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Review Article

Implementing Board Rotation: A Potential Remedy for Nigeria's "Boardroom Bubble"? Examining Benefits and Limitations

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Abstract

This article examines the potential and limitations of director rotation as a response to the "boardroom bubble" phenomenon in Nigerian companies. Gaining traction as a key corporate governance practice, director rotation seeks to mitigate stagnant decision-making within boards. The research explores how this approach can enhance corporate governance, accountability, and oversight. Our study suggests that while director rotation holds significant promise in reducing board entrenchment and strengthening corporate governance, it is not without drawbacks. These drawbacks include: Lack of independence among directors, reduced knowledge continuity on matters such as ESG (Environmental Social and Governance) factors or long-term strategies, difficulty finding suitable successors who share their predecessors' characteristics (e.g., gender) as well as turmoil created when introducing inexperienced members onto Boards at times of crisis. Additionally, it does not address other important aspects of board diversity i.e., racial or ethnic background or educational achievements, which remain overlooked through this process alone. While acknowledging the benefits of rotation as a potential remedy for the "boardroom bubble," this paper advocates for a nuanced approach to board rotation in Nigeria. Our research undertakes a comprehensive examination of Nigeria's legal and regulatory landscape for implementing rotational boards, employing a rigorous doctrinal approach. The analysis delves into primary sources of data, such as the relevant Acts of the National Assembly and pertinent case law, while the secondary data are mainly books, journals, periodicals and web-based materials. In addition, the work proposes further research to explore specific regulatory frameworks and best practices tailored to the Nigerian context.

Keywords: Board rotation, corporate governance, boardroom bubble, boardroom dynamics, Companies and Allied Matters Act (CAMA), Banks and Other Financial Institutions Act (BOFIA), Nigeria.

1.0 INTRODUCTION

This article examines director rotation, a corporate governance practice where companies periodically replace some or all board members. Director rotation has garnered growing attention as a solution to boardroom entrenchment, a phenomenon where long-tenured board members can become overly familiar with a company's operations and resistant to fresh perspectives. Proponents argue that director rotation can revitalise boards by introducing diverse viewpoints and experiences.

This paper will explore the potential benefits that director rotation can provide, such as increased corporate governance quality, improved risk management practices and fostering innovation; along with its limitations including a lack of experience/ expertise among newly elected members and difficulty integrating them effectively into existing knowledge networks within organisations.

Also, we will explore how director rotation might potentially address the "boardroom bubble," what challenges and opportunities come with implementing such principles within businesses today, the impact it could have on related stakeholders (such as shareholders), the legal implications associated with the practice, ethical considerations and finally, some alternative suggestions for erasing stagnation in board composition without requiring extensive structural changes whatsoever.

By exploring its potential benefits, challenges, and lessons learned from international experiences, we can foster a more informed and nuanced conversation about this mechanism of corporate governance.

2.0 DISCUSSION

Before we delve into the potential of boardroom rotation as a remedy for Nigeria's "boardroom bubble," it is crucial to lay a solid foundation by defining some key concepts. This introductory section will act as a compass, guiding us through the intricacies of corporate governance and highlighting the essential elements that shape the dynamics within the boardroom.

By understanding these concepts, we equip ourselves to better grasp the arguments for and against rotation, analyse its potential impact on Nigerian businesses, and ultimately determine its efficacy as a solution to the "boardroom bubble" phenomenon.

2.1 Who is a Company Director?

By virtue of s. 269 (1) CAMA, a company director is a person duly appointed by the company to direct and manage the business of the company.[1] Here, the Act emphasises on the due appointment of a person who acts in the capacity of a company director.

Flowing from its artificial nature, a company cannot act without reliance on natural persons. Hence, the directors represent the will and mind of the company. While considering the nature of a company, Lord Denning L.J. in the English case of *Bolton (Engineering) Co. v. Graham & Sons Ltd* stated thus:

> A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind and will of the company, and control what it does…[2]

This principle has been restated in a number of Nigerian cases. For instance, in *Marine Management Associates Inc. & Anor v. National Maritime Authority*,[3] the Supreme Court held that: "A company is only a juristic person [and thus], it can act only through an alter ego, either its agents or servants….”[4]

Also, in *NBCI v Int. Gas (Nig.) Ltd*,[5] the Court of Appeal, echoed the same principle, which it affirmed as follows:

> Not all biological persons working for and within a company is looked upon in determining the mental manifestation of a company. The directors, managers, general managers or the managing directors represent the directing mind and will of the company and control what it does. Their actions and thoughts can be attributed to the company. The state of mind of this category of officials is the state of mind of the company and it is treated by the law as such.

Owing to the varied responsibilities of directors, they have sometimes been referred to as “agents, trustees, or managing partners.”[6] These terms are not meant to be a definitive list of their powers and responsibilities. Instead, they represent different perspectives on a director's role, depending on the specific context and situation. [7]

Regardless of the specific title used, the key aspect of being a director is the duty to direct and manage the affairs of a company. This duty determines the status of a person as a director.

2.2 What is a Board in a company?

The Australian Institute of Company Directors (AICD), defines a board as a “group of individuals (howsoever described or called)” who have the authority and responsibility for governing, controlling, directing and managing a company according to its constituent documents or legislation.”[8]

The Board, as stated in Principle 1 of the NCCG (Nigerian Code of Corporate Governance), has various key roles. These include “providing entrepreneurial and strategic leadership, promoting ethical values and responsible corporate citizenship.” Directors, acting as a board, have the duty to exercise oversight and control as well as to ensure that management acts in the best interest of shareholders and other stakeholders.[9]

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[1]See for instance, *Bafa v. Odili* (2001) 15 NWLR (Pt. 737) 709 at p. 373. It is crucial to observe that acting as a director without due appointment is an offence – see s. 269 (3) and (4) CAMA; See also *Nwankwo v. Kay-Kay Construction Ltd* (2014) LPELR-24336 (CA) (Pp. 74-77 paras. B)

[2][1957]1QB 159; [1956] 3 All ER 624

[3](2012) LPELR- 20618 (SC) pp. 50 - 62; see also *Abu-al-Qasim Ltd & Anor v. FBN* (Pp. 19-21 paras. E-E) and *Olufosoye v Fakorede* (1993) 1 NWLR (Pt 272) 747, SC

[4]*MMA Inc & Anor v. NMA* (2012) LPELR-20618 (SC) (Pp. 48-49 paras. D)

[5](1999) 8 NWLR (Pt. 613) 119 at p.129; See also *Sterling Bank PLC v. Samak Associates Limited & Ors* (2021) LPELR-56409 (CA) (Pp. 12 paras. D)

[6]*Imperial Hydropathic Hotel Co., Blackpool v. Hampson* (1883) 23 Ch D1

[7]*Ibid*., per Bowen, L.J.

[8]Australian Institute of Company Directors, ‘The Role of the Board’ <https://www.aicd.com.au/content/dam/aicd/pdf/tools-resources/director-tools/board/role-of-board-director-tool.pdf> accessed 18 April 2024

[9] See also Mary Kelly, ‘The Role of the Board of Directors in Corporate Governance’ <https://www.cpaireland.ie/CPAIreland/media/Educatio

As highlighted by Otisi, JCA, in *Oteri Holdings Ltd v. Mofta West Africa Ltd & Ors*, directors are equally expected "to use their powers within the company's constitution, the Memorandum and Articles of Association, in the best interests of the company…and to avoid conflicts of interest." [10]

Ultimately, the goal of the board is to sustain the prosperity of the company. In order to ensure efficacy and efficiency, the board has the authority to delegate some of its roles and responsibilities to competent committees.[11]

2.3 The Boardroom

In the corporate world, the boardroom is more than just a meeting room. It is the nerve centre where critical decisions are made and the future of the company is shaped. It may be defined as a formally designated room within a company, used for the meetings of the Board of Directors.[12] Figuratively, the term refers to the group of directors themselves and their decision-making processes.[13]

2.4 Board Meetings

Board meetings in Nigerian public companies are vital aspects of corporate governance. These meetings serve as a platform for directors to discuss and make decisions that align with the company's objectives.[14] The Companies and Allied Matters Act of 2020 governs the legal framework for conducting board meetings, including guidelines for meeting frequency,[15] length of notice,[16] etc.

2.5 Boardroom Dynamics

Boardroom dynamics refer to the complex web of interactions, relationships, and power structures that exist within a boardroom.[17] It encompasses various aspects, such as:

1) **Communication and information flow:** How effectively do directors communicate with each other? Is there open and transparent information sharing, or are there silos or power imbalances that restrict information flow?
2) **Power dynamics and decision-making:** Who holds the most power on the board? How are decisions made? Is there a collaborative and inclusive decision-making process, or does a single individual or group dominate?
3) **Leadership and culture:** What is the overall leadership style and culture of the board? Is it respectful, constructive, and focused on the best interests of the company, or are there personal agendas, conflicts, or a lack of trust?
4) **Levels of engagement and expertise:** Are all directors actively engaged and contributing their expertise? Do they have the necessary knowledge and skills to fulfil their responsibilities?
5) **Formal and informal relationships:** Beyond official titles and roles, what are the informal relationships between directors? Are there any alliances, rivalries, or personal biases that can influence board dynamics?

Understanding boardroom dynamics is crucial in the context of director rotation because it impacts how rotation is perceived, implemented, and ultimately affects its effectiveness. For instance, a board with poor communication and a dominant leader might resist rotating members, fearing loss of control or knowledge. On the other hand, a board with open communication and

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n-Training/Study%20Support%20Resources/P1%20Corp%20Laws%20and%20Governance/Relevant%20Articles/p1-corp-governance-the-role-of-the-board-of-directors.pdf> accessed 18 April 2024

[10](2021) LPELR-54853(CA) (Pp. 74-75 paras. F)

[11] See section 289 (5) CAMA 2020; The board committees of public companies, as spelt out under Principle 11 of the NCCG, 2018 are as follows: (1) Nomination and Governance Committee; (2) Remuneration Committee (3) Audit Committee; and (4) Risk management Committee.

[12] Cambridge Dictionary, 'boardroom' <https://dictionary.cambridge.org/dictionary/english/boardroom> accessed 18 April 2024.

[13]*Ibid*.

[14]S. 289 (1) CAMA; the CAMA also provides for various aspects of the proceedings, including: The manner of voting – S. 289 (2) CAMA; the right attached to votes - S. 289 (9) CAMA; the persons who can summon a meeting - S. 289 (3) CAMA; the office of the board chair – s. 289 (4) CAMA; delegation of powers to a managing director or committees of the board - S. 289 (5), (6) and (7) of CAMA

[15]The first board meeting of the company is to be held within six months of its incorporation while subsequent meetings can be held at any time as may be decided by the directors,– see sections 289 (1); and s. 292 (2) CAMA

[16]The minimum notice in this instance is a period of 14 days – see s. 289 (2) CAMA

[17]For an insightful reading on boardroom dynamics, see the following sources: Sharon Allen, 'The ABC's of Boardroom dynamics – attitude, behaviour and candor'<https://www2.deloitte.com/content/dam/Deloitte/in/Documents/risk/Board%20of%20Directors/in-gc-the-abcs-of-boardroom-dynamics-noexp.pdf > accessed 14 March 2024; Advance Boardroom Excellence, "Board Dynamics and Why it Matters" (27 October 2016) <http://www.abexcellence.com/blog-list/2016/10/27/board-dynamics-and-why-it-matters> accessed 14 March 2024; Better Boards, 'Practical ways to Improve Boardroom Dynamics' (27 June 2019) <https://betterboards.net/governance/practical-ways-to-improve-boardroom-dynamics/> accessed 14 March 2024.

a collaborative culture might find rotation easier to implement and beneficial for fostering diverse perspectives.

It is equally critical to understand that effective knowledge transfer is crucial during rotation, and this depends on the trust and cooperation within the board. By being mindful of boardroom dynamics, companies can develop rotation policies and strategies that address potential challenges and leverage the power of diverse perspectives for better decision-making and improved governance.

2.6 The Boardroom Bubble

As companies strive for greater diversity and fresh perspectives in their boardrooms, the concept of director rotation has emerged as a potential solution to address the issue of the "boardroom bubble."

The term, "boardroom bubble" refers to a phenomenon where corporate boards, particularly in publicly traded companies become insular, disconnected from the realities of the market and the stakeholders they serve. This isolation can have a number of negative consequences, some of which are particularly relevant in the Nigerian context.

Equipped with these fundamental definitions, we can approach the discussion of boardroom rotation with a clearer lens, allowing us to engage in a more nuanced and informed analysis of its potential benefits and drawbacks within the context of Nigeria's corporate landscape.

