Corporate Governance in Nigeria – Platitude or action?

Recent events in the corporate world in Nigeria particularly in the financial sector have drawn attention to corporate governance and ancillary issues surrounding governance in business.

A generally accepted definition of corporate governance is "the system by which business corporations are directed and controlled"- Sir Adrian Cadbury. A number of jurisdictions have developed codes of corporate governance which typically address such issues such as board composition, risk management, internal controls and processes among others. In the UK, the Combined Code on corporate governance 2008 (currently under review), covers all companies incorporated and listed on the main market of the London Stock Exchange. Companies are expected to report on how they have applied the code in their annual reports. The disclosure obligation on companies has a coercive effect which is more than enough pressure in a system where to be seen doing a wrong thing is sufficient indictment on its own.

In the United States of America, the Sarbanes-Oxley Act of 2002 has legalised certain principles of corporate governance and there are penalties for non-compliance. The South African King code (1, 11, and 111) on corporate governance is generally accepted as the leading corporate governance code in Africa. Whilst certain issues raised in King 11 have been included in the South African Companies Act of 2008, King 111 is however implemented on an "apply or explain" basis.

Nigeria has 3 identifiable codes on corporate governance – the SEC Code of best practice on corporate governance for public companies 2003, the Central Bank of Nigeria (CBN) code of corporate governance for banks in Nigeria – post consolidation 2006 and the code on corporate governance for the insurance industry.

The SEC code provides for issues such as insider trading, shareholder rights e.t.c. but does not provide any penalty for breach of the code. Instead, it provides that in the event of a breach or non-compliance, SEC will notify the entity of the areas of non-compliance specifying what actions are required to remedy the breach.

The CBN code of corporate governance which took effect in 2006 was meant to address the challenges that arose post consolidation of the banking industry. It identified 15 weaknesses in corporate governance in banks including weak internal controls, abuses in lending, sit tight directors and poor risk management. It further goes on to state that compliance with the code is mandatory. It seems incredible that despite the fact that these issues were

foreseen as critical by the regulator and the industry as a whole in 2006, these same issues were responsible for the recent collapse of some banks.

The code of corporate governance for the insurance industry in Nigeria was introduced by the National Insurance Commission (NAICOM), the apex regulatory body for the insurance industry in 2009. It seeks to cover similar issues as the SEC and CBN codes albeit from an industry perspective. For instance, it provides for mandatory attendance by board members of training organised by NAICOM on insurance principles and practice. Again, this code is predicated on voluntary compliance by entities.

It may be argued that 3 codes on corporate governance covering similar issues seem excessive but the issue is not so much with the multiplicity of codes but their effectiveness especially as there seems to be a move by the regulatory authorities towards harmonising these codes. Though, Nigeria has had a code on corporate governance since 2003 yet judging by recent developments governance of businesses remains at rudimentary levels. The effectiveness of corporate governance is therefore more a matter of implementation rather than the existence of a code or codes. Even though codes exist, it is clear that unless the people who run/control the organisations are committed and have character, these codes will never be implemented effectively. Consequently, there is a need to reconsider the voluntary compliance approach in the Nigerian context as the challenge will remain enforceability. Though it is yet to be clearly seen whether the adoption of the "comply or else" approach adopted by the USA has significant advantages over that of the "comply or explain approach" adopted by other jurisdictions, it can be argued that fear of penalties to be imposed on the entities and personally on directors or other responsible individuals in those entities could alter to some extent their approach to governance issues.

There is an urgent need for the regulatory authorities to strengthen their capacity in respect of enforceability as this would be a sign to the public and businesses that corporate governance in Nigeria is not a copy cat issue but one which the authorities realise is critical to the development of the businesses and the economy of the country.