A few good men? Limiting the number of board seats held by individual Directors

The recurrence of certain names on the boards of public limited liability companies in Nigeria should raise questions or concerns as to why only certain people are considered 'good' enough to occupy these positions. This could be especially important where their role in at least 2 or more of these boards is critical. For instance, a particular individual could be the Chairman of the main board of a Company and chair of a board committee in another. How effective would such an individual be bearing in mind the time commitments of these roles? And how much value can be created for each of those companies in such circumstances? Is it a case of a few good men? Or should some thought be given to the possibility of regulating the number of board seats that can be held by individuals, especially on the boards of public companies. In a Special Report of the Financial Times, it was noted that 59 men sit on boards of 4 or more large US companies including at least one Fortune 100 business. If this is the case in the US, the prevalence of multiplicity of board positions held by individuals in Nigeria is probably likely to be higher.

The Director of a company is an elected/appointed member of the Board of Directors and can be an executive director i.e. involved in the day to day management of the affairs of the company as an employee or a non executive director (NED). A NED could also be independent. The focus is however on the NEDs whom, even though not expected to be 'hands on' in the management of the company still have a role to play in the running of its affairs. NEDs should provide some form of objectivity and ensure adherence to good corporate practice. Their role is key in providing strategic direction, monitoring management performance and risk issues. Consequently, given their pivotal functions, the failure or ineffectiveness of NEDs could directly impact the fortunes of a Company and ultimately the value of the Company. Directors in general are expected to be able to commit the necessary time required in carrying out their duties and busy directors may be unable to do so thereby rendering them incapable of providing value to the Company. An individual holding directorship positions in 3 or more public Companies may be unable to commit the requisite time to each of these Companies in a manner that will provide value. Additionally, the level of commitment/loyalty to any one Company may be distorted. The limited time available to a busy NED may curtail the ability of such director to serve on board committees. Granted, there may be some benefits of multiple directorships to companies for example, significant connections amongst such companies where an individual holds board seats.

The mode of appointment of Directors is important in considering the issue of multiplicity of board seats held by a single individual. Good corporate governance practice requires boards to have nomination committees whose functions include ensuring the quality of individuals appointed onto the board of directors (and other senior management in some cases) as well as transparency of the process of appointment. But it is not always the case that NEDs are selected based on merit. They may be selected based on ‘old boy’s network’, high visibility or profile of the individual, political links and ability to peddle influence as well as perceived connections. There should be greater disclosure and transparency regarding the nominating process for Directors of public companies. Nomination committees (where they exist) should be effective and not mere rubber stamps for nominations which have been made by Management. The selection of the members of the nominating committee itself should be objective to ensure there is no ‘self perpetuation’. Following the most recent global economic crises, the Securities and Exchange Commission of the United States has introduced proposals seeking to give shareholders more powers in the appointment of Directors.

Certain jurisdictions including India, Malaysia and South Korea have placed regulatory limits on the number of board positions that can be held by an individual. Companies in their board guidelines/charters can also impose limits for instance a Company may provide in its guidelines that no Director should serve on more than say 4 additional public company boards but may also provide conditions under which they may serve on additional boards i.e. should they wish to serve on more than 4. The Indira Gandhi Institute of Development Research in a 2006 paper titled “Board of Directors and Opportunistic Earnings Management: Evidence from India” notes that 2 factors are critical in determining whether an individual can hold multiple directorship positions viz. 1) the demands of the directorship position/job and 2) the ability of the director. The Institute of Directors (UK) in its 2009 response to the Financial Reporting Council’s review of the effectiveness of the UK Combined Code noted amongst other issues that NED’s should be able “to commit a sufficient amount of time to their duties (particularly if they are involved in board room committees). This is likely to be difficult to achieve if they hold an excessive number of board positions in other organisations (particularly in the capacity of Chairman or CEO).” It could also be argued that ‘the market’ should be left to decide the appropriateness of holding multiple board seats.

Be that as it may, there is a need to review this issue thoroughly to ensure continued robust corporate governance practice in Nigeria.