3.0 The Growing Discourse of Board Rotation in Nigerian Corporate Governance and the call for Reformation

Nigerian businesses are increasingly scrutinising the issue of stagnant corporate leadership and its impact on economic growth. The "boardroom bubble," characterised by weak accountability and a focus on short-term profit, has sparked calls for reform. Among the proposed solutions, director rotation has emerged as a potential game-changer, generating significant debate within the realm of Nigerian corporate governance. This heightened focus stems from a critical evaluation of the optimal balance between stability and renewal within leadership structures.

With the global push for diversity on boards, which has seen many countries around the world promote gender and ethnic diversity on company boards, there has been a growing discussion on the subject of director rotation in Nigerian corporate governance.[18]

The desire for fresh perspectives is also another contributory factor. Many believe that having new directors rotate onto the board can bring fresh ideas and fresh viewpoints, ultimately benefiting the company's decision-making process.[19]

The need to avoid conflict of interest has also been posited as one of the motivating factors for director rotation and its growing discussion in Nigerian corporate governance. In situations where long-tenured directors are also major shareholders or executives within the same company, concerns may arise over potential conflicts of interests which could be mitigated through regular rotations.

3.1 Strategic Board Composition: A Critical Pillar of Effective Corporate Governance

The composition of directors plays a critical role in the success of a company, as highlighted by the Australian Institute of Company Directors (AICD). While there is no universal ideal structure for boards,[20] directors should have the requisite skills and experience that align with the long-term strategy of the company.[21] Additionally, diversity in backgrounds and perspectives is essential for effective decision-making within the board. This suggests that a variety of viewpoints can lead to better outcomes for the company.[22]

While skills, experience and diversity are rightfully prioritised when building a board, other crucial aspects often receive less attention. Such areas as director tenure and succession planning are often overlooked until the need arises to replace a retiring director.[23] This raises the question of how boards should strategically

[18] On the subject of gender inclusiveness in the boardroom, see for instance, Debbie A. Thomas, (Winter 2018) 'Bias in the Boardroom: Implicit Bias in the Selection and Treatment of Women Directors' *Marquette Law Review* (102) (2), 539 – 574; see also Beverly Hancock, 'Bursting Three Myths about Women on Boards' <https://sirdargroup.com/busting-three-myths-about-women-on-boards/> accessed 9 April 2024

[19] Robert B. Lamm, 'The Challenges in 'refreshing' board committees' (January 2015) <https://www.thesecuritiesedge.com/2015/01/the-challenges-in-refreshing-board-committees/> accessed 14 March 2024.

[20] Australian Institute of Company Directors, 'Not-for-profit Board Composition' (30 January 2019) <https://www.aicd.com.au/corporate-governance-sectors/not-for-profit/principles/board-composition.html> accessed 14 March 2024.

[21] George Anderson and Julie Hembrock Daum, "Board Composition: The Road to Strategic Refreshment and Succession" (March 2021) <https://www.spencerstuart.com/research-and-insight/the-road-to-strategic-board- succession> accessed 9 April 2024.

[22] *Ibid*

[23] While director tenure refers to the length of time a director serves on the board; succession planning on the

think about their board composition to ensure optimal performance.[24]

Strong boards prioritise succession planning, fostering a talent pool of qualified candidates to ensure a smooth handover when vacancies inevitably arise. This proactive approach safeguards the organisation's long-term needs by maintaining a consistent level of expertise and diverse perspectives within the boardroom.

Conversely, reactive board succession planning exposes the organisation to significant risks. Sudden departures, especially from seasoned members, can create a temporary but critical knowledge gap. New directors require time to integrate and acquire the necessary institutional knowledge to function effectively. This can hinder the board's ability to make informed decisions and navigate complex situations with the necessary cohesion.

Furthermore, a reactive approach may leave the board unprepared for emerging challenges and opportunities. The business landscape is constantly evolving, and boards lacking a diverse range of skills and experiences may struggle to adapt or capitalise on new trends.

By proactively identifying and nurturing future board leaders with the necessary skillsets and diverse viewpoints, boards can ensure continuity in leadership and strategic direction. This forward-thinking approach promotes optimal performance not only in the present but also in the years to come.[25]

In examining the issue of strategic board composition, we shall in the ensuing subtopics, address in a comprehensive manner, the following three main issues: Who sits on the board? What are the classes of directors? How are directors chosen? These questions highlight the importance of having a structured approach to selecting directors based on various factors to ensure effective governance and decision-making within the organisation.

3.1.1 Qualifications for Board Membership

The Companies and Allied Matters Act (CAMA) establishes minimum qualifications for board membership. First, directors must be at least 18 years old.[26] Second, they must be mentally fit; individuals declared lunatic or of unsound mind by a court are ineligible.[27]

CAMA further disqualifies individuals from serving as directors for various reasons. Those previously removed due to fraud, dishonesty, or unethical conducts are prohibited.[28] Similarly, by virtue of Section 279 of CAMA insolvent persons are barred from acting as directors or participating in company management.[29] This section clarifies that "company" includes unregistered companies.[30]

Section 280 of CAMA allows for the disqualification of persons involved in illegal activities related to company promotion, formation or management. This includes those convicted or found to have committed offenses under Sections 668-670 of CAMA, or those involved in fraud during winding up. The High Court may issue an order prohibiting such individuals from holding directorships for a maximum of ten years.[31]

A company's Articles of Association may specify a share qualification for directors. Failure to meet this requirement would prevent an individual from serving on the board of a company.[32]

CAMA also limits directorships in public companies. An individual cannot hold directorships in more than five public companies at a time.[33]

Section 283(e) of CAMA 2020 prohibits corporations from directly serving as directors. However, the corporation may appoint a representative to fulfil this role.

Beyond legal requirements, the Australian Institute of Company Directors (AICD) identifies desirable skills for effective directors. These skills are highly sought after during board recruitment. Desirable traits include business acumen (encompassing financial literacy, strategic thinking, and vision), effective leadership, and strong communication skills.

other hand, involves preparing for the replacement of directors in the future.

[24]*Ibid*

[25]See for instance, Ray Wizbowski, 'Board Succession Planning: Identifying and developing future board leaders' (7 March 2024) <https://www.diligent.com/en-gb/resources/blog/board-succession-planning> accessed 19 May 2024

[26]S. 283 (1) CAMA

[27]S. 284 (1) CAMA

[28]See s. 15 BFA 2022 which amended s. 283 (c) CAMA 2020

[29]Such action is considered an offence and on conviction, the defaulter may face a fine or imprisonment for a period ranging from six months to two years or both – see section 279 (1) CAMA, 2020

[30]S. 279 (2) CAMA

[31]It is important to note that the period of disqualification begins either after the completion of the sentence for the offence or when the fine for the offence is paid. This ensures that the disqualification is implemented after the legal consequences of the offense have been fulfilled – see section 280 (2) CAMA

[32]See generally, s. 277 CAMA, 2020

[33]See s. 307 CAMA, as amended by section 16 BFA 2022

Additionally, decision-making and problem-solving skills, integrity and ethics, the ability to delegate tasks effectively, and work collaboratively with other directors and management are also important.

Moreover, leveraging the expertise of others, industry knowledge, and the desire for continuous learning are desirable qualities for a company director.[34] Importantly, the ideal profile for a director will vary depending on the specific company and industry.[35]

3.1.2 Classes of Directors in Nigerian Public Companies

Publicly traded companies in Nigeria have the flexibility to establish boards comprised of various director classifications, each with distinct roles and responsibilities. These classifications play a crucial role in ensuring robust corporate governance, fostering accountability to stakeholders, and safeguarding shareholder interests.

Generally, boards of public companies in Nigeria are broadly categorized into executive, non-executive,[36] and independent directors.[37] Additionally, there may be individuals who operate on the company board as shadow directors,[38] alternate directors,[39] assignee directors,[40] nominee directors, or life directors.[41]

3.1.2.1 Executive Directors

The leadership team of the company consists of executive directors. This group includes the Managing Director (MD)/ Chief Executive Officer (CEO) and any other directors who are company employees. Executive directors receive salaries and actively manage the day-to-day operations of the organisation. They often hold departmental positions, usually with departmental responsibilities in addition to their broader leadership roles.[42]

On the nature of the relationship between an executive director and the company, the Court of Appeal held in *Usman & Anor v. Jibrin & Ors*.,[43]as follows:

> …..an executive director is an employee of the company and devotes his full time and attention to the work of his employer i.e. the company. An executive director has the same legal responsibility and is subject to the same duties as a non-executive director, however, arising from his contract of employment he has the duty to give continuous attention to the business of the company. This is so because he is employed by the company to attend to the daily running and management of the company. He has a contract of service with his employer and earns salary. His appointment, rights, discipline and tenure are regulated by the Articles of Association of the company as well as his contract of service with the company. His remuneration as director is determined by the board of directors. He holds a salaried employment with the company together with his directorship, and effectively, he is an employee and a member of staff of the company and whatever rights and privileges are available to the employees of the company are available to such director. It is therefore usual for executive directors to have contracts of service with their employer i.e. the company.

Under the NCCG, 2018, the executive leadership team of public companies operates under a well-defined structure, with the the Managing Director/ Chief Executive Officer as the most senior member. Effective operations and management of the company are achieved through a collaborative approach. All executive directors contribute their expertise and provide mutual support, ensuring a cohesive unit that guides the company strategically.[44]

3.1.2.2 Non-executive Directors

Non-executive directors are not involved in daily operations but participate in the company's activities only when the board meets.[45]

In determining the status of non-executive directors, the Court of Appeal held, in *Longe v. FBN Plc*,[46] that,

> They are not employees of the company as they do not have contracts of employment and do not draw salaries. The remuneration paid to them are in the nature of fees or allowances fixed at the Annual General Meetings of the Board of Directors…They are not usually required to report for duty at the office and, their functions being of part-time nature, they could be

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[34]Australian Institute of Company Directors, *op.cit.*,
[35]Ibid.
[36]See for instance, s. 269 (2) of CAMA which stipulates that a person described as director of the company may be appointed in the capacity of an executive director or otherwise (a non-executive director)
[37]See generally, s. 275 (3) CAMA which requires that the directors of a public company in Nigeria should consist partly of independent directors.
[38]S. 270 CAMA
[39]*Baffa v Odili* [2001] 15 NWLR 709 – 744 at p. 737 (para E)
[40]*Ibid*
[41]See **s.** 281 CAMA
[42]See *Longe v FBN Plc* (2006) 3 NWLR (Pt. 967) 228 - 281at 237
[43](2019) LPELR-48792(CA) (Pp. 54-55 paras. A)
[44]See principles 4 and 5, Nigerian Code of Corporate Governance, 2018
[45]*Olawepo v SEC* at p. 146
[46](2006) 3 NWLR (Pt. 967) 228 - 281

engaged in some other endeavours which could be full or part-time.[47]

3.1.2.3 Independent Directors

An independent director, also known as an outside director is a board member who is not affiliated with the company, or any other stakeholders that could influence their actions or independent judgment on board-related issues.[48]

Independent directors offer unbiased advice, perspective and judgment to the board,[49] ensuring sound decision-making. Their presence helps prevent mismanagement and unethical behaviour, ultimately enhancing leadership, strategy and governance within the organisation.

Section 275 (3) CAMA defines an "independent director" in the context of public companies. To be considered independent under the Act, a director must meet specific criteria within the two years preceding the time in question. The criteria include:

i. Not being an employee of the company or having relatives who are employees;
ii. Not engaging in transactions with the company exceeding ₦20 million or doing so through an entity in which the affected director owns more than 30% share or interest;
iii. Not owning more than 30% share of the company; and
iv. Not being engaged as an auditor for the company.

The restrictions aim to ensure that independent directors are free from potential conflicts of interest and can exercise their duties with objectivity and in the best interest of the company. With the increasing importance placed on corporate governance, the legal and regulatory regime in Nigeria is beginning to pay more emphasis on the need for public companies to have more members whose purpose is solely to provide oversight. Hence, every public company is mandated to have at least one-third of the total number of its board as independent directors.[50]

3.1.2.4 Assignee Directors

An assignee director assumes a permanent delegation of authority to manage and direct specific functions within the company. This is typically reflected in titles like "Director of Operations," "Director of Marketing," "Director of Finance," etc. Assignee directors hold independent authority over their assigned areas.

