontinental Bank Plc			--			--			--
13	Nigeria International Bank Ltd /Citibank Nigeria Ltd	N6.94bn	N7.5m	0.10	N8.52b n	N9.6m	0.11			
14	Oceanic Bank Plc			--			--			
15	Skye Bank Plc			--			--			
16	Spring Bank Plc			--			--		--	--
17	Stanbic IBTC			--			--			
18	Standard Chartered Bank Ltd			--			--			
19	Sterling Bank Plc			--			--			--
20	Union Bank Plc			--			--			--
21	United Bank for Africa Plc			--			--			
22	Unity Bank Plc			--			--			--
23	Wema Bank Plc			--			--			--
24	Zenith Bank Plc			--			--			

CSR spending: Data obtained from DMBs Financial Statements for 2007, 2008 and 2009,

Table D2 2010 - 2012

S/N	BANKS	CSR Initiatives 2010			CSR Initiatives 2011			CSR Initiatives 2012		
		Net Profit	CSR Amt	CSR %	Net Profit	CSR Amt	CSR %	Net Profit	CSR Amt	CSR %
1	Access Bank Nigeria Plc	N12bn	N103m	0.85	N16bn	N182 m	1.1	N38bn	N173m	0.45
2	Afribank Nigeria Plc /Mainstream Bank Ltd from 2011	N1.99bn	__	__	N3.32b n	__	--	N23bn	__	__
3	Bank PHB Plc / Keystone Bank Ltd from 2011			--			--			--
4	Diamond Bank Plc			--			--			--
5	Ecobank Nigeria Plc			--			--			
6	Equatorial Trust Bank Ltd			--			--			--
7	Fidelity Bank Plc			--			--			--
8	First Bank of Nigeria Plc			--			--			
9	First City Monument Bank Plc			--			--			
10	FinBank Plc			--			--			--
11	Guaranty Trust Bank Plc			--			--			
12	Intercontinental Bank Plc			--			--			--
13	Citibank Nigeria Ltd	N9.05bn	N42.3m	0.46	N9.73b n	N62.9 m	0.6 4			
14	Oceanic Bank Plc			--			--			
15	Skye Bank Plc			--			--			
16	Spring Bank Plc / Enterprise Bank Ltd from 2011			--			--		--	--
17	Stanbic IBTC			--			--			
18	Standard Chartered Bank Ltd			--			--			
19	Sterling Bank Plc			--			--			--
20	Union Bank Plc			--			--			--
21	United Bank for Africa Plc			--			--			
22	Unity Bank Plc			--			--			--
23	Wema Bank Plc			--			--			--
24	Zenith Bank Plc			--			--			

CSR spending: Data obtained from DMBs Financial Statements for 2010, 2011 and 2012,

Table D3 2013 - 2015

S/N	BANKS	CSR Initiatives 2013			CSR Initiatives 2014			CSR Initiatives 2015		
		Net Profit	CSR Amt	CSR %	Net Profit	CSR Amt	CSR %	Net Profit	CSR Amt	CSR %
1	Access Bank Nigeria Plc	N36bn	N391m	1.08	N43bn	N388 m	0.9	N65bn	N346 m	0.53
2	Citibank Nigeria Plc			--			--			--
3	Diamond Bank Plc			--			--			--
4	Ecobank Nigeria Plc			--			--			--
5	Enterprise Bank Ltd			--			--			
6	FSDH Merchant Bank Ltd									--
7	Fidelity Bank Plc			--			--			
8	First Bank of Nigeria Plc			--			--			
9	First City Monument Bank Plc			--			--			
10	Guaranty Trust Bank Plc			--			--			--
11	Heritage Bank Ltd			--			--			
12	Jaiz Bank Plc			--			--			--
13	Keystone Bank Ltd			--			--			
14	Mainstreet Bank Ltd			--			--			
15	Rand Merchant Bank Ltd			--			--			
16	Skye Bank Plc			--					--	--
17	Stanbic IBTC			--			--			
18	Standard Chartered Bank Ltd			--			--			
19	Sterling Bank Plc			--			--			--
20	Union Bank Plc			--			--			--
21	United Bank for Africa Plc						--			
22	Unity Bank Plc			--			--			--
23	Wema Bank Plc			--			--			--
24	Zenith Bank Plc			--			--			
25	Coronation Merchant Bank									
26	FBN Merchant Bank Ltd									

CSR spending: Data obtained from DMBs Financial Statements for 2013, 2014 and 2015,

Table D4 2016 - 2018

S/N	BANKS	CSR Initiatives 2016			CSR Initiatives 2017			CSR Initiatives 2018		
		Net Profit	CSR Amt	CSR %	Net Profit	CSR Amt	CSR %	Net Profit	CSR Amt	CSR %
1	Access Bank Nigeria Plc	N71bn	N285m	0.41	N61bn	N567 m	0.92	N95bn	N376 m	0.39
2	Citibank Nigeria Plc			--	N32bn		--	N31bn		--
3	Coronation Merchant Bank Ltd			--			--			--
4	Diamond Bank Plc			--			--			--
5	Ecobank Nigeria Plc			--			--			
6	FSDH Merchant Bank Ltd			--			--			--
7	Fidelity Bank Plc			--			--	N23bn		--
8	First Bank of Nigeria Plc			--			--	N60bn		
9	FBN Merchant Bank Ltd			--						
10	First City Monument Bank Plc			--			--	N15bn		--
11	Guaranty Trust Bank Plc			--			--	N185bn		
12	Heritage Bank			-			--			--
13	Jaiz Bank Plc			--			--			
14	Keystone Bank						--			
15	Rand Merchant Bank Ltd			--			--			
16	Skye Bank Plc, Polaris Bank from 2018			--			--		--	--
17	Stanbic IBTC			--			--	N74bn		
18	Standard Chartered Bank			--			--			
19	Sterling Bank Plc			--			--	N9bn		--
20	SunTrust Bank Plc			--			--			--
21	Union Bank Plc			--			--	N18bn		
22	United Bank for Africa Plc			--			--	N79bn		--
23	Unity Bank Plc			--			--			--
24	Wema Bank Plc									
25	Zenith Bank Plc							N193bn		
26	Providus Bank									
27	Nova Merchant Bank									

CSR spending: Data obtained from DMBs Financial Statements for 2016, 2017 and 2018,