3.1.2.5 Alternate Directors

Company articles often empower substantive directors to designate alternate directors. These appointments serve a crucial function: Ensuring continuity of representation in board meetings when the substantive director is unavailable.[51] This safeguards the smooth operations of the company even in the absence of the substantive director. Critical decisions often require a quorum, and the presence of an alternate director prevents disruptions caused by a substantive director's unavailability.

The fundamental distinction between assignee and alternate directors lies in the duration and scope of their delegated authority. Assignee directors hold a permanent delegation of specific functions, while alternate directors have a temporary delegation limited to the substantive director's absence and specific board meetings. The purpose of these roles also differs. Assignee directors provide specialised expertise and leadership in their designated areas, while alternate directors ensure continuity and prevent disruptions caused by a substantive director's absence.

The case of *Baffa v Odili*[52] highlights the key distinction between alternate and assignee directors. An alternate director's appointment constitutes a temporary delegation of authority, limited to specific instances of the substantive director's absence. Conversely, an assignee director receives a permanent delegation of power and duties.

3.1.2.6 Nominee directors

The contemporary corporate landscape often involves situations where a company is a director of another company. This scenario necessitates the appointment of a natural person to act as the legal representative on the board of the latter company. Such an individual is designated as a nominee director.[53]

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[47] *Ibid*., p. 262
[48] See principle 7.1 NCCG, 2018; see also, Thomson Reuters, "Independent Director" <https://uk.practicallaw.thomsonreuters.com/w-037-8890?transitionType=Default&contextData=(sc.Default)&firstPage=true> accessed 11 April 2024
[49] Josh Palmer, "What is an Independent Director? (Overview, Roles and Responsibilities)" (6 September 2022) <https://www.onboardmeetings.com/blog/independent-director/#:~:text=The%20term%20%E2%80%9Cindependent%20director%E2%80%9D%20is,sure%20its%20mission%20is%20fulfilled> accessed 11 April 2024
[50] See, s. 14 (a) Business Facilitation (Miscellaneous Provisions) Act 2023 which amended Section 275 (1) CAMA, 2020
[51] see *Baffa v Odili* (2001) 15 NWLR (Pt. 737) 709 at p737 paras B-D (CA)
[52] *Ibid*., p. 737, para. E
[53] See section 283 (e) of CAMA 2020 which prohibits corporations from directly serving as directors on a board.

The nominee fulfils the essential functions of a director, such as attending board meetings, participating in decision-making processes, and exercising oversight responsibilities on behalf of the appointing company, and also assumes a fiduciary duty to act in its best interests.

However, a key challenge associated with nominee directors arises from the potential for conflicting fiduciary duties. While the nominee director owes a primary duty to the appointing company, they also have a general duty to act in the best interests of the company on whose board they serve. This potential conflict can manifest in situations where the interests of the two companies diverge.[54]

3.1.2.7 Life Directors

Section 281 of the Companies and Allied Matters Act (CAMA) offers a unique provision within Nigerian corporate law. It allows for the appointment of a director for life, a designation typically encountered in private companies. However, this seemingly permanent position does not equate to absolute tenure. Section 288 of CAMA empowers the company's members to remove a life director through an ordinary resolution, ensuring accountability and responsiveness to the company's stakeholders.

The extent of a company's authority in structuring leadership roles intersected with the concept of life directorships in the landmark case of *U.O.O. Nigeria Plc v. Okafor & Ors.* At issue was the validity of a clause within the Memorandum and Articles of Association (MEMART) of a public limited liability company (Plc) purporting to appoint the respondent as a "managing director/Chief Executive Officer of the board of Directors for life."

The court delivered a clear and decisive judgment. The position envisioned by the clause – a managing director/CEO with a lifetime tenure – found no recognition under CAMA. The court declared the clause void, ineffective, and unlawful.[55] Its reasoning was hinged on the Act's framework for corporate governance. CAMA, the court emphasised, only acknowledges the concept of a "director for life." This designation, while suggestive of permanence, does not shield the director from removal by the company's members. Through an ordinary resolution at an annual general meeting (AGM), members retain the power to remove a life director, ensuring a degree of accountability within the company's leadership structure.

The court's decision in *U.O.O. Nigeria Plc v. Okafor & Ors.*, was firmly grounded in specific provisions of CAMA. Sections 255, 248, and 268 of the CAMA 2004[56] (now re-enacted as sections 281, 273, and 294 of the CAMA 2020)

3.1.2.8 Shadow Directors

This segment delves into the concept of shadow directors, individuals who exert undue influence over a company's board and management despite lacking formal appointments. Section 270 of the Companies and Allied Matters Act (CAMA) acknowledges their existence, highlighting the potential for such actors to manipulate decision-making processes.

The Nigerian Code of Corporate Governance (NCCG) aligns with this perspective. It emphasises the importance of proper board structure and composition, recommending against any individual or group holding undue sway over the board or management without a formal directorship.[57] Accordingly, Section 269(1) of CAMA, underscores the need for due appointment and sanctions those acting as directors without authorisation.[58]

The rationale for restricting shadow directors' activities is multifaceted. First and foremost, it safeguards stakeholders. Transparency and accountability in corporate operations are paramount, and shadow directors pose a significant threat to both. Their influence undermines clear lines of responsibility, as they wield significant power without being answerable to shareholders, creditors, or the public.

Secondly, informed decision-making by shareholders is critical. Investment decisions are often based on the information available regarding a company's leadership. Shadow directors, by operating in secrecy, impede this process and hinder shareholders' ability to make informed choices.

Finally, the potential for financial harm to the company itself cannot be ignored. Shadow directors may manipulate the company for personal gain, jeopardizing its financial standing.

[54] For a deeper exploration of potential conflicts arising from a nominee director's fiduciary duties, see the following scholarly articles: Chanrdawat & Partners, 'Conflict in the Fiduciary duties of a Nominee Director on a Joint Venture Board'<https://chandrawatpartners.co/conflict-in-the-fiduciary-duties-of-a-nominee-director-on-a-joint-venture-board/> accessed 20 May 2024; Hasit Jain, 'The Conundrum of A Nominee Director (18 December 2023)<https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023539/the-conundrum-of-a-nominee-director-experts-opinion> accessed 20 May 2024

[55] *U.O.O. Nig. Plc v. Okafor & Ors* (2020) LPELR-49570 (SC) (Pp. 42-43 paras. A)

[56] *Cap.* C 20 Laws of the Federation of Nigeria, 2004

[57] See principle 2.10, NCCG, 2018

[58] See particularly S. 269 (3) and (4) CAMA

In summary, the existence of shadow directors necessitates a focus on robust corporate governance practices. By ensuring transparency, accountability, and adherence to proper appointment procedures, companies can mitigate the risks associated with these influential, yet officially unrecognized, figures.

3.1.3 Director Selection: A Multifaceted Approach

The composition of a company's board of directors significantly impacts its long-term success and strategic direction. Understanding the processes by which these critical positions are filled offers valuable insights into corporate governance practices.

Director selection methodologies vary, each offering distinct advantages and drawbacks. Companies may leverage internal nominations, where management or existing board members propose qualified individuals within the organisation for consideration. Alternatively, external recruitment firms can be employed to headhunt suitable external candidates. Shareholder activism may also play a role, as major shareholders may nominate directors to influence board composition and strategic direction.

Furthermore, some companies establish dedicated nomination committees, often comprised of independent directors, to spearhead the search for qualified candidates. In recent years, diversity and inclusion initiatives have gained traction, prompting companies to prioritise candidates from underrepresented backgrounds to enrich boardroom discourse with a wider range of perspectives and experiences.

The most effective approach to director selection often involves a strategic blend of these methods, tailored to the specific needs and context of the organisation. Factors such as the company's size, industry, and stage of development all influence the ideal selection methodology.

In Nigeria, the Companies and Allied Matters Act (CAMA) dictates the framework for director selection. The initial directors of a company are appointed by the subscribers listed in the Memorandum of Association. The directors can also be named in the articles.[59] Subsequent appointments typically occur at a general meeting of shareholders.[60] For casual vacancies arising between general meetings, the board of directors may appoint a new director, subject to ratification at the next Annual General Meeting (AGM).[61]

3.1.3.1 Factors Influencing Director Selection

As previously observed, the composition of a company's board of directors exerts a profound influence on both its enduring profitability and the efficacy of its corporate governance. Several key factors influence the selection process, shaping the overall skillset and independence of the board.

a) Skills and Expertise

Boards require a diverse range of skills aligned with the company's industry, size, and strategic objectives. These may include financial acumen, legal knowledge, marketing expertise, and industry-specific experience. Such qualities are essential for boards to effectively carry out their governance functions and responsibilities.[62]

The Australian Institute of Company Directors (AICD) emphasizes the importance of understanding a board's skillset to identify potential gaps and forecast future needs.[63] Boards often utilise "skills matrices" to quantify and record directors' expertise, encompassing technical skills, passion for the organization's purpose, and soft skills like communication, negotiation, and conflict resolution. These matrices can also pinpoint areas requiring board development and succession planning. This structured approach ensures boards possess the necessary skills and expertise to fulfil their roles effectively.[64]

The importance of directors continuously acquiring and maintaining sufficient understanding of the company's business was further emphasized in the Nigerian case of *Olawepo v SEC*.[65] This case highlights the ongoing need for directors to develop and maintain their knowledge to effectively fulfil their duties.

b) Independence

Independent directors play a critical role in providing unbiased oversight and minimising conflicts of interest within a company. Company policies or regulatory requirements may dictate that a specific percentage of the board be comprised of independent directors to ensure transparency and accountability.

In Nigeria, a recent amendment to Section 275(1) of the Companies and Allied Matters Act (CAMA) now mandates that public companies have at least one-third of their directors classified as independent directors. This change aims to enhance corporate governance practices and strengthen the independence of board members in Nigerian companies.

[59] S. 272 CAMA
[60] s. 273 CAMA
[61] see s. 274 (1) and (2) CAMA
[62] S. 308 (1) CAMA; see also s. Principle 2.4 NCCG, 2018.
[63] See Australian Institute of Company Directors, “Not-for-profit Board Composition” (30 January 2019) <https://www.aicd.com.au/corporate-governance-sectors/not-for-profit/principles/board-composition.html> accessed 14 March 2024
[64] *Ibid.*
[65] (2011) 16 NWLR (Pt. 1272) 122 at p. 152

c) Diversity

In today's globalised market, companies increasingly recognise the benefits of a board that reflects the diversity of their customer base and operating environment. Raphael Goldsworthy[66] emphasises that diversity extends beyond mere demographics like gender or age.

By incorporating individuals with different backgrounds, ethnicities and experiences, boards can enhance their decision-making processes and ultimately achieve stronger corporate outcomes. Diverse thinking and varied viewpoints contribute to more robust discussions and better decision-making within the boardroom. Therefore, it is crucial for businesses to consider the advantages of having a diversified board in order to understand customer needs, develop relevant products and services, and connect with a wider audience in today's dynamic business environment.

d) Reputation and Experience

A demonstrably strong track record remains a cornerstone of effective director selection. This encompasses proven leadership skills, sound business acumen, and a demonstrably effective ability to navigate crisis situations. In the case of specialised businesses, having the necessary technical expertise is often considered.[67]

e) Networks and Relationships

Directors with extensive networks can be a strategic asset for a company. Research by Rüdiger Falenbrach *et al.,* reveals that directors are more likely to secure additional directorships if they are associated with well-connected CEOs and peer directors on their current boards.[68] While this suggests that having strong connections within the industry can increase opportunities for directors to serve on multiple boards, well-connected directors can benefit the company by facilitating new partnerships and strategic alliances. Their network and relationships can open doors for the company to explore collaborations and expand its reach.

f) Shareholder Interests and Director Selection

The Annual General Meeting (AGM) serves as a critical forum for shareholder participation in corporate governance. One of the primary functions of the AGM is the election of directors, who play a vital role in shaping the company's strategic direction and ensuring its long-term success.[69] Major shareholders may have specific expectations regarding the board's composition and strategic direction and this provides an opportunity for them to vote and influence the composition of the board.

g) Regulatory Environment

In a multi-layered regulatory environment like Nigeria, industry regulations and legal requirements may dictate certain qualifications or limitations for board composition.[70] For instance, the regulations governing bank board composition provide for the Central Bank of Nigeria's (CBN's) role in approving board appointments and its authority to address situations of potential bank distress.

On prior approval for director appointments, the Banking and Other Financial Institutions Act (BOFIA), 2020, mandates that all Nigerian banks obtain written approval from the CBN before appointing any director or chief executive officer (CEO).[71] This prior approval requirement ensures the CBN's oversight in the composition of bank boards and promotes adherence to regulatory standards.

Furthermore, section 18(2) of the BOFIA Act further specifies that the CBN's approval is necessary for the appointment of specific categories of individuals as bank directors. These categories include:

i. **Individuals holding directorships in other banks:** This provision aims to prevent conflicts of interest and over-concentration of power within the banking sector.
ii. **Persons or entities with significant influence on the bank:** The CBN scrutinizes the appointments of individuals or entities that can exert undue influence on the bank's operations. This safeguards against potential manipulation and promotes independent decision-making by the board.

[66]Raphael Goldsworthy, "Practical Strategies for Better Board Decisions." downloadable at <https://eot.betterboards.net/f/a/kQy4QQT4l8iSg0iDZY57Sw~~/AAAHUQA~/RgRoBCuhP0UgYjM4NzYwZGMyYjk0MzEwYzhlNzUzMzVmNjNkZTczZTdEQGh0dHBzOi8vYmV0dGVyYm9hcmRzLm5ldC9maWxlcy9lYm9va3MvQmV0dGVyLWJvYXJkLWRlY2lzaW9ucy5wZGZXBXNwY2V1QgpmH6GmIWa2r3I7UhB5b3J6MjRAZ21haWwuY29tWAQAAGwU> accessed 1 May 2014.

[67]See, Principle 12.1 NCCG, 2018

[68]Rüdiger Falenbrach, Hyemin kim, and Angie Low, 'The importance of Network Recommendations in the Director Labour market' (November 2018) *Swiss Finance institute Research*, Paper No 18 -28, 31st Australasian Finance and Banking Conference, 2018

[69]See generally, s. 285 CAMA

[70]See for instance, Guidelines for the Appointment of Board and Top Management Positions of Pension Fund Administrators and Pension Fund Custodians, made pursuant to s. 97 of the Pension Reform Act, 2004. Refer to Guideline 1.2 which requires every PFA to seek the approval of PenCom before appointing members of its board and top management. See also, Guidelines 2 and 3 which specify the educational qualifications and other criteria for appointments into various positions - <https://www.pencom.gov.ng/wp-content/uploads/2017/04/Guideline-for-Appointment-to-Board-and-Top-Management-Positions-in-PFAs-and-PFCs.pdf> accessed 30 April, 2024

[71]Section 47(1) BOFIA, 2020

These provisions embedded in the BOFIA Act empower the CBN to regulate the composition of bank boards in Nigeria. The goal is to mitigate potential conflicts of interest, ensure adherence to regulatory standards, and promote responsible banking practices. Compliance with these regulations is critical for banks operating in the Nigerian financial system.

As part of the CBN's oversight of bank boards, Sections 33 and 34 of the BOFIA, 2020, grant the CBN Governor the authority to intervene in situations of bank distress. In instances where a bank is deemed to be in a grave financial condition, the Governor has the power to suspend or dissolve the bank's board of directors, remove managers or officers of the bank, notwithstanding any limitations imposed by the bank's memorandum and articles of association, or other applicable laws.

This extraordinary power is also conferred upon the Governor by Section 42(1)(b) of the CBN Act, 2007. This Act mandates the CBN to maintain high standards of conduct and management practices throughout the Nigerian banking system.[72] The Governor's intervention authority serves as a safeguard against financial instability and promotes a well-functioning banking sector.

In essence, the regulatory framework for bank board composition in Nigeria, as illustrated by the BOFIA Act and the CBN Act, establishes a system for vetting bank board appointments and empowers the CBN to intervene in critical situations. This approach fosters responsible board composition, mitigates potential conflicts of interest, and ultimately contributes to the stability of the Nigerian banking system.

Case law reinforces the CBN Governor's authority to intervene in critical situations. In *Omoyeni v. CBN & Ors*,[73] the court acknowledged the combined effect of BOFIA provisions (1991 Act, mirrored in sections 33 and 34 of the 2020 Act) granting the Governor the power to remove and replace directors/officers of a bank deemed to be in a grave situation.[74]

Similarly, *Danson Izedonmwen & Anor v. Union Bank of Nigeria Plc*[75] upheld the Court of Appeal's decision recognising the Governor's authority to remove and replace directors or executive officers to facilitate the recovery of a struggling bank.[76] These judgements underscore the legal basis for the regulatory intervention and the CBN's oversight of bank boards. However, it is crucial to recognise the underlying policy objectives driving this authority. By empowering the CBN to take decisive action, the regulatory framework aims to safeguard financial stability, protect depositors, foster public trust and promote responsible management. It prevents contagion, ensures bank solvency and incentivises sound risk management practices, reinforcing the importance of responsible fiduciary duties.

While the CBN holds significant authority within the banking sector, it is important to recognise the presence of other regulatory bodies overseeing distinct sectors in the Nigerian economy. These include: Securities and Exchange Commission (SEC);[77] National Insurance Commission (NAICOM);[78] Nigeria Communications Commission (NCC);[79] and National Pension Commission (PenCom).[80]

The NGX (Nigerian Stock Exchange), operating under sector-specific regulations, exerts influence over listed companies. As part of its oversight function, the NGX mandates compliance with the SEC Code of Corporate Governance for all dealing members of the exchange.[81] This code establishes best practices for board composition, encompassing diversity, independence, and director qualifications.[82] The Code also encourages listed companies to implement board refreshment policies that set limitations on director tenure.

h) Company Needs and Strategy

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[72] Importantly, by virtue of s. 29 (1) of the BOFIA, regulatory and supervisory powers over banks and other financial institutions reside in the Central Bank of Nigeria, to the exclusion of any other agency. Equally of note, s. 18 (1) (b) BOFIA provides that the appointment of a management agent in respect of a bank, cannot take effect without the approval of the CBN.

[73] (2015) LPELR-25789(CA) (Pp. 26-33 paras. E)

[74] *Ibid*., per Akomolafe-Wilson, JCA (Pp. 26-33, paras. E-A)

[75] [2012] 6 NWLR (pt 1295) pp. 1- 52

[76] *Ibid*., per Okoro JCA (pp. 49, paras. B-D); (p. 51, paras. B- E)

[77] It issues the SEC Code of Corporate Governance, which applies to listed companies and influences board composition practices across various sectors.

[78] NAICOM regulates and supervises the insurance industry, promoting fair market practices and ensuring the solvency of insurance companies.

[79] The NCC regulates the telecommunications sector, ensuring competition, consumer protection, and efficient service delivery.

[80] PenCom regulates and supervises the Nigerian pension industry, safeguarding pension assets and ensuring the security of retirement benefits.

[81] See Rule 9.11, Rulebook of the Nigerian Stock Exchange (NGX), 2015. Note that the NGX "Rulebook" is a compilation of all the rules, regulations and guidelines of the NGX in single document. Note also that a dealing member of the Nigerian Stock Group (NGX) is a member company licensed by the NGX to act as a dealer in securities. They are essentially stock brokers with specific permissions and obligations.

[82] See for instance, Guidelines 1-5, SCCG

Beyond regulatory requirements and adherence to corporate governance principles, a company's specific strategic direction and challenges significantly influence the selection of its board of directors.

By carefully considering the company's unique needs and strategic direction, board composition can become a powerful tool for driving success. A well-curated board, with directors possessing the right blend of skills and experience, can provide effective guidance and oversight, ultimately propelling the company towards achieving its long-term goals. In essence, selecting directors becomes a strategic act in itself, ensuring the board is well-equipped to navigate the ever-evolving business landscape and lead the company towards a prosperous future.

4.0 The Regulatory Landscape of board Composition, Director Tenure and Rotation in Nigeria

The Nigerian corporate governance landscape has undergone a period of significant transformation in recent years. The enactment of the Companies and Allied Matters Act 2020 (CAMA 2020), the Banks and Other Financial Institutions Act 2020 (BOFIA 2020), and the Business Facilitation (Miscellaneous Provisions) Act 2023 has added a new dimension to the pre-existing framework. This intricate legal tapestry, which also includes the Investments and Securities Act, the Financial Reporting Council of Nigeria Act, the Central Bank of Nigeria Act, the Pension Reform Act 2004, and the National Insurance Commission Act (NAICOM Act), demands a closer examination to understand how director tenure and rotation are regulated in contemporary Nigeria.

CAMA 2020 serves as the cornerstone legislation for director tenure and rotation. The Act outlines a default mechanism that applies when a company's articles of association lack specific provisions. In such instances, CAMA 2020 mandates that all directors, excluding life directors, retire at the first annual general meeting (AGM). Subsequently, at each AGM, a designated portion of the board, typically one-third (or the nearest number to one-third if the total is not divisible by three), must rotate out of office. This ensures a gradual turnover of experience and perspectives within the boardroom, fostering a balance between continuity and fresh thinking. The order of retirement is determined by length of service, ensuring a systematic approach to board refreshment. For directors appointed on the same day, a mutual agreement regarding retirement order can be reached. In the absence of such agreement, the matter is settled by lot, injecting an element of fairness into the process.

Significantly, CAMA 2020 streamlines the process for director re-election. A retiring director seeking to continue their service is presumed to have been re-appointed unless the AGM explicitly rejects the re-election resolution, another candidate is elected to fill the vacancy, or the AGM votes to leave the position unfilled. This presumption of continuity fosters stability within the board while still allowing shareholders to exercise their ultimate control over board composition.

However, CAMA 2020 recognises the need for flexibility in corporate governance. Section 258(1) establishes a default mechanism for director retirement in the absence of specific provisions within a company's articles. The crucial phrase "Unless the articles provide..." empowers companies to deviate from this default rule and craft their own procedures for director retirement and rotation. Consequently, Section 285 of CAMA 2020 grants companies the flexibility to tailor director rotation to their unique governance philosophies. This allows companies to consider factors such as industry best practices, the size and complexity of their operations, and the desired balance between continuity and fresh perspectives when designing their board rotation policies. This flexibility fosters a more nuanced and adaptable approach to corporate governance, moving away from a rigid, one-size-fits-all approach.

4.1 An Examination of the various Codes and Guidelines Shaping board Composition and Rotation

While the legal framework governing director rotation in Nigeria is a dynamic interplay between the Companies and Allied Matters Act (CAMA) of 2020 and sector-specific laws, a rich tapestry of codes and guidelines issued by various regulatory bodies further shapes these practices. Due to space limitations, this analysis will delve into a selection of these influential instruments, exploring their impact on director rotation and their potential to mitigate the phenomenon of the "boardroom bubble." The list will be approached in the following order:

1) Nigerian Code of Corporate Governance (NCCG), 2018
2) SEC Code of Corporate Governance Guidelines (SCGG)[83]
3) The Sector-specific Codes:
    a) Banking Industry:
        i. Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023;

[83] Unlike the SEC Code of Corporate Governance Guidelines (SCGG) which apply specifically to public companies listed on the Nigerian Stock Exchange (NGX), the NCCG applies more broadly to all public companies in Nigeria regardless of listing status. In particular the NCCG extends to the following entities: (a) All public companies (whether a listed company or not); (b) all private companies that are holding companies of public companies or other regulated entities; (c) all concessioned or privatised companies; and (d) all regulated private companies being private companies that file returns to any regulatory authority other than the Federal Inland Revenue Service (FIRS) and the Corporate Affairs Commission (CAC

and The Corporate Governance for Financial Holding Companies in Nigeria, 2023.[84]
ii. Code of Corporate Governance for Finance Companies in Nigeria, 2019[85]

b) Insurance Industry: The National Insurance Commission's (NAICOM's) Corporate Governance Guidelines for Insurance and Reinsurance Companies in Nigeria, 2021
c) Telecommunications Industry: Code of Corporate Governance for the Telecommunications Industry, 2016
d) Operation and Administration of the Pension Scheme in Nigeria: Circular on Corporate Governance for Licensed Pension Fund Operators, 2019 (it replaced the Code of Corporate Governance for Licensed Pension Fund Operators, 2008)

4.1.1 The Nigerian Code of Corporate Governance: Building Effective Boards

The Nigerian Code of Corporate Governance (NCCG) 2018 sets the standard for strong boards in Nigerian companies. Issued by the Financial Reporting Council, the NCCG is a flexible guide, allowing companies to tailor their approach based on size and complexity.

Key Features:

a) **Separation of Roles:** The NCCG encourages separating the chairman and CEO roles in public companies, promoting checks and balances.[86]
b) **Board Refreshment:** The code recommends three-year term limits for independent directors, bringing in fresh perspectives.[87] Nonetheless, the code leaves the tenure limit of executive and non-executive directors to the discretion of the board. [88]
c) **Diverse Skills:** The NCCG emphasises the importance of board members with a variety of skills and backgrounds, including women.[89]
d) **Transparency and Accountability:** By focusing on competent, independent, and ethical boards, the NCCG aims to create a trustworthy and accountable business environment. [90]
e) **Optimal Board Size:** The NCCG avoids a "one-size-fits-all" approach for board size, allowing companies to choose a structure that best suits their needs. [91]
f) **Responsible Directorship:** The code discourages directors from holding too many board positions and prohibits serving on competitor boards to prevent conflicts of interest. [92]

Overall, the NCCG's recommendations promote well-functioning boards that drive long-term value creation for Nigerian businesses. Companies listed on the Nigerian Stock Exchange (NGX) or aiming for listing are expected to follow the NCCG's guidance.

4.1.2 The Securities and Exchange Commission's Corporate Governance Guidelines: Strengthening Oversight for Public Companies

The Securities and Exchange Commission Code of Corporate Governance Guidelines (SCGG), issued by the SEC, serves as a vital instrument within its regulatory framework for publicly listed companies in Nigeria. These guidelines extend the reach of the 2018 Nigerian Code of Corporate Governance (NCCG) by applying to all Nigerian companies seeking capital via securities offerings or listing by introduction. [93]

Prior to the issuance of the Securities and Exchange Commission Code of Corporate Governance Guidelines (SCGG), the Nigerian regulatory landscape relied on the 2011SEC Code of Corporate Governance for Public Companies in Nigeria.

The 2011 code served as a critical stepping stone in the evolution of corporate governance practices for publicly listed companies in Nigeria. It introduced core principles concerning board composition, director tenure, and rotation, fostering a more transparent and accountable environment for investors. While the SCGG serves as a more comprehensive and updated framework, it demonstrably inherits the core principles enshrined in its predecessor. The SCGG's provisions regarding board composition, director tenure, and rotation reflect this continuity, building upon the foundation laid by the earlier code.

The SCGG provides for the following:

a) **Minimum Board Size:** The SCGG mandates a minimum board size of five directors. [94] This

[84] These guidelines, which became effective on 1st of August, 2023 supersede all previous codes, circulars and related directives on corporate governance issued by the CBN
[85] It is applicable to the following financial institutions: Micro Finance Banks, Development Finance Banks, Primary Mortgage Banks, Mortgage Refinance Companies, Finance Companies and Bureaux De Change
[86] Principe 2.7 NCCG, 2018
[87] See Principle 12.8 and 12.9 NCCG, 2018
[88] See Principle 12.8 and 12.9 NCCG, 2018
[89] *Ibid*., Principle 2.4
[90] *Ibid*., Principle 2
[91] *Ibid*., Principle 2.2. The Code further proceeds to outline the factors that the board may consider determining the requisite number of its members – Principle 2.3 (a) – (e) of the NCCG
[92] *Ibid*., Principle 2.8
[93] See SEC's introductory explanation to the SCGG. See also the 2011 SEC Code of Corporate Governance for Public Companies in Nigeria, which formed the foundation for the development of the SCGG– note, particularly Part A, para 1.3 (a) (g) SEC Code of Corporate Governance for Public Companies in Nigeria, 2011
[94] See Guideline 1 SEC Code of Corporate Governance Guidelines (SCGG)

stipulation ensures a sufficient number of individuals to provide diverse perspectives and foster robust discussions within the boardroom. A larger board also facilitates the creation of specialised committees to address critical areas like audit, risk management, and compensation.

b) **Family and Interlocking Directorships:** Recognising the potential for conflicts of interest and the importance of board independence, the SCGG limits the number of family members on a public company's board to a maximum of two.[95] This measure promotes a boardroom environment with a wider range of viewpoints and mitigates undue influence from concentrated family interests.

Additionally, the SCGG discourages interlocking directorships between competing companies. This prohibition safeguards against conflicts of interest and fosters objective, ethical decision-making within the board. By ensuring a board free from undue influence or divided loyalties, the SCGG protects the interests of shareholders and the integrity of the capital market.

c) **Sanctions:** Non-compliance with the Nigerian Code of Corporate Governance and SEC Corporate Governance Guidelines can result in a fine of ₦500,000, in the first instance and an additional ₦5,000 per day for everyday the violation persists, or such other sanction as determined by the Commission.

As the issuing authority of the SEC Code of 2011 and the more recent SCGG, the Securities and Exchange Commission derives its regulatory authority over publicly listed companies and their directors from the Investments and Securities Act (ISA).[96] The landmark case of *Oni v The Administrative Proceedings of SEC*[97] serves as a crucial judicial affirmation of this authority. In this case, the court upheld the SEC's power to disqualify individuals deemed unfit from holding directorships in public companies and from operating within the Nigerian capital market.[98] The court's decision further underscores that the Companies and Allied Matters Act (CAMA) and the Criminal Code do not supersede the SEC's regulatory authority. Instead, these legislative instruments operate in concert with the SEC's powers to safeguard the integrity of the Nigerian capital market.[99]

4.1.3 The Central Bank of Nigeria's Evolving Corporate Governance Framework: A Focus on Board Tenure and Rotation Practices in Banks

This section examines the recent advancements in corporate governance within the Nigerian banking sector, with a particular emphasis on board tenure and rotation practices. The analysis centres on the Central Bank of Nigeria's (CBN) issuance of the "Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria," 2023 (CGGCM-NPSBs)[100] and the "Corporate Governance Guidelines for Financial Holding Companies in Nigeria," 2023 (CCGFHC). These guidelines, along with prior codes established by the CBN, derive their authority from the Central Bank of Nigeria Act[101] and the Banks and Other Financial Institutions Act (BOFIA Act).[102]

To facilitate a comprehensive understanding, a comparative tabular analysis will be presented, dissecting the composition, board tenure, and rotation of directors in Nigerian banks. It is noteworthy that the 2023 Guidelines explicitly supersede all preceding CBN pronouncements on corporate governance, including codes, circulars, and directives.

This section delves into the evolving corporate governance landscape of the Nigerian banking industry, specifically focusing on board tenure and rotation practices. It centres its analysis on the recently issued Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria, 2023 (CGGCM-NPSBs)[103] and the Corporate Governance Guidelines for Financial Holding Companies in Nigeria, 2023 (CCGFHC). Both sets of guidelines, along with prior codes within the sector,[104] were promulgated by the Central Bank of Nigeria (CBN) pursuant to its authority under the Central Bank of Nigeria Act (CBN Act)[105] and the Banks and Other Financial Institutions Act (BOFIA Act).[106]

[95] *Ibid*, Guideline 2.1
[96] Act No. 29, 2007
[97] (2014) 13 NWLR (Pt. 1424) 334 CA
[98] *Ibid* at p. 347
[99] *Ibid* at p. 347
[100] Note that the guidelines and the NCCG 2018 are applicable to all Commercial, Merchant, Payment Service and Non-Interest banks in Nigeria
[101] See section 2 (d) CBN Act, 2007, Laws of the Federation of Nigeria
[102] See also sections 56 (2) and 67 (1) BOFIA Act, 2020, Laws of the Federation of Nigeria
[103] Note that the guidelines and the NCCG 2018 are applicable to all commercial, merchant, payment service and non-Interest banks in Nigeria
[104] An example in this regard is the Code of Corporate Governance for Finance Companies in Nigeria, made in 2019, for micro finance banks, development finance banks, primary mortgage banks, mortgage refinance companies, finance companies and bureaux de change.
[105] See section 2 (d) CBN Act, 2007, Laws of the Federation of Nigeria
[106] See also sections 56 (2) and 67 (1) BOFIA Act, 2020, Laws of the Federation of Nigeria

Subject	A) Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023 - (CGGCM-NPSBs)	B) Corporate Governance Guidelines for Financial Holding Companies in Nigeria, 2023 - (CCGFHC)
1) Board Composition	a) The composition of the Board includes EDs (Executive Directors) and NEDs (Non-Executive Directors), with a higher number of NEDs compared to the EDs on the Board and its committees.[107] b) The Board is to also contain some INEDs (Independent Non-Executive Directors)[108]	a) The Board is composed of EDs and NEDs, which includes INEDs.[109] b) The number of NEDs on the board and its committees should be greater than the number of EDs[110] In FHC the Managing Director/ Chief Executive Officer (MD/ CEO) is typically the only ED. However, there may be exceptional circumstances where the CBN approves the appointment of an ED as the Chief Financial Officer (CFO)[111]
2) Size of the Board	a) Commercial, Merchant and Non-Interest Banks (CMNIBs): Minimum is 7 while maximum is 15 b) Payment Service Banks (PSBs): Minimum is 7, while maximum is 13[112]	The minimum and maximum number of directors on the Board of an FHC shall be seven (7) and nine (9) respectively.[113]
3) Tenure of Executive Directors (MD/ CEO/ DMD	The tenure of Executive Directors (MD/ CEO/[114] DMD[115]) is determined by their employment contract with the bank and cannot exceed a total of twelve (12) years. However, if a DMD/ED becomes an MD/CEO of the same bank, their previous tenure as DMD/ED is not counted towards their tenure as MD/CEO.[116] It is important to note that there is a cumulative tenure limit of 24 years, as stated in section 8 of the Corporate Governance guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria. This means that regardless of the specific roles held, an individual cannot serve as an Executive Director for more than 24 years in total.	The tenure of the Managing Director/Chief Executive Officer (MD/CEO) in a Financial Holding Company (FHC) will be determined based on the terms of engagement with the FHC. However, the maximum tenure allowed for the MD/CEO is ten (10) years.[117]

[107]S. 1.4 Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023
[108]*Ibid*, 1.5.1 and 1.5.2
[109]S. 1.4 Corporate Governance for Financial Holding Companies in Nigeria, 2023
[110]*Ibid*
[111]*Ibid*., 3.2.2
[112]S. 1.3 Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023
[113]S. 1.3 Corporate Governance for Financial Holding Companies in Nigeria, 2023
[114]For the Tenure of MD/ CEO of Commercial, Merchant, Non-interest and Payment Service Banks, see s. 3.2 Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023
[115]For the tenure of the DMD in this regard see of Commercial, Merchant, Non-interest and Payment Service Banks, see s. 3.3.1 Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023
[116]*Ibid*., See s. 3.3.3
[117]See s. 3.2.3; and s. 3.2.5 Corporate Governance for Financial Holding Companies in Nigeria, 2023. Cf. section 3.2.2 which is to the effect that an FHC shall have the MD/ CEO as the only ED unless in exceptional circumstances where the CBN approves the appointment of an ED as the Chief Financial Controller

Subject – contd.	**CGGCM-NPSBs – contd.**	**CCGFHC – contd.**
4) Number of INEDs	*Three INEDs for: i) Commercial banks with International and national authorisation[118] ii) ii) Merchant banks[119] iii) Non-Interest Banks (NIBs) with national authorisation[120] *Two INEDs for: i) PSBs[121] ii) Commercial banks with regional authorisation;[122] and iii) NIBs with regional authorisation[123]	For the boards of Financial Holding Companies (FHCs), there should be a minimum of three Independent Non-Executive Directors (INEDs) or as required by the Companies and Allied Matters Act (CAMA) of 2020.[124]
5) Tenure of INEDs	The tenure of INEDs should not exceed two terms of four years each. This indicates a maximum limit of eight years for an INED to serve on the board of a Commercial, Merchant, Non-interest or PSBs in Nigeria[125]	For the boards of FHCs, the term is set at 4 years, with the possibility for renewal for an additional four-year-term. This means that individuals holding this position can serve a maximum of two consecutive terms, totalling 8 years in office.[126]
6)Maximum tenure of NEDs	Non-Executive Directors (NEDs) of Commercial, Merchant and Non-Interest Banks in Nigeria, excluding INEDs are limited to serving a maximum of twelve years. This period is divided into three terms, with each term lasting four years.[127]	Non-Executive Directors (NEDs), including the Chairman (INEDS), of a financial holding company (FHC) are limited to serving a maximum of three terms, with each term lasting four years. As a result, the total tenure limit for a NED in an FHC or any other FHC is 12 years.[128]
7) Gender diversity/ inclusiveness	The Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023 emphasise the importance of promoting gender inclusivity on boards. This is achieved by focusing on women's economic empowerment, aligning with Principle 4 of the Nigerian Sustainable Banking Principles.[129]	The Corporate Governance for Financial Holding Companies in Nigeria, 2023 also promotes a gender inclusive board through women economic empowerment, in line with Principle 4 of the Nigerian Sustainable Banking Principles.[130]

[118]S. 1.5.1 Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023
[119]*Ibid*
[120]*Ibid*
[121]*Ibid*., section1.5.2
[122]*Ibid*.,
[123]Ibid.,
[124]S. 1.5 Corporate Governance for Financial Holding Companies in Nigeria, 2023
[125]s. 3.5.2 Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023
[126]s. 3.4.2 Corporate Governance for Financial Holding Companies in Nigeria, 2023
[127]s. 3.4.2 Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023
[128]Section 3.3.2 Corporate Governance for Financial Holding Companies in Nigeria, 2023
[129]See, ss. 1.8 and 1.9 Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023
[130]See, ss. 1.6 and 1.7 Corporate Governance for Financial Holding Companies in Nigeria, 2023

Subject – contd.	**CGGCM-NPSBs – contd.**	**CCGFHC – contd.**
8) Interlocking[131] or concurrent directorships	A director of a bank within its FHC or group Structure can only hold concurrent directorships in two institutions[132]	A director of an FHC is restricted to holding directorships in only two institutions within the group structure. This means that a director can only serve in two organisations within the FHC's group.[133]
9) Cooling-off Period for directors[134]	**a) Cooling off Period for bank Executives:** Bank executives who exit from the board of a bank prior to expiration of maximum tenure, specifically ED, DMD, or MD/CEO, a two-year cooling off period is necessary before they can be appointed as a NED in the same bank, taking into account applicable cumulative tenure limits. [135] **b) Appointment of an Executive (ED, DMD or MD/CEO) of a bank into the Board of its FHC in any role:** If the an Executive (ED, DMD or MD/CEO) of a bank is to be appointed into the Board of its FHC in any role**,** a cooling-off period of two years will be enforced[136] **c) Appointment of a NED into an executive role in the same bank:** If a NED is appointed into an executive role within the same bank, a cool-off period of two years is required. During this period, the NED is restricted from taking up the executive period.[137] **d) Transition by a director, from one bank to a sister subsidiary** i. When the transition results in a change of role: A cooling-off period of two years is required ii. If there is no change in the directors role during the transition: No cooling-off period applies.[138]	**a) Cooling-off period for bank executives before being eligible for appointment into the board of FHC:** There is a cooling-off period for bank executives before they can be appointed to the board of a Financial Holding Company (FHC). Specifically, former Managing Directors (MDs), Chief Executive Officers (CEOs), or Executive Directors (EDs) must wait for a period of 2 years after leaving the bank's board before they can join the board of the FHC in any capacity. [139] **b) No cooling-off period for Non-Executive Directors:** Non-executive directors (NEDs) do not have a cooling-off period when transitioning to another board, such as the Financial Holding Company (FHC) board. This means that regular NEDs can seamlessly move from a bank's board to the FHC board without any waiting period. [140] **c) Cooling off/ Interlocking Directorships: Cooling off/ Interlocking Directorships:** An individual who starts as a director in the bank's subsidiary is restricted from also serving as an interlocking director in the same subsidiary or any other Central bank of Nigeria (CBN) regulated subsidiary while being on the FHC board.[141] **d) No cooling off period in Moving between FHCs:** No cooling off period is required when a director of an FHC is appointed on the board of another FHC.

[131]Interlocking directorships describe a situation where a board member of one company also holds a board position in another company.
[132]s. 1.16 Corporate Governance Guidelines for Commercial, Merchant, Non-interest and Payment Service Banks in Nigeria, 2023. This limitation is put in place to prevent conflicts of interest and ensure proper governance within the banking sector. By restricting the number of directorships a single individual can hold, it aims to promote transparency and accountability in decision-making processes. This regulation helps to maintain the integrity of the financial system and safeguard the interests of stakeholders.
[133]S. 6.2 Corporate Governance for Financial Holding Companies in Nigeria, 2023
[134]In the context to directors' tenures, a cooling-off period refers to a mandatory waiting period after a director leaves a position before they can be eligible for another specific role within the same company or sometimes, even a competitor.
[135]S. 7.1 CM-NPSBs, 2023. This regulation aims to prevent conflicts of interest and ensure transparency in the banking sector. The cooling off period serves as a safeguard to maintain the integrity of the board and prevent any potential misuse of insider information. By imposing this restriction, regulatory authorities aim to uphold good governance practices and maintain public trust in the banking industry
[136]*Ibid*., s. 7.2
[137]*Ibid*., s. 7. 4
[138]Ibid., s. 7. 6
[139]S. 5.1 Corporate Governance for Financial Holding Companies in Nigeria, 2023
[140]*Ibid*., s.5.2. This flexibility allows for a smooth transition and continuity in governance roles. It also highlights the importance of experience and expertise that NEDs bring to different boards. The absence of a cooling-off period for NEDs emphasizes the value of their contributions and the trust placed in their judgment and decision-making abilities.
[141]*Ibid*., s. 5.3

4.1.4 The National Insurance Commission's Corporate Governance Guidelines for Insurance and Reinsurance Companies in Nigeria: A Reinforcement of Best Practices

The Nigerian insurance sector is subject to the regulatory oversight of the National Insurance Commission (NAICOM). In furtherance of its mandate, NAICOM issued the Corporate Governance Guidelines for Insurance and Reinsurance Companies in Nigeria (CGGIRC) in 2021. This issuance effectively superseded the previously existing NAICOM Code of Good Corporate Governance for the Insurance Industry (2009). Notably, the CGGIRC supplements and reinforces the principles established in the broader Nigerian Code of Corporate Governance (NCCG) of 2018.

The salient provisions of the CGGIRC are as follows:

i. **Board Composition and Structure**

The CGGIRC prescribes specific parameters for the composition of boards within insurance and reinsurance companies. Board size is mandated to fall within a range of 7 to 15 members, ensuring a balance between efficiency and inclusivity. Furthermore, the guidelines dictate a board composition with a mix of executive and non-executive directors, with a cap placed on the proportion of executive directors at 40% of the total board. This stipulation safeguards against undue influence by the executive directors and fosters independent oversight.

The CGGIRC further prohibits the concentration of power within a single individual or family unit. The guidelines explicitly bar the simultaneous holding of the chairman and managing director/CEO positions by the same person in related insurance companies. Additionally, they restrict members of the same family from occupying both the chairman and managing director/CEO positions within any single insurance company. These provisions aim to prevent conflicts of interest and promote diverse leadership perspectives.

ii. **Interplay with the NCCG and Enforcement**

It is paramount to interpret the CGGIRC within the framework established by the NCCG (2018). The guidelines operate in tandem with the broader Code, providing industry-specific refinements to best practices in corporate governance. Recognizing the importance of compliance, the CGGIRC specifies that non-adherence to its provisions and the NCCG constitutes a violation of Section 49(1)(b) of the National Insurance Commission Act, 1997, and attracts a penalty under s. 59 (5) of the same Act. Compliance with these guidelines is crucial for insurance companies operating in Nigeria to ensure good corporate governance practices and regulatory adherence.

4.1.5 The Nigerian Communications Commission's Code of Corporate Governance for the Telecommunications Industry, 2016: A Balancing Act between Flexibility and Best Practices

The Nigerian Communications Commission's (NCC) 2016 Code of Corporate Governance for the Telecommunications Industry (NCC Code) adopts a nuanced approach to board composition within the telecommunications sector. This approach prioritizes a balanced board while offering companies some degree of flexibility in its structure.

In contrast to some corporate governance regimes, the Code refrains from mandating a specific number of directors.[142] This allows telecommunications companies to tailor board size to their unique needs and operational complexity. However, the Code doesn't entirely abandon structure. It emphasizes the importance of a board composition reflecting a diversity of skills and experience, including gender diversity.[143] This focus on a well-rounded board ensures a comprehensive and informed decision-making process.

The Code acknowledges the crucial role of independent directors (IDs) in fostering good corporate governance. It recommends that all telecommunications companies have at least one ID on their board. This recommendation aligns with the general principles of independent oversight within a board structure. However, the Code recognizes the potential interplay with the Nigerian Companies and Allied Matters Act (CAMA) of 2020, particularly Section 148(2). In the case of public telecommunications companies, the stricter provisions of CAMA will supersede the Code's recommendation. Under CAMA, public companies must ensure that at least one-third of their directors qualify as independent directors.

Finally, the Code institutes a maximum tenure of 15 years for non-executive directors (NEDs).[144] This provision serves a two-fold purpose. Firstly, it encourages the introduction of fresh perspectives and expertise onto the board, preventing stagnation in decision-making. Secondly, it promotes a culture of accountability and discourages complacency among long-serving NEDs.

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[142] See Principle 3.2 (b) and (c) NCC Code
[143] *Ibid*., Principle 3.2 (a)
[144] *Ibid*., Principle 3.2 (i)

4.1.6 The National Pension Commission's Circular on Corporate Governance for Pension Fund Operators: Aligning Industry Practices with Evolving Standards

The Nigerian Pension Commission (PenCom) serves as the central regulatory body for pension matters within the country. In 2008, PenCom issued the Code of Corporate Governance for Licensed Pension Fund Operators, establishing initial guidelines for board composition, tenure, and rotation within the industry. [145] However, recognizing the evolving nature of best practices in corporate governance, PenCom superseded this code in December 2019 with the "Circular on Corporate Governance for Pension Fund Operators" (CPFAs). [146]

This Circular aims to provide comprehensive guidance for all Pension Fund Operators (PFOs), encompassing Pension Fund Administrators (PFAs), Contributory Pension Fund Account Holders (CPFAs), and Pension Fund Custodians (PFCs). The Circular, to be interpreted alongside the Nigerian Code of Corporate Governance (NCCG) 2018, establishes clear parameters for board member tenure. For Managing Directors/CEOs and Executive Directors (EDs), the maximum tenure is set at 10 years. An exception exists if an ED transitions to the MD/CEO role, in which case the maximum tenure is extended to 15 years, encompassing the prior years served as an ED. For Non-Executive Directors (NEDs), the maximum tenure is capped at 15 years. Independent Non-Executive Directors (INEDs) face a stricter limitation of 9 years, divided into three consecutive terms of three years each. These provisions underscore PenCom's commitment to fostering a culture of board renewal and introducing fresh perspectives into leadership structures.

The Circular's emphasis on director appointments reflects a broader objective of ensuring a dynamic and well-rounded board composition. By encouraging the appointment of new directors, the Circular aims to prevent stagnation in decision-making and promote the infusion of diverse viewpoints and expertise within the boardroom. This focus on board rejuvenation aligns with contemporary best practices in corporate governance and serves to strengthen the overall effectiveness of PFOs in managing pension funds.

4.2 International Benchmarks for Board Composition, Director Tenure and Rotation: A Comparative Analysis and the Role of the OECD Principles

International regulations for director tenure and rotation have gained attention in recent years due to a number of reasons, including the growing importance of corporate governance and the need for diversity on boards. The regulations vary across countries. While some countries have introduced mandatory retirement ages or term limits, others require periodic boardroom changes through rotating positions among board members. These measures aim to promote good governance practices and maintain an appropriate balance between stability and change at the top level of decision making in companies around the world.

Across the globe, some of the instruments on board practices include, the Swiss Code of Best Practice for Corporate Governance, the King Report on Corporate Governance applicable in South Africa, the UK Corporate Governance Code and others.

In terms of an international benchmark for board practices, the OECD Principles of Corporate Governance, 2023 serve as a strong reference point.[147] Primarily, the aim of the OECD is to improve the setting and supervision of policies by providing a suitable policy environment in which public authorities can effectively discharge their duties and markets can function efficiently. This is expected to result in sustained economic growth and favourable social resources. The principles provide a guideline and reference for countries attempting to re-establish economic and social order after a perceived collapse in market integrity. For example, this was seen in the post-financial crisis and in Asia and some South American countries.

The principles have also been translated into other languages, such as Japanese, and have been subject to review in conferences with formal input from non-member countries. This demonstrates the international influence and acceptance of the principles. The OECD has stated that the global dimension of corporate governance is fundamental to its work. It serves the globalization of capital and requires an international framework of rules to ensure smooth functioning. Therefore, the principles serve as both a prescription for best practice and a transitional device for countries moving onto the right path from a questionable position.

[145] Herein referred to as “the PenCom Code,” it can be downloaded at <https://www.pencom.gov.ng/wp-content/uploads/2017/04/Code_of_Corporate_Governance_for_Licensed_Pension_Operators.pdf >

[146] Downloadable from <https://www.pencom.gov.ng/wp-content/uploads/2020/03/Appendix-A-Circular-On-Corporate-Governance-For-PFOs-3.pdf> accessed 10 February 2024

[147] The principles were first issued in 1999 and were revised in 2004 and 2023 See the following sources: Fianna Jesover and Grant Kirkpatrick, “The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries”<https://www.oecd.org/corporate/ca/corporategovernanceprinciples/33977036.pdf> accessed 10 February 2024

4.2.1 Aligning Board Practices with the G20/OECD Principles of Corporate Governance: Composition Rotation and Term Limits

The preamble to the OECD principles states that "the objective of corporate governance is to enhance shareholder value and prevent the abuse of power." Primarily, the principles outlined seek to meet the objective stated by trying to "provide guidance for policymakers, regulators, and market participants in improving the legal, institutional, and regulatory framework that underlies corporate governance with a view to supporting economic efficiency, sustainable growth, and financial stability."

The principles cover a wide spectrum of issues. The OECD principles provide an international benchmark for good corporate behaviour. This is important not only for countries with developed capital markets and legal systems, the principles are also of relevant to others currently undergoing economic reform and institutional development e.g. Central and Eastern Europe, and Latin America. The global financial crisis has pointed to the need for further improving corporate governance in the financial sector, which the principles are well-suited to addressing.

4.2.1.1 How Do the OECD Principles Address the issues of Director Composition, Rotation and Term Limits?

The OECD Principles of Corporate Governance (the Principles) provide a foundational framework for having a well-constituted board of directors. While the Principles do not prescribe explicit mandates regarding director composition, rotation, or term limits, a nuanced analysis reveals their implicit recognition of the critical role these elements play.[148] This segment examines how the Principles inform optimal practices in these areas.

i. **Board Composition: Cultivating Expertise and Independence**

The Principles emphasise the paramount importance of directors possessing the qualifications and experience necessary to discharge their fiduciary duties effectively. This translates to a board comprised of individuals with a diverse range of expertise and backgrounds that align with the company's specific needs.[149]

ii. **Board Independence**

The G20/OECD Principles prominently feature board independence as a cornerstone principle. The core tenet is that the board should be able to exercise independent judgment on corporate affairs, free from undue influence by management or controlling shareholders.[150] The Principles, however, do not dictate a specific percentage of independent directors.

4.3 Director Rotation and its Impact on Corporate Governance

Corporate governance relies on a delicate equilibrium: preserving institutional knowledge and experience while fostering innovation and independent oversight. Director rotation serves as a key tool in achieving this balance. By establishing term limits for board members, companies can introduce fresh perspectives and skillsets while ensuring a smooth handover of institutional memory.

However, director rotation is not without its potential drawbacks. The departure of experienced directors can lead to a significant loss of institutional memory and historical context, which could hinder strategic decision-making, particularly for complex long-term initiatives. Furthermore, the onboarding and integration of new directors require time and resources, potentially disrupting board efficiency in the short term.

This section will examine the potential benefits this practice can offer, exploring how it can enhance the overall governance and success of an organisation.

4.3.1 Benefits of Director Rotation

As a mechanism for bursting the "boardroom bubbles," director rotation advocates for limiting the terms individual directors can serve on corporate boards. This, in theory, would accomplish the following:

i. **Reduced groupthink and enhanced decision-making quality:** Incoming directors bring diverse experiences and viewpoints, challenging groupthink while fostering innovation and prompting existing directors to re-evaluate their approach.[151]

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[148] According to OECD iLibrary, "The Principles are intended to apply to whatever board structure is charged with the functions of governing the company and monitoring management" – See OECD iLibrary 'G/20 OECD Principles of Corporate Governance 2023' <https://www.oecd-ilibrary.org/sites/ed750b30-en/1/2/5/index.html?itemId=/content/publication/ed750b30-en&_csp_=7a1eca165fad928a70a0300d1e07c36f&itemIGO=oecd&itemContentType=book#:~:text=This%20Principle%20states%20the%20two,with%20due%20diligence%20and%20care.> accessed 22 May 2024

[149] See for instance OECD Principle V.E.1 and V.E.2

[150] *Ibid*., OECD Principle V.E

[151] Irvin Janis, cited by Rogers and Satvat, defined groupthink as "the deterioration of mental efficiency, reality testing and moral judgment in the interest of group solidarity." Janis was quoted as saying that groupthink occurs when the members of the group become overly concerned about cohesiveness, rejecting dissent within the group and paying little attention to external views. This it was claimed, stems from excessive pride of the group, as opposed to individual arrogance or defiance ('hubris') – See, Mark Rogers and Amir Satvat, 'Rotating Boards' *Monash Business Review*, p. 39 <https://bridges.monash.edu/articles/journal_contributio

By introducing new faces and perspectives, boardroom dynamics could be invigorated, challenging entrenched interests and fostering innovative thinking.

ii. **Improved Board Accountability:** Term limits encourage directors to prioritise long-term value over short-term gains, reducing the risk of complacency.

Shorter tenures could heighten the sense of responsibility, leading to increased board-level diligence and responsiveness to stakeholder concerns.

iii. **Increased diversity of thought and experiences on the board:** Rotation allows for the inclusion of directors with different backgrounds and skill sets. This diversity of thought can lead to more well-rounded discussions and decisions, fostering a culture of continuous learning within the boardroom.

Thus, a well-designed rotation policy could open doors to a wider talent pool, including younger professionals and underrepresented groups, enriching boardroom discussions and decision-making.

iv. **Improved responsiveness to the Interests of Stakeholders:** Rotation can open board seats to broader representation, reflecting the interests of diverse stakeholders.
v. **Succession planning:** Rotation allows high-potential internal candidates to gain invaluable board experience.[152] By actively participating in strategic discussions and observing boardroom dynamics, these individuals develop crucial governance expertise and leadership skills.

In addition, as directors rotate, their strengths, weaknesses and leadership styles become readily apparent to the board and nomination committees. This continuous evaluation process facilitates the identification of potential candidates for future board or executive positions.

vi. **Stronger governance practices:** Rotation encourages a focus on building a strong governance framework within the company. This includes clear policies on director selection, performance evaluation and compensation.

These impacts can lead to an improved corporate governance image. Ideally, embracing board rotation aligns with international best practices and strengthens investor confidence. However, as earlier noted, director rotation, may sometimes be associated with some challenges.

4.3.2 Challenges and Considerations in Implementing Director Rotation Policies

While the mechanism of board rotation has been applauded for its advantages, there are also significant challenges to consider when implementing it. The drawbacks associated with director rotation may be summarised as follows:

a) **Balancing Renewal with Institutional Memory:** Seasoned directors offer invaluable historical context and understanding of the organisational fabric. Frequent rotations may risk sacrificing this collective memory, potentially derailing long-term strategies.

In other words, the exit of experienced directors can lead to knowledge gaps, thus impacting decision-making in the following ways:

ii. **Loss of institutional memory Disruption Continuity:** Boards function best with a balance of experience and fresh ideas. Constant leadership changes disrupt strategic planning and implementation, creating instability and hindering progress. Indeed, frequent turnover can hinder long-term strategic planning and implementation.
iii. **Practical Considerations and Power Dynamics:** Defining optimal term lengths, ensuring a steady pipeline of qualified candidates, and navigating potential power struggles within boards are just some of the practical hurdles that need careful consideration. Within the context of power dynamics for instance, short terms may incentivize directors to prioritise pleasing management rather than challenging it.

b) **Shareholder Resistance:** Some shareholders may resist director rotation, fearing instability or the loss of experienced leadership. Effective communication and transparent implementation processes can help address these concerns.

c) **People vs. Profit Dilemma:** Some critics argue that director rotation prioritizes fulfilling quotas for diversity over finding qualified individuals who would contribute to the financial success of a company.

d) **Confidentiality Concerns:** Directors often have access to sensitive information about a company's operations, strategies and financials. The departure of directors necessitating the onboarding of new

n/Rotating_the_boards_corporate_governance/4968395 > accessed 9 April 2024

[152] See, Åsa Björnberg and Claudio Feser, 'CEO succession starts with developing your leaders' (August 2016) p.2<https://www.mckinsey.com/~/media/mckinsey/featured%20insights/leadership/the%20board%20perspective/the-board-perspective.ashx > accessed 10 February 2024

members raises concern about the potential for confidential information leaks. Companies must establish robust protocols for information security and director onboarding to mitigate these risks.

e) Selecting the right Rotation Model: Different rotation models exist (term limits, staggered terms and age limits), each with its own advantages and disadvantages. The company's articles may outline specific terms for directors.[153] Choosing the right model depends on the company's specific needs and goals.

f) **Measuring Effectiveness and Overcoming Subjectivity:** Evaluating the effectiveness of director rotation can be challenging. This is so because the performance of a company is influenced by many factors that are beyond the control of the board, such as market conditions, competitor actions and economic or industry trends. Isolating the impact of director rotation on financial metrics like stock price or profitability can be difficult.

Furthermore, the lack of clear metrics for director performance makes the implementation of director rotation a complex issue with several challenges. Subjectivity creep is a major pitfall when evaluating director performance without clear metrics. Admittedly, board members have their own experiences, preferences and biases. Hence, without clear metrics, these biases can heavily influence their evaluation of directors. A director with a charismatic personality or who shares similar personal experiences with a board member might be seen more favourably, even if their actual performance is lacking.

Additionally, incorporating peer evaluations from fellow board members can provide a more holistic assessment of director performance.

5.0 Suggestions for Erasing Stagnation in Board Composition without Requiring Extensive Structural Changes

Ensuring a board functions effectively is paramount for any organisation's long-term success. However, board composition can naturally evolve over time, potentially leading to a lack of fresh perspectives and a diminished ability to address emerging challenges. This section explores practical strategies to reinvigorate board dynamics and foster a culture of continuous improvement, all within the context of the existing board structure. By implementing these readily actionable suggestions, organizations can empower their boards to remain at the forefront of strategic decision-making and propel the organization towards its goals.

Here are some suggestions for erasing stagnation in board composition without requiring extensive structural changes:

a) Leveraging the Board Skills Matrix: This may be accomplished in any of the following ways:

i. **Skills Gap Analysis:** Regularly review the board skills matrix to identify areas where the board lacks expertise. This can inform targeted recruitment efforts to bring in fresh perspectives without major structural changes.

ii. **Succession Planning:** Use the matrix to identify potential successors for directors nearing rotation who possess critical skills. Develop these individuals through mentorship or training programs, ensuring a smooth transition.

b) Enhancing Board Evaluations: In this regard, the following considerations are particularly relevant:

i. Focus on Skills and Performance: Shift the focus of board evaluations from attendance to a more skills-based approach. Evaluate directors based on their contributions to specific areas like strategy, risk management, or industry knowledge.

ii. Flexible Term Limits: Consider implementing flexible term limits, encouraging some directors to step down after a designated period while allowing re-election for those with critical, hard-to-replace skills.

c) **Director Development:** Promoting directors through training and mentorship programs can also be helpful for erasing stagnation in board composition without recourse to extensive structural changes. Companies can invest in training and mentorship programs to help existing directors develop new skills or update their knowledge base.

d) **Leveraging Technology:** This is yet another point to consider when tackling stagnation in board composition without major structural changes. For instance, the use of secure board portal platforms to facilitate efficient communication and collaboration among board members will help overcome geographical limitations and encourage active participation from all directors, thus, tackling stagnation in board composition, without the need for extensive structural changes.

5.1 The Influence of Stakeholders on Director Rotation and Proposed Regulatory Reforms

In this section, we shall analyse the perspectives and potential influence of different stakeholders on director rotation, including shareholders, investors, activists, regulatory bodies, and the directors themselves. Thereafter, we shall proceed to discuss proposed regulatory reforms surrounding director rotation, analysing their potential impact and effectiveness.

[153] S. 285 (1) CAMA

5.1.1 Shareholder Influence on Director Rotation

Shareholders possess a nuanced, yet impactful, role in influencing director rotation. This influence manifests through both direct and indirect mechanisms. Notably, academic commentary underscores the growing shareholder focus on board composition.[154]

a) **Mechanisms of Shareholder Influence**

i. **Annual Meeting Voting Rights on the Appointment and removal of Directors:** The annual meeting serves as a cornerstone for shareholder influence on director rotation, particularly for large institutional investors wielding significant voting power.

In a general meeting, shareholders possess the authority to appoint or remove directors. This power is exercised through a resolution passed by a majority of votes cast, either in person or by proxy.

ii. Board Authority to Fill Casual Vacancies

The board of directors possesses the authority to appoint new directors to fill vacancies arising from death, resignation, retirement, or removal.[155] This interim appointment allows the board to maintain its functionality while ensuring continuity of leadership. However, such appointments are subject to ratification by the shareholders at a subsequent general meeting.[156] This ratification requirement reaffirms the ultimate authority of shareholders over the board's composition.

b) Shareholder Activism:[157]

Large shareholders or activist investor groups can pressure the board to remove underperforming directors. This pressure can come through public pronouncements, media campaigns, or even litigation.[158] Institutional shareholders[159] and shareholders' associations[160] are recognised as key actors in this process, collaborating to enhance corporate accountability.[161]

However, the Nigerian context presents a unique scenario. Academic writers have reported that while shareholders' associations have played a prominent role in shareholder activism, such as resisting the fraudulent sale of corporate assets and playing a role in the dismissal of poorly performing corporate executives, institutional shareholder activism, remains relatively uncommon.[162] Studies by Uche *et al*., reveal a scarcity of such activism, with limited participation primarily from private pension funds. When it does occur, it often manifests as either a passive or an active approach. Notably, this contrasts sharply with developed nations where public pension funds are prominent forces in shareholder activism.[163]

Uche *et al*., further demonstrate that the limited number of active institutional shareholders in Nigeria, who did engage in activism primarily sought to promote enhanced business productivity, transparency, and accountability, demonstrating a willingness to leverage their holdings for influence on corporations.[164] Conversely, the majority of institutional shareholders in Nigeria exhibit a more passive approach, often motivated by a desire to maintain business relationships, maximize profitability, and minimize governance-related expenses.[165]

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[154] See for instance, George Anderson and Julie Hembrock Daum, 'Board composition: The road to strategic refreshment and succession' (March 2021) <https://www.spencerstuart.com/research-and-insight/the-road-to-strategic-board-succession> accessed 9 April 2024

[155] S. 274 (1) CAMA

[156] S. 274 (2) CAMA

[157] Shareholder activism has been described as a "phenomenon… in which an interested subset of a corporation's shareholders seek to influence the company's operation or direction – See, Wharton Aresty Institute of Executive Education, University of Pennsylvania, "The Threat and Opportunity of Shareholder activism" (November 2020) <https://executiveeducation.wharton.upenn.edu/thought-leadership/wharton-at-work/2020/11/shareholder-activism/> accessed 8 April 2024; see also Investopedia, "What is an Activist Shareholder? What they Do and How They Work" <https://www.investopedia.com/terms/s/shareholderactivist.asp> accessed 8 April 2024

[158] For further reading on shareholder activism (including who they are, what they want, the risk factors and how to respond to an activist), see PWC, "The Director's guide to shareholder activism" <https://www.pwc.com/us/en/services/governance-insights-center/library/how-shareholder-activism-might-impact-your-company.html> accessed 9 April 2024

[159] Institutional shareholders are large entities like pension funds, mutual funds, banks, insurance companies and hedge funds. They pool money from a large number of individuals and organisations and invest it in a variety of assets, including money stocks and bonds.

[160] Information available on the website of the Securities and Exchange Commission reveals that the number of shareholders' association registered with Nigeria's Corporate Affairs Commission is one hundred and eleven - See, SEC Nigeria, "List of Registered Shareholders' Associations" <https://sec.gov.ng/list-of-registered-shareholders-associations/> accessed 15 May 2024

[161] C. Uche, et al. "Institutional Shareholder Activism in Nigeria" (2016), *Corporate Governance: The International Journal of Business in Society*, (16) (4), pp. 1-16

[162] *Ibid*, p. 6

[163] *Ibid*., p. 4

[164] *Ibid*., pp. 6-7

[165] *Ibid*., pp. 8 - 11

5.1.2 Limitations of Shareholder Influence on Director Rotation

This section examines the limitations inherent in shareholder influence over director rotation within publicly traded companies. While shareholders possess certain mechanisms to exert pressure on board composition, these avenues are not without limitations. Some of the key constraints are as follows:

1) **Board Control over Nominations:** The initial nomination of directors often falls within the purview of the board itself. This grants the board significant influence over the pool of candidates presented to shareholders for election.
2) **Staggered Boards:** A prevalent corporate governance structure utilizes staggered boards. In these arrangements, only a designated portion of the board faces election each year. This extends the timeframe necessary for shareholders to enact a comprehensive board overhaul.[166]

All in all, shareholder influence on director rotation presents a multifaceted issue. Although shareholders possess tools to exert pressure, the board retains considerable power regarding nominations and election processes. A nuanced understanding of these limitations is crucial for both shareholders and directors to navigate the complexities of corporate governance.

5.2 Potential Influence of Regulatory Bodies on Director Rotation

Through various mechanisms, regulatory bodies can exert significant pressure on board rotation. This may be achieved in any of the following ways:

5.2.1 Regulatory Requirements and Corporate Governance Codes

Stock exchanges, including the NGX, establish listing requirements that impact the board composition of public companies. For instance, Rule 6.6 of the NGX Rulebook requires that "alterations to the particulars of all directorships…of dealing members shall be with the prior approval of the Exchange." Besides, the Rule book also mandates that no one shall serve as a director for more than one dealing member at a time.[167] By setting these standards, regulators push companies towards a more diverse and qualified board, which can lead to natural rotation as directors reach term limits or fail to meet evolving requirements.

Furthermore, regulatory bodies such as the SEC, NAICOM, PenCom and others, have issued corporate governance codes that recommend best practices for board composition and rotation. These codes carry weight and can compel companies to adopt policies that encourage regular board refreshment.

5.2.2 Enforcement Actions: Investigations and Disqualifications or Board Dismissal

Regulatory investigations into corporate misconduct or poor performance can result in recommendations for board changes as part of a settlement or corrective action plan.

Additionally, an investigation may uncover grounds for a regulatory body to disqualify directors deemed unfit to hold such a position due to misconduct, a lack of competence, or repeated breaches of regulations. This disqualification forces a company to find a replacement, leading to board rotation.

Investigations by regulatory bodies can also uncover issues that may warrant the dismissal of the entire board of a company.

Viewed from different angles, regulatory bodies wield a powerful influence on board rotation, acting as a vital counterpoint to directorial control. Through a combination of mandatory disclosures, diversity quotas, and independence requirements, regulations can promote a more balanced and effective board composition. However, striking the right balance is crucial. Overly stringent regulations can stifle innovation and limit the pool of qualified candidates.

Moving forward therefore, a more collaborative approach involving regulators, companies and shareholders is necessary to ensure regulations promote good governance practices without hindering a company's ability to attract the best talents to its board.

5.3 Directorial Influence on Board Rotation: A Potential Conflict?

As earlier emphasised, board rotation is the cornerstone of effective corporate governance. It fosters an influx of fresh ideas while also mitigating the risks of entrenched leadership. However, a potential conflict arises when the very directors whose terms are expiring hold sway over the rotation process. This subtopic explores the influence directors can exert on board composition and the tactics they may employ.

Directors, particularly long-tenured ones can exert a significant, though often subtle, influence on board rotation. They can leverage their position in any of the following ways:

[166]See the following: Investopadia, "Staggered Board of Directors: Structures and Meaning" (January 15, 2023) <https://www.investopedia.com/ask/answers/05/staggeredboard.asp> accessed 17 May 2023; CFI (Corporate Finance Institute) Team, Staggered Board, <https://corporatefinanceinstitute.com/resources/management/staggered-board-of-directors/> accessed 17 May 2023

[167]See Rule 6.8 Rulebook of the NGX

i. **Nominating Committee Control:** Often, directors themselves appoint members of the nominating committee, the group responsible for selecting candidates for open board seats. This allows them to potentially stack the committee with allies who favour their preferred replacements.
ii. **Lobbying and Endorsements:** Outgoing directors can actively lobby shareholders and fellow board members to support their chosen candidates. Public endorsements and behind-the-scenes campaigning can sway votes.
iii. **Internal Networks and Influence:** Directors cultivate relationships within the company and industry. They can leverage these networks to identify and promote potential successors who align with their vision or protect their interests.
iv. **Bypassing Formal Processes:** In certain instances, directors may circumvent established nomination procedures altogether. They might directly approach potential candidates, especially those with limited experience on public boards, offering guidance and mentorship in exchange for a potential future alliance. This can build talent pools but raises concerns about transparency and undue pressure.
v. **Golden Parachutes and Staggered Terms:** Some companies offer lucrative exit packages ("golden parachutes") to outgoing directors, potentially incentivizing a smoother transition and reducing resistance to their chosen successor. Additionally, staggered terms, where only a portion of the board is up for election each year, can create a longer runway for directors to influence future compositions.

It follows therefore, that while directors' influence can ensure continuity and stability, excessive directorial control can lead to adverse consequences, including stifling innovation and growth, promoting groupthink, undermining shareholders' rights and leading to reduced oversight.

By acknowledging these potential issues, companies can strive for a more balanced approach to board rotation. This might involve strengthening independent nominating committees, promoting transparency during candidate selection, and setting term limits for directors.

5.4 Director Rotation: Proposed Regulatory Reforms in Nigeria

Effective corporate governance hinges on a well-functioning system of director rotation. This practice ensures the continual influx of fresh perspectives and mitigates the risks associated with long-tenured leadership. However, current director rotation practices in Nigeria may not be achieving their full potential due to limitations in transparency and effectiveness. This section delves into a series of proposed regulatory reforms designed to address these shortcomings. By implementing these reforms, Nigeria can establish a more robust and transparent system of director rotation, ultimately fostering a corporate environment characterized by greater accountability and trust.

5.4.1 The Rationale for Reform: Addressing Shortcomings in Transparency and Effectiveness

The current landscape of director rotation in Nigeria necessitates a critical re-evaluation. Some potential areas for consideration include the following:

5.4.1.1 Strengthening Enforcement and Monitoring Mechanisms: Ensuring Adherence

Beyond the realm of disclosure, fortifying enforcement and monitoring mechanisms for existing transparency and disclosure regulations concerning director rotation is equally critical. This can be achieved through a combination of strategies:

5.4.1.2 Increased Penalties as a Deterrent

Implementing more stringent penalties for non-compliance with disclosure requirements specific to director rotation would serve as a strong deterrent for companies neglecting their transparency obligations. This would incentivize adherence and promote a culture of accountability.

5.4.1.3 Empowering Regulatory Bodies

Enhancing the capabilities of regulatory bodies through improved resources and expertise would allow them to effectively monitor compliance with director rotation regulations. This could involve bolstering investigative capacities and streamlining reporting procedures. By strengthening regulatory oversight, consistent enforcement becomes more achievable.

By enacting these proposed reforms, Nigeria can make significant strides towards achieving greater transparency and accountability in director rotation practices. This, in turn, can cultivate trust within companies and bolster the broader business environment. Ultimately, these advancements can contribute to the establishment of a more robust and well-functioning corporate governance framework in Nigeria.

6.0 CONCLUSION

6.1 Summary

The “boardroom bubble,” where directors become isolated from the realities of the company and market can be a serious threat to good governance. While boardroom rotation has the potential to burst the "boardroom bubble" by introducing fresh perspectives and expertise, it is crucial to acknowledge potential drawbacks. These include the loss of seasoned directors and the disruption of long-term strategic plans. To maximize the benefits and mitigate the limitations, a multifaceted approach is recommended.

6.2 Recommendations

Recommendations on some of the best practices to tackle these challenges are as follows:

1) Promoting diversity in the boardroom in terms of age, gender, ethnicity and background: This brings in different perspectives and challenges assumptions. Board refreshment should take into account, the appointment of members with specific expertise relevant to the company's future challenges, such as cyber security, artificial intelligence, or sustainability.
2) Ensuring a healthy number of independent directors who are not beholden to management
3) Setting term limits for directors encourages them to prioritize long-term value over short-term gains, reducing the risk of complacency.
4) Constructive dialogue with activist shareholders is also crucial. As a non-traditional approach to breaking the bubble, it is gaining traction internationally. Instead of dismissing activist shareholders, some companies are engaging in constructive dialogue to understand their concerns and perspectives. This can provide valuable insights and prevent disruptive proxy fights.
5) Staggered terms, where only a portion of the board rotates at a time can ensure continuity of knowledge and may be more appropriate for some organisations. Mentorship programmes can equip board members with the institutional memory and industry know-how held by outgoing directors. Additionally, robust knowledge transfer procedures, involving comprehensive handover documents and detailed briefings can ensure a smooth transition.

Ultimately, the goal should be to achieve an optimal balance between continuity and innovation. This will require a nuanced approach that considers the impact of various stakeholders